velopment project; to the Committee on Interior and Insular Affairs.

154. Also, memorial of the Legislature of the State of Nevada, relative to amending legislation promoting the development of the mining resources of the United States; to the Committee on Interior and Insular Affairs.

155. Also, memorial of the Legislature of the State of Oklahoma, relative to changing the period of daylight saving time; to the Committee on Interstate and Foreign Commerce.

156. Also, memorial of the Senate of the State of Washington, relative to changing the proposed Railpax schedule to provide an additional stop; to the Committee on Interstate and Foreign Commerce.

157. Also, memorial of the Legislature of the State of Maine, relative to lowering the retirement age under social security from 65 to 62 years; to the Committee on Ways and Means.

158. Also, memorial of the Legislature of the State of Massachusetts, relative to providing free and fair trade in the products relating to the power transformer industry; to the Committee on Ways and Means.

159. Also, memorial of the Senate of the State of New Jersey, requesting Congress to assume the entire cost and administration of the welfare and relief programs presently administered by the various States, counties, and municipalities; to the Committee on Ways and Means.

160. By Mr. BARING: Memorial of the Assembly and Senate of the State of Nevada, jointly: That the members of Nevada's congressional delegation are hereby memorialized to urge the Bureau of Indian Affairs of the U.S. Department of the Interior to ask for appropriations for and to build a new multipurpose gynasium building at the Stewart Indian School, near Carson City, Nev.; to the Committee on Interior and Insular Affairs.

161. By Mr. BARING: Memorial of the Senate and Assembly of the State of Nevada, jointly: That the Legislature of the State of Nevada urges the Congress of the United States to amend an act to promote the development of the mining resources of the United States, 17 Stat. 91, and other related acts to prevent further abuse thereof by speculators; to the Committee on Interior and Insular Affairs.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BARING:

H.R. 8018. A bill for the relief of Josephat Ahing; to the Committee on the Judiciary.

By Mr. BROYHILL of Virginia (by request):

H.R. 8019. A bill for the relief of Edna Clarke; to the Committee on the Judiciary.

By Mr. DANIELSON:

H.R. 8020. A bill for the relief of Leonardo Tandes Prado; to the Committee on the Judiciary.

By Mr. EDWARDS of California:

H.R. 8021. A bill for the relief of Parviz Faramarzi; to the Committee on the Judiciary.

By Mr. KEMP:

H.R. 8022. A bill for the relief of Hubert Knapp; to the Committee on the Judiciary.

H.R. 8023. A bill for the relief of Sebastian Okechukwu Mezu; to the Committee on the Judiciary.

By Mr. O'NEILL:

H.R. 8024. A bill for the relief of Joao De Quadros; to the Committee on the Judiciary.

By Mr. ROE:

H.R. 8025. A bill for the relief of Andreas Boutsis; to the Committee on the Judiciary.

H.R. 8026. A bill for the relief of Fernando Carreira Martins; to the Committee on the Judiciary.

SENATE—*Monday, May 3, 1971*

The Senate met at 12 o'clock noon and was called to order by the President pro tempore (Mr. ELLENDER).

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

Almighty God, as our fathers trusted in Thee and brought forth "one nation under God" so we would yield ourselves to Thee in our time of trial. Open our minds to the instruction of Thy truth and our hearts to the ways of compassion, mercy, and justice. Amid all that is ugly and brutal in this world grant us not to miss the beauty and kindness all about us in human existence.

Bestow Thy grace and wisdom upon those who bear the burdens of government. Make us all, both leaders and followers, receptive to new insights for peace and justice, and willing to explore the untried but ofttimes perilous pathways to a new world of freedom and brotherhood. Keep us from that bitterness and hate which enervates the spirit, dissipates creative energy, and extinguishes the light of Thy truth.

O Lord, our God, we beseech Thee to frustrate the ways of the peacebreakers and to prosper the efforts of the peacemakers that all men may dwell together in safety, in the unity of Thy spirit, and in the bonds of love.

We pray in the Master's name. Amen.

CALL OF THE ROLL

The PRESIDENT pro tempore. The Senate having adjourned in the absence of a quorum on April 30, 1971, the Chair directs the clerk to call the roll to ascertain the presence of a quorum.

The assistant legislative clerk called the roll, and the following Senators answered to their names:

[No. 56 Leg.]

Aiken	Gravel	Prouty
Allott	Hollings	Proxmire
Anderson	Hughes	Ribicoff
Beall	Inouye	Roth
Bible	Javits	Schweiker
Byrd, Va.	Jordan, N.C.	Scott
Byrd, W. Va.	Jordan, Idaho	Sparkman
Cook	Mansfield	Stevenson
Cotton	McClellan	Symington
Curtis	Metcalf	Talmadge
Ellender	Packwood	Tower
Ervin	Pearson	Young

Mr. BYRD of West Virginia. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Wyoming (Mr. MCGEE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Maine (Mr. MUSKIE), the Senator from Virginia (Mr. SPONG), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Alabama (Mr. ALLEN), the Senator from California (Mr. CRANSTON), the Senator from Georgia (Mr. GAMBRELL), and the Senator from Minnesota (Mr. HUMPHREY), are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Kansas (Mr. DOLE), the Senator from Colorado (Mr. DOMINICK), the Senator from Nebraska Mr. HRUSKA), the Senator from Iowa (Mr. MILLER), the Senator from Ohio (Mr. SAXBE) and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senator from Delaware (Mr. BOGGS) is absent because of death in his family.

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

The PRESIDENT pro tempore. A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

The PRESIDENT pro tempore. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Baker	Griffin	Mondale
Bayh	Gurney	Moss
Bennett	Hansen	Nelson
Brock	Harris	Pastore
Buckley	Hart	Pell
Case	Hartke	Percy
Chiles	Hatfield	Randolph
Cooper	Jackson	Smith
Eagleton	Kennedy	Stennis
Eastland	Long	Stevens
Fannin	Magnuson	Taft
Fong	Mathias	Tunney
Fulbright	McGovern	Weicker
Goldwater	McIntyre	

The PRESIDENT pro tempore. A quorum is present.

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the President pro tempore laid before the Senate a message from the President of the United States, submitting the nomination of

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

James L. Oakes, of Vermont, to be a U.S. circuit judge, second circuit vice Sterry R. Waterman, retired, which was referred to the Committee on the Judiciary.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, April 30, 1971, be dispensed with.

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

WAIVER OF CALL OF CALENDAR UNDER RULE VIII

Mr. MANSFIELD. Mr. President, I ask unanimous consent to waive the call of the calendar of unobjected to bills under rule VIII.

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

ORDER FOR ADJOURNMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 12 o'clock noon tomorrow.

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

ORDER FOR ADJOURNMENT FROM TOMORROW TO WEDNESDAY NEXT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business on tomorrow, it stand in adjournment until the hour of 12 o'clock noon on Wednesday.

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

ORDER FOR RECOGNITION OF SENATOR BUCKLEY TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that after the prayer by the Chaplain and the recognition of the majority and the minority leaders, the distinguished Senator from New York (Mr. BUCKLEY) be recognized for not to exceed 15 minutes on tomorrow.

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

COMMITTEE MEETING DURING SENATE SESSION TODAY

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

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a period for the conduct of routine business within the morning hour, with a time limitation of 3 minutes on statements made therein.

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

[Disturbance in Public Gallery No. 8.]

The PRESIDENT pro tempore. The galleries will be in order.

TESTIMONIAL DINNER IN HONOR OF SENATOR GEORGE D. AIKEN

Mr. MANSFIELD. Mr. President, on Saturday last I had the distinct honor and privilege to speak at a testimonal dinner in honor of our distinguished colleague, the dean of the Republicans in this body, the second in seniority, the distinguished senior Senator from Vermont, GEORGE DAVID AIKEN. This testimonial which was really an appreciation dinner, was held at St. Michael's College in Winooski, Vt., one of the outstanding educational institutions in the Northeast.

I ask unanimous consent that the text of my remarks delivered on that happy occasion be incorporated at this point in the RECORD.

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

REMARKS OF SENATOR MIKE MANSFIELD

I am delighted to have an opportunity to come to Vermont for this tribute to George Aiken. Your most distinguished Senator also happens to be my oldest friend in the Senate. My regard for him is such that I would be delighted to sing his praises—even from the top of your highest mountain. Perhaps, I should say, especially from *that* mountain, since I have the honor to share its name.

It is one of the marks of the civility of the Senate that a close personal association such as I have with Senator Aiken bridges the gap of party politics. I would note in this connection that we share breakfast almost daily in the Senate cafeteria. It is served at an early hour and in the morning the problems of the nation have always seemed to stand in clearest perspective. At least the breadth of vision of George Aiken makes them so appear. Having been exposed to his judgments for many years, I can understand the basis of his reputation for sharp perception. In the aviary of the Senate, George Aiken is catalogued as neither hawk nor dove but as a very wise owl.

Rather than heap redundant praise on his shoulders, however, I would like to share with you instead a few thoughts on the impact which I believe George Aiken's presence in the Senate has had on the face of this State, the nation and the world.

When I see Senator Aiken in these delightful surroundings and among old friends, I find it difficult to understand why he ever left home. It is much easier to understand why he comes back so often; he is of the very rock and earth of Vermont.

I know that he could have remained and settled down as a successful raspberry farmer.

He could have remained and continued his work in the field of horticulture and his highly original investigations of wild flowers.

He could have stayed here as a local school director and state legislator.

He was equipped to follow any and all of those occupations. Any one of them, alone, would have been more than sufficient distinction for a lifetime. In short, he could have remained in Putney and put together what would have been a very appealing and most comfortable life.

But George Aiken, to borrow the phrase of another Vermonter, "took a road less traveled." He left his heart there as he followed a family tradition of high public service. When he moved into the arena of State and federal responsibility, however, he continued to resist the comfortable security of the moment. His native honesty led him to reject the easy and the expedient. Rather, he chose to immerse himself, progressively, in more complex aspects of public leadership and, just as one achievement in Vermont led to another, each political summit in Washington has expanded his vision to new horizons.

He chose, for example, not co-existence with vested interests, but struggle against monopolistic practices in the supply of electric power.

Rather than a narrow partisanship, he urged on his party a positive and constructive outlook. He did so at a time when it would have been easier to go along with a blatant partisanship. It is small wonder that Democrats in this State ever since, have been hard-pressed to find a candidate to run against him. In his last election, I understand, the challenge to him was such that he was compelled to expend on his campaign the grand total of $17.09. Furthermore, only 35 Democrats voted against him for various other write-in candidates. We haven't found them yet.

George Aiken has never pursued change for the sake of change. Neither has he been wedded to the traditional way of doing things out of a sterile traditionalism. Rather, his common sense has always been receptive to new ideas. Change does not come easily in government, but over the years, the advocacies which George Aiken fought for have borne fruit.

A notable case in point is the extension of electrical power service to the rural areas of the nation. In 1938, Governor Aiken was able to tell the people of Vermont that within two years electric power would be available to every community in the State. His prophecy has long since come true and as the years have passed, electricity has emerged as a key factor in the revolution in agriculture. Its impact has been especially notable on the dairy industry.

Bulk tanks, milking parlors and bar cleaners have replaced milk cans, milking stools and, regrettably, milkmaids. What has been lost in color, however, has been compensated for by the gain in efficiency. Machines powered by electricity have removed much of the drudgery from the farmer's job.

I was struck by recent figures from the Department of Agriculture in this connection. They showed that the average number of man-hours needed to tend a dairy cow has been cut in half over the last 30 years, while the production per cow has doubled in that same period. So thanks to George Aiken and his counterparts in other parts of the nation, Vermont dairy farmers along with those in Wisconsin, Minnesota and elsewhere are producing twice as much milk per cow on half as much work-input.

George Aiken has also been in the forefront of the revolution in transportation. Since the 1930's rural road mileage in Vermont has increased seven fold. Like electrification, this advance has brought with it results which could hardly have been foreseen when it began. The highways have opened up most of Vermont's delightful countryside for recreation in winter as well as summer. From elsewhere in the nation, Americans have been travelling here in ever increasing numbers to confirm for themselves that Vermont does, indeed, look like the landscapes painted by your late near neighbor Grandma Moses. It is no wonder that tourism has become such a vital part of the State's income.

Then there is the Aiken Rural Water Act of 1965. It provides small communities throughout the nation with federal assistance in developing water and sewage facilities. It is bringing great benefits to this State and to many others, notably my own State of Montana. This landmark legislation passed the Senate by a unanimous vote in spite of the opposition of then President Lyndon B. Johnson. That tells you something of George Aiken's stature among his colleagues of both parties.

In recounting these achievements, I do not mean to leave the impression that Senator Aiken brought them about single-handedly.

He would be the first to reject the label "super-man or super-Senator." There are none and never have been in the Senate. Achievements are put together in that body out of a common response to a common need and many members participate in their creation. But someone has to set the train in motion. With regard to rural America, George Aiken's vision of the future, as seen from Vermont, has been a compelling inspiration. The great esteem with which he is held, moreover, has been a powerful force in giving substance to this vision. In my book and in many others, his support of a policy gives it automatic respectability. The fact is that his stamp of approval is a sort of national trademark for reliability.

George Aiken has done much in thirty years of Senate service to enhance the well-being, not only of those Americans who live the quiet life of farm and hillside but of all the people of the nation. His good sense has stood as a wall against assaults on the integrity of our national life. He has labored incessantly to keep in check the violently divisive forces which tear at the fabric of the nation's unity. At the same time, he has worked to turn back the tides of bigotry which would erode the nation's meaning.

He is the epitome of the New England of Henry Thoreau. Yet, his decency and good sense are just as relevant to the entire nation—not only to well-kept village and hamlet but to eroded farmlands and wasted rivers, to run-down factory towns and to metropolitan areas in shambles. This nation is in great need for human healing and George Aiken is one of its finest doctors.

As time goes on, moreover, more attention is also being paid to his views on world affairs and peace. In that realm, he has not pursued the course of self-righteous isolationism—to use his own phrase. Rather, he has emerged in recent years as one of the most knowledgeable men in the Senate on international affairs. If the word statesman is applicable to anyone in the Senate, it applies to George Aiken I have travelled with him to all corners of the globe. His judgments of situations abroad have been, as they are at home—sound and clear—even in the most alien circumstances.

In underdeveloped nations of Southeast Asia which we visited together, for example, Senator Aiken's background as a farmer gave him profound insights into the problems of those overwhelmingly rural lands. He saw clearly the incongruities of much which was being foisted upon them by us and others in the name of progress. Asians responded to him, not only as an American but as a human being, one of them, a man whose hands, too, had touched the soil. In Cambodia, as in Laos, in Viet Nam as in Burma, he left more friends than he found. George Aiken personified to them as he does to anyone who knows him the rejection of a philosophy that would presume to save a village by burning it down.

Above all else, George Aiken has been during these past few years, a voice pleading against deepening the tragedy in Indochina. At the very beginning—and I am going back to 1965—he raised a flag of warning against the path we had entered on in Viet Nam. Time and again, ever since, he has urged a rational peace. Three years ago, he said that it was time for this country to conclude that the war was over and to declare that it had been won insofar as it could be won by our participation. He urged that the withdrawal of our forces begin without delay.

We have tarried too long. We have permitted the tragedy to spead too far from Viet Nam—into Cambodia and Laos. It has now rebounded to sow the seeds of a deepening division in this nation.

The approaches to Viet Nam which George Aiken urged long ago have taken too long to find their way into the policies of the government. Thousands more have died or been maimed during the delay.

One would hope that his most recent proposal will not go unheeded. He has called for a convening of Asian nations to find a solution to the problem of peace in Asia. That is a most reasonable suggestion. In the end, those nations will have the greatest stake in the kind of peace which is restored. It may be that the President's new and welcome initiatives towards China are a step in that direction. In any event, when peace does return to Asia, it will come sooner rather than later, because George Aiken has spoken out on the basis of his insights into the problems of that region.

We might well inquire into the source of these insights. Why is it that George Aiken sees clearly into so many situations whether they are on the banks of the Mekong or Memphremagog. The secret was revealed many years ago by someone who said:

"Youth is not radical; only embittered and frustrated youth (or any age for that matter) wants to overturn a social order that will give them no foothold or security. Nor is youth apt to be stand-pat. Given reasonable opportunity, youth is liberal and open-minded. That is why folks can be young at twenty-one or forty-five or eighty, for youth is a mental outlook. Everything is before them and they have a vast energy for doing . . ."

Today, the author of these lines is the senior Senator from Vermont. He is second ranking Member of the United States Senate in point of service. He is the Dean of the Republicans of the Senate. Except for the vagaries of politics he would be the President Pro Tempore of the Senate and third in succession to the Presidency. He would also be chairman of either the Foreign Relations Committee or the Committee on Agriculture. He might also, may I say, been a candidate for President of the U.S. in the late 30's and early 40's.

The years have not dimmed the youthfulness of George Aiken's vision. They have not slowed the vigor of his step. In outlook, George Aiken remains more in tune with what the TV commercials refer to as the "now" generation than those who write them.

Because of our long-standing relationship it has become something of a joke in the Senate to say that when Mike Mansfield speaks, you know what George Aiken is thinking and when George Aiken speaks, you know what Mike Mansfield is thinking. It seems to me that this reciprocity might be given a more enduring form. I noted, indirectly, earlier in my remarks that the highest peak in the Green Mountain State bears the name Mansfield but not in any way connected with me. It occurred to me, however, that a suitable promontory in Montana might similarly be credited to the Senator from Vermont.

I am happy to be able to report that the reciprocity, in a sense, already exists. The highest point in Montana is called Granite Peak, and in the United States Senate the word "granite" is synonymous with "Aiken." The two words are associated with amazing regularity by colleagues and journalists alike. Only two weeks ago I had occasion to remind the Senate that granite typifies the character and stature of the man. So I hope that Senator Aiken will accept my assurance that the highest mountain in Montana is really named after him. And I might just add that Granite or Aiken Peak, Montana, is three times as high as Mount Mansfield, Vermont which, I am happy to concede, is just the way it is with the respective namesakes.

To this man of gentleness and granite—to this man of integrity and humility—to this man who belongs not only to Vermont but to all of us in this nation—I extend on behalf of all his colleagues in the Senate our love, affection and respect and to Vermont our thanks nad appreciation for giving him to the Republic.

George Aiken is what we would all like to be.

[Disturbance in Public Gallery No. 8.]

The PRESIDENT pro tempore. The galleries will be in order.

THE GOVERNMENT OF THE UNITED STATES IS PROCEEDING WITH THE NORMAL CONDUCT OF ITS BUSINESS

Mr. SCOTT. Mr. President, the Government of the United States, as was anticipated, is proceeding with the normal conduct of its business, in spite of attempts at disruption by a group, not all of whom perhaps ought to be condemned, but who are certainly evilly led by a group of junior monsters and those who strongly desire to bring about their own arrest and see if they can prevent this Government from functioning. Their tactics remind me of the words from the British anthem, "God Save the Queen":

Confound their politics,
Frustrate their knavish tricks.

These people have been counterproductive and have all but erased the genuinely sincere efforts of a bunch of good guys who were here last week, who behaved themselves and exercised their right of dissent, and were respected in their performance of it.

It is too bad that we appear to have this kind of tactic in a free country, but it will not work. It never has worked, and it is not going to work this time.

I yield back the remainder of my time.

SENATE RESOLUTION 112—SUBMISSION OF A RESOLUTION PROVIDING FOR APPOINTMENT OF FEMALE SENATE PAGES

Mr. JAVTS. Mr. President, on behalf of myself and 23 other cosponsors, including the Senator from Illinois (Mr. PERCY) and the Senator from Oklahoma (Mr. HARRIS), who are similarly situated with me, having appointed girl pages, I send to the desk a resolution and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will state the resolution by title.

Mr. MANSFIELD. Mr. President, I object.

The PRESIDENT pro tempore. Objection is heard, and the resolution goes over under the rule.

Mr. MANSFIELD. Mr. President, if the Senator will yield, I would like to state——

Mr. JAVITS. May we have the resolution read first?

The PRESIDENT pro tempore. The clerk will state the resolution.

The assistant legislative clerk read the resolution (S. Res. 112) as follows:

SENATE RESOLUTION 112

Resolved, That no individual shall be denied appointment as a Page of the Senate solely on the basis of sex.

The PRESIDENT pro tempore. The Senator from New York may proceed.

Mr. JAVITS. Mr. President, we understand that the procedure followed by the majority leader is absolutely correct. I

had been advised that the Senator from Vermont (Mr. PROUTY) would object. We expect to discuss the matter tomorrow. If the Senate wishes to take action on it then, that is fine. If not, it will go on the calendar. So the sole purpose was to bring the matter before the Senate. I know the majority leader and the Senator from Vermont (Mr. PROUTY) know that we gave notice and intended no surprise or anything else here in proposing the matter today. For the record, I would like to state that the cosponsors of this resolution, in addition to myself, Senator PERCY and Senator HARRIS, also include Senators BAYH, BROOKE, BUCKLEY, CASE, CRANSTON, EAGLETON, GRAVEL, HART, HATFIELD, HUGHES, MCGOVERN, MCINTYRE, MONDALE, MUSKIE, PACKWOOD, PROXMIRE, ROTH, STEVENSON, THURMOND, TUNNEY, and WEICKER.

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

Mr. JAVITS. I yield.

Mr. PROUTY. May I explain to the majority leader that I have discussed this matter with the distinguished Senator from North Carolina (Mr. JORDAN), chairman of the Committee on Rules and Administration, and also with the distinguished Senator from New York (Mr. JAVITS). They are both agreeable to accepting a unanimous consent request that the resolution be referred to the Committee on Rules and Administration with instructions that the Committee report it back to the Senate not later than May 11.

Mr. JAVITS. Mr. President, if that is agreeable to the majority leader——

The PRESIDENT pro tempore. Is there objection to the request?

Mr. MANSFIELD. Mr. President, I would suggest that it go over until tomorrow. Hopefully, the Senator from North Carolina (Mr. JORDAN) will be on the floor at that time. I would hope also that we might unanimously agree to the suggestion made.

Mr. JAVITS. Mr. President, I thank my colleague.

The PRESIDENT pro tempore. Is the request withdrawn?

Mr. JAVITS. Mr. President, I thank the Senator from Vermont (Mr. PROUTY) for his fine intercession.

The PRESIDENT pro tempore. The Chair understands that the request is withdrawn.

Mr. PROUTY. Yes.

NOTICE OF INTENTION TO FILIBUSTER AGAINST EXTENSION OF THE DRAFT

Mr. GRAVEL. Mr. President, there is a great inequity in our Nation that must be corrected.

I refer to the unjust and undemocratic system of our compulsory draft.

Within a very few days, the Senate will begin to debate whether this country should keep or put an end to military conscription. The President's authority to induct expires on July 1. If the Congress refuses to renew that authority there will be no more draft.

Mr. President, I hereby announce my intention—to the Senate and to the American people—to conduct a filibuster against any extension of the draft.

Many of our finest young men are being pressed unwillingly into the armed services to wage a war most of them believe to be immoral, illegal, and unnecessary to our national security.

By conducting a filibuster against an extension of the draft, I hope to open a political dialog not only in the Senate but also among the American people over our involvement in an illegal war and our entire present philosophy of defense.

We all know the American people are opposed to this war. I believe we will find they are also opposed to the draft.

The people, however, must have sufficient time to express their views to the Senate. By filibustering, I intend to give them the next 2 months until the draft expires to do so.

Our Government is founded on the principle of individual freedom. There can be no justification for continuing a policy of coercing young men into unwarranted military service.

The security of this Nation under present world conditions can be maintained through voluntary means.

If we here in the Congress put an end to the draft, we also help put an end to a senseless war in which more than 45,000 Americans and untold numbers of Vietnamese people have been killed.

It is time for us to rethink the whole idea of national defense and what the real interests of the United States.

It is time to call into question the notion that this country needs conscription to maintain massive numbers of troops around the world in order to preserve its security.

Mr. President, surely no subject is of more importance than one which confronts us with the question of whether we want to be a people at war or a people at peace.

It is exactly this type of dialog I hope to bring about when the Senate begins its deliberations on the extension of the draft.

EXECUTIVE COMMUNICATIONS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

CONDEMNATION OF AIRCRAFT REFUELING BOAT

A letter from the Assistant Secretary of the Navy (Installations and Logistics), reporting the condemnation of Aircraft Refueling Boat, Hull No. 25291; to the Committee on Armed Services.

REPORT ON AVIATION PERSONNEL ABOVE THE GRADE OF MAJOR, DEPARTMENT OF THE ARMY

A letter from the Acting Secretary of the Army, reporting, pursuant to law, on the Department of the Army aviation personnel above the grade of major (with accompanying papers); to the Committee on Armed Services.

REPORT OF THE FEDERAL COMMUNICATIONS COMMISSION

A letter from the Chairman, Federal Communications Commission, transmitting, pursuant to law, the 36th Annual Report of the Federal Communications Commission (with an accompanying report); to the Committee on Commerce.

PROPOSED DISTRICT OF COLUMBIA MOTOR VEHICLE ACT

A letter from the Commissioner of the District of Columbia, submitting a draft of proposed legislation to amend the Motor Vehicle Safety Responsibility Act of the District of Columbia and the District of Columbia Traffic Act of 1925, in order to promote increased traffic safety, and for other purposes (with accompanying papers); to the Committee on the District of Columbia.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Multiyear Leasing and Governmentwide Purchasing of Automatic Data Processing Equipment Should Result in Significant Savings" (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the impact of employment ceilings on management of civilian personnel in the Department of Defense (with an accompanying report); to the Committee on Government Operations.

PROPOSED LEGISLATION TO PROVIDE FOR THE PROTECTION OF U.S. PROBATION OFFICERS

A letter from the Director, Administrative Office of the U.S. Courts, submitting a draft of proposed legislation to amend title 18, United States Code, to provide for the protection of U.S. probation officers (with accompanying papers); to the Committee on the Judiciary.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the President pro tempore:

A joint resolution of the Legislature of the State of Nevada; to the Committee on Agriculture and Forestry:

"ASSEMBLY JOINT RESOLUTION NO. 40

"Memorializing the Congress of the United State to institute programs to reforest America

"Whereas, The first Americans once gazed upon vast, inspiring forests that seemed unending; and

"Whereas, Over many years our ancestors cleared and otherwise used up much of this great reservoir of timber, wildlife and recreation; and

"Whereas, Each tree planted is a small oxygen factory, erosion preventative, source of natural fertilizer and humus and home for wildlife; and

"Whereas, Each tree planted can beautify rural and urban America; now, therefore, be it

"Resolved by the Assembly and Senate of the State of Nevada, jointly, That the members of Nevada's congressional delegation are hereby memorialized to urge the Congress of the United States to institute programs to:

"1. Reforest federally owned land capable of being reforested.

"2. Assist the several states to reforest state lands.

"3. Provide additional incentives to reforest privately owned lands.

"4. Plant more trees in urban areas.

"5. Coordinate certain federal projects for reforestation with industrial needs for lumber, and to preserve other areas for recreational uses; and be it further

"Resolved, That the legislative counsel prepare and transmit copies of this resolution to the presiding officer of each house of the United States Congress, the members of the Nevada congressional delegation and to Representative Wendell Wyatt, Congressman from Oregon."

A resolution of the Senate of the State of Washington; to the Committee on Commerce:

"SENATE RESOLUTION

"Whereas, Railpax is to commence rail service May 1, 1971 amid serious controversy over its proposed routes and basic purposes; and

"Whereas, There are now scheduled to be

two daily trains in each direction between Portland and Seattle which will leave Portland at 8 a.m. and 4:30 p.m. and Seattle at 9:30 a.m. and 5:30 p.m. with stops only at Vancouver and Tacoma; and

"Whereas, The Seattle-San Diego triweekly train is scheduled to stop at Kelso when northbound at 2:25 p.m. and to arrive in Seattle at 5:15 p.m. and the only daily Seattle-Chicago train will depart from Seattle at 2:15 p.m.; and

"Whereas, From the above schedule it will be impossible for persons of the Kelso-Longview area, Kalama, Castle Rock, Cathlamet, Skamokawa, and the other communities between Tacoma and Vancouver to board a train for Chicago or points east unless they take the Northbound California train and wait for twenty-one hours in Seattle; and

"Whereas, This area of Southwestern Washington does provide sufficient patrons on a daily average basis to warrant another stop and, in addition provides substantially more weekend traffic composed largely of college students; and

"Whereas, The proposed reduction of train service under Railpax will place greater traffic burdens on the badly overcrowded Interstate 5 highway, and will reduce the work force in our area by 105 persons including several persons from the Kelso depot;

"Now, therefore, be it resolved, That the Senate of the State of Washington requests that the Railpax organization, the Interstate Commerce Commission, the Department of Transportation, and the Congressional delegation from the state of Washington reexamine the proposed Railpax schedule and provide for an additional stop at Kelso of the four daily Portland-Seattle trains; and

"Be it further resolved, That copies of this resolution be transmitted by the Secretary of the Senate to the Railpax organization, to the Interstate Commerce Commission, to the Department of Transportation, to the President of the United States Senate, to the Speaker of the House of Representatives and to each member of Congress from the state of Washington."

A concurrent resolution of the Legislative Assembly of the Commonwealth of Puerto Rico; to the Committee on Commerce:

"CONCURRENT RESOLUTION

"To request the Congress of the United States of America and the National Meteorological Service of the Department of Commerce of the United States to take the necessary measures so that there be installed in San Juan, Puerto Rico, a radar for meteorological signals.

"STATEMENT OF MOTIVES

"Puerto Rico is located in one of the zones of the terrestrial globe most susceptible to the lashings of hurricanes, tropical storms and other atmospheric disturbances. These atmospheric phenomena, on crossing our island, leave behind great losses to the agriculture, commerce and industry of the island and to the life and property of our citizens.

"Since it is not within the power of man to control the acts of nature, scientific and governmental efforts have been directed towards the task of warning the citizens of the occurrences of climatological phenomena. As a complement to these efforts and in order to offer greater protection to our people, it would be convenient and necessary to install in Puerto Rico a radar for meteorological signals.

"The establishment of a radar system for meteorological signals would fill the existing gap in the warning sysstem against atmospheric phenomena in the Caribbean. Likewise, it would enlarge the possibilities of the offices of the National Meteorological Service located in Puerto Rico, by giving hurricane warnings not only for Puerto Rico and its adjacent islands, but also it would permit the immediate forecast of cold fronts, barometric waves and other atmospheric phenomena which frequently cause serious floods in the island with the consequent loss of lives and properties.

"Be it resolved by the Legislature of Puerto Rico:

"Section 1.—There is hereby requested that the Congress of the United States of America and the National Meterological Service of the Department of Commerce of the United States, that it should take the necessary measures for the installation of a radar for meterological signals in the San Juan Station of the National Meteorological Service.

"Section 2.—It is hereby directed that copies of this resolution be transmitted to the Congress of the United States of America and to the National Meteorological Service of the Department of Commerce of the United States of America."

A resolution of the Senate of the State of New Jersey; to the Committee on Finance:

"SENATE RESOLUTION No. 2003

"Whereas, the cost of administering the welfare and relief programs in the various states, counties and municipalities has risen to a point where the resources of such entities are no longer sufficient to adequately finance such programs; and

"Whereas, the continuing spiraling costs of such programs have become an oppressive burden on the taxpayers who must pay for them; and

"Whereas, benefits under the various welfare and relief programs should be made substantially uniform throughout the United States to discourage the migration of people to certain States to obtain the advantages of more favorable welfare programs; and

"Whereas, the Federal Government alone has sufficient jurisdiction and economic resources to provide a uniform, effective and equitable system of welfare and relief laws; now, therefore,

"Be it resolved *by the Senate of the State of New Jersey:*

"That the Congress of the United States be, and is hereby respectfully memorialized to assume the entire cost and administration of the welfare and relief programs presently administered by the various States, counties and municipalities; and,

"*Be It Further Resolved,* That authenticated copies of this resolution, signed by the President of the Senate and attested to by the Secretary, be transmitted to the United States Senate and the United States House of Representatives; and,

"*Be It Further Resolved,* That copies of this resolution be transmitted to each member of the Congress of the United States elected from the State of New Jersey."

A joint resolution of the legislature of the State of Maine; to the Committee on Finance:

"JOINT RESOLUTION

"Memoralizing Congress to lower retirement age under social security from 65 to 62 years

"We, your Memoralists, the Senate and House of Representatives of the State of Maine in the One Hundred and Fifth Legislative Session assembled, most respectfully present and petition your Honorable Body as follows:

"Whereas, social security legislation is now under consideration by the Congress of the United States; and

"Whereas, a proposal has been made to lower the retirement age from 65 to 62 at which full benefits could be received; and

"Whereas, the lowering of the retirement age will assist approximately 8 million citizens for the first year; and

"Whereas, of these 8 million citizens, 3.5 million persons will become eligible for the first time; and

"Whereas, of these 3.5 million citizens, 1 million persons may act to claim benefits in the first year; and

"Whereas, the cost of this provision will be approximately 2.6 billion dollars a year, now, therefore, be it

"*Resolved,* That we, your Memoralists, recommend and urge that the Congress of the United States give immediate and favorable consideration to this provision lowering the retirement age for receiving full benefits under social security from 65 to 62 years; and be it further

"*Resolved,* That a copy of this Memorial, duly authenticated by the Secretary of State, be transmitted forthwith by the Secretary of State to the President of the Senate and the Speaker of the House of Representatives in the Congress of the United States and to members of the said Senate and House of Representatives from this State."

Two joint resolutions of the Legislature of the State of Nevade; to the Committee on Interior and Insular Affairs:

"ASSEMBLY JOINT RESOLUTION No. 33

"Memorializing the United States Bureau of Indian Affairs to seek appropriations for and to build a new multipurpose gymnasium building at the Stewart Indian School

"Whereas, The Stewart Indian School is a home and an educational and cultural center for Indians of many tribes throughout the West; and

"Whereas, The Stewart Indian School is the focal point of this interface between two cultures trying to increase their mutual understanding through cultural exchanges and other programs; and

"Whereas, There is an unequivocal need for a multipurpose building, worthy of pride, in which to hold sports events, assemblies, concerts, stage productions and other presentations, and to which the public could be invited; and

"Whereas, The present gymnasium was built in 1938 to serve far fewer students than are presently enrolled and will, in fact, not even seat two-thirds of the present student body of 600, much less provide adequate room for visitors; and

"Whereas, The Stewart Indian School is a charter member of the Nevada Interscholastic Activities Association sponsoring activities in football, basketball, wrestling, track, golf, tennis, baseball, gymnastics, music, speech and debate, and yet the present gymnasium is inadequate in every way to accommodate most of the major activities; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of Nevada, jointly,* That the members of Nevada's congressional delegation are hereby memorialized to urge the Bureau of Indian Affairs of the United States Department of the Interior to ask for appropriations for and to build a new multi-purpose gymnasium building at the Stewart Indian School, near Carson City, Nevada; and be it further

"*Resolved,* That copies of this resolution be prepared by the legislative counsel and dispatched forthwith to the presiding officer of each house of the United States Congress, to the director of the Bureau of Indian Affairs and to each member of the Nevada congressional delegation."

"SENATE JOINT RESOLUTION No. 2

"Memorializing the Congress to amend the federal mining laws to prevent abuses by speculators

"Whereas, By 'An act to promote the development of the mining resources of the United States,' 17 Stat. 91, the Congress of the United States on May 10, 1872, made available all valuable mineral deposits in federal lands for exploration and purchase; and

"Whereas, Certain speculators have taken improper advantage of such Act of Congress and are filing large numbers of mining claims without following proper locating procedures; and

"Whereas, Although most of such claims may be proven to be invalid, they create a cloud of title for valid locators; now, therefore, be it

"Resolved by the Senate and Assembly of the State of Nevada, jointly, That the legislature of the State of Nevada urges the Congress of the United States to amend "An act to promote the development of the mining resources of the United States," 17 Stat. 91, and other related acts to prevent further abuse thereof by speculators; and be it further

"Resolved, That copies of this resolution be prepared and transmitted by the legislative counsel to the President of the Senate, to the Speaker of the House of Representatives, to all members of the Nevada congressional delegation and to the Secretary of the United States Department of the Interior."

A resolution of the Legislature of the State of Nebraska; to the Committee on Interior and Insular Affairs:

"LEGISLATIVE RESOLUTION 51

"Whereas, investigation by the United States Bureau of Reclamation has shown that a multipurpose water development project in Loup, Garfield, Valley, Greeley, Howard, Merrick, and Nance Counties, Nebraska would provide large benefits for irrigation, recreation and fish and wildlife to the people of the State of Nebraska; and

"Whereas, studies completed by the Nebraska Soil and Water Conservation Commission for the Nebraska Water Plan show that the project would be desirable and compatible with total State Water Resources Development; and

"Whereas, House Bill, H.R. 869 and Senate Bill S. 352, for authorization and construction of this Project were introduced by Congressman Dave Martin and Senators Roman L. Hruska and Carl T. Curtis and are presently being considered by the House of Representatives and the Senate of the United States; and

"Whereas, in 1968 the University of Nebraska released a study of the economic impact that irrigation crop production has on the economy of the entire State of Nebraska, and applying the results of this study to the North Loup Division shows the development would add about $36,000,000 annually to business in Nebraska; and

"Whereas, local support for the North Loup Project has always been strong and the owners and operators of the irrigable land are highly in favor of the Project.

"Now, therefore, be it resolved by the members of the 82d Legislature of Nebraska, first session:

"1. That the Legislature memoralizes the 92d Congress of the United States and the respective Interior Committees thereof, to support the proposals of the Bureau of Reclamation for the North Loup Division and approve the above legislation for its authorization and construction.

"2. That funds be provided to the United States Bureau of Reclamation in fiscal year 1971–72 for preconstruction planning of the North Loup Division.

"3. That copies of this resolution, suitably engrossed, be transmitted by the Clerk of the Legislature, to the United States Senate and House of Representatives of the 92d Congress, to Honorable Henry Jackson, Chairman of the Senate Interior Committee, and Honorable Wayne Aspinall, Chairman of the House Interior Committee, and to each member from Nebraska in the Senate and House of Representatives of the United States."

A resolution adopted by the council of the City of Indio, Calif., in support of a revenue-sharing program; referred to the Committee on Finance.

A petition from the Ecology Club of Garden City, Junior High School, Garden City, Long Island, N.Y., urging antipollution legislation; to the Committee on Public Works.

Petitions were presented to the Senate and referred as indicated:

Mr. PEARSON. Mr. President, the Bureau of Motor Vehicles Safety of the Federal Highway Administration in the Department of Transportation has recently proposed regulations which would, in effect, prohibit a great portion of the farm work force from operating vehicles essential to the normal operations of our Nation's farms.

As one who has been intensely interested in this matter, as one who has offered legislation, it is most encouraging to receive from the legislature of my State a concurrent resolution indicating their opposition to the proposed regulations and their determination to make their views known to appropriate officials at the Federal level.

Accordingly, Mr. President, I ask unanimous consent that this resolution be received and printed in the RECORD at the conclusion of my remarks. I invite the attention of the Senate, the appropriate committees, and the responsible officials within the Department of Transportation to this statement.

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

The joint resolution of the Legislature of the State of Kansas, which was referred to the Committee on Commerce, reads as follows:

HOUSE CONCURRENT RESOLUTION No. 1048

A Concurrent Resolution memorializing the United States Department of Transportation and the Congress of the United States concerning interstate transportation of farm vehicles and regulation thereof by the Federal Highway Administration Bureau of Motor Safety

Whereas, The motor carrier safety regulations of the Bureau of Motor Carrier Safety of the Federal Highway Administration of the United States Department of Transportation applicable to farm vehicles traveling in interstate commerce have been modified to gravely restrict the traditional interstate travel of farm trucks; and

Whereas, Under such modified rules:

1. All drivers in interstate commerce must pass a road test (no exception for drivers of farm trucks).

2. All drivers in interstate commerce must take an examination in the federal motor carrier safety regulations. (No exception for drivers of farm trucks).

3. All drivers in interstate commerce must be at least 21 years of age. (No exception for drivers of farm trucks).

4. All drivers in interstate commerce must carry with them a medical certificate executed within the past 24 months evidencing they meet prescribed physical standards. (No exception for drivers of farm trucks).

5. All drivers must file with the employer a complete history of his driving employment and experience, including violations; and the employer must verify this experience. (No exception for farm trucks); and

WHEREAS, The above modified rules were partially suspended on January 1, 1971 for a period of six months; and

WHEREAS, The modified rules referred to above fail to fit the operating conditions of farmers and are unrealistic and unworkable as applied to agriculture and the approximately three million (3,000,000) trucks operated by farmers: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: The United States Department of Transportation and the Congress of the United States are hereby respectively memorialized to cause the rules of the Bureau of Motor Carrier Safety of the Federal Highway Administration to be further modified to realistically accommodate and balance the safety needs of the public and the public's need for the farm products necessary to wholesome life in the United States.

Be it further resolved: That the secretary of state is hereby directed to transmit an enrolled copy of this resolution to each member of the congressional delegation from the state of Kansas, to the Secretary of Transportation of the United States and to the Bureau of Motor Carrier Safety of the Federal Highway Administration.

Mr. PEARSON. Mr. President, the recent decision by Congress to terminate our supersonic transport program has and will have a devastating effect on thousands of dedicated workers, scientists, technologists, and engineers, not only in my State, but in many parts of the Nation. As I have indicated here before, that decision, in my judgment, was not made with full comprehension of the facts or with full appreciation for the impact it would have.

Consequently, Mr. President, the legislature of my State, in a joint resolution, has petitioned the Congress to reconsider its action to deny funds for the design and construction of two prototype aircraft to test for the problems which were so casually proclaimed to be insurmountable. I ask unanimous consent that it be received and printed in the RECORD at the conclusion of my remarks.

I invite the attention of the Senate to this expression of disappointment and concern by the elected representatives of the people of the State of Kansas.

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

The joint resolution of the Legislature of the State of Kansas, which was referred to the Committee on Appropriations, reads as follows:

HOUSE JOINT RESOLUTION No. 1002

A Joint Resolution memoralizing the Congress of the United States to reconsider its actions on funding development of the supersonic transport

Whereas, The state of Kansas has long been a leader in the aerospace industry; and

Whereas, The city of Wichita in Sedgwick county is the home of many thousands of highly skilled, dedicated and experienced aircraft workers, scientists, technologists and engineers and is the site of large aircraft manufacturing plants; and

Whereas, In the city of Wichita there is situated a large unit of the Boeing Company, a manufacturing plant which has contributed magnificently to the military efforts and peaceful activities of the United States and the free world; and

Whereas, The economy of Wichita, its surrounding area and the state of Kansas are grievously depressed, unemployment is high and the economy weak; and

Whereas, The skills and talents of the people of Wichita must be preserved now and for the future; and

Whereas, The United States will lose markets and suffer losses of prestige should it not be competitive in the world markets: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate agreeing thereto:

Section 1. The legislature of the state of Kansas hereby respectfully petitions the Congress of the United States to reconsider its actions on denial of funds for design, prototype construction and flight demonstrations of the supersonic transport. The legislature further urges that all conclusions as to the effect by the supersonic transport upon the environment be held in abey-

ance until after ample test flights have been made.

Sec. 2. The secretary of state is hereby directed to send enrolled copies of this resolution to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Secretary of Health, Education and Welfare, the Secretary of Defense, the Secretary of Labor, each member of the Kansas delegation to the Congress of the United States and to the Governor, the President of the Senate and the Speaker of the House of Representatives of the state of Washington, Olympia, Washington 98501.

Sec. 3. This joint resolution shall take effect and be in force from and after its publication in the official state paper.

BILLS AND JOINT RESOLUTIONS INTRODUCED

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. McCLELLAN:

S. 1735. A bill for relief of St. Louis Southwestern Railway Lines. Referred to the Committee on the Judiciary.

By Mr. GRAVEL (for himself, Mr. RANDOLPH, Mr. COOPER, Mr. BOGGS, Mr. JORDAN of North Carolina, and Mr. TUNNEY):

S. 1736. A bill to amend the Public Buildings Act of 1959, as amended, to provide for financing the acquisition construction, alteration, maintenance, operation, and protection of public buildings, and for other purposes. Referred to the Committee on Public Works.

By Mr. FONG:

S. 1737. A bill for the relief of Kwok Kwong Wong;

S. 1738. A bill for the relief of Manuel Paris Guerrero;

S. 1739. A bill for the relief of Romeo Farley Tanjuaquio; and

S. 1740. A bill for the relief of Renato Geliza Ramil. Referred to the Committee on the Judiciary.

By Mr. EAGLETON:

S. 1741. A bill to provide increased unemployment compensation benefits for Vietnam era veterans. Referred to the Committee on Finance.

By Mr. BROCK:

S. 1742. A bill to prohibit the use of the name of any of certain deceased servicemen unless consent to so use the name is given by the next of kin of the serviceman. Referred to the Committee on the Judiciary.

By Mr. ERVIN:

S. 1743. A bill to further protect the constitutional rights of members of the Armed Forces by requiring that pretrial confinement be deducted from the term of any sentence to confinement adjudged by a court martial. Referred to the Committee on Armed Services.

S. 1744. A bill to provide for compliance with constitutional requirements in the trials of persons who are charged with having committed certain offenses while subject to trial by court martial, who have not been tried for such offenses, and who are no longer subject to trial by court martial; and

S. 1745. A bill to provide for compliance with constitutional requirements in the trials of persons who, while serving as employees of the United States or while accompanying the Armed Forces, commit certain offenses outside the United States. Referred to the Committee on the Judiciary.

By Mr. NELSON (for himself, Mr. MONDALE, and Mr. CRANSTON):

S. 1746. A bill to amend the Public Health Service Act to extend for 1 year the student loan and scholarship provisions of titles VII and VIII of such act. Referred to the Committee on Labor and Public Welfare.

By Mr. KENNEDY:

S. 1747. A bill to amend title VIII of the Public Health Service Act to extend, expand, and improve the various programs thereunder relating to nurse training, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. McGOVERN:

S. 1748. A bill for the relief of Zenaida Magtibay. Referred to the Committee on the Judiciary.

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

S. 1749. A bill to amend section 7 of the Flood Control Act approved June 28, 1938, (52 Stat. 1215, 1225), as amended. Referred to the Committee on Public Works.

By Mr. PACKWOOD:

S. 1750. A bill to authorize abortions in the United States. Referred to the Committee on Labor and Public Welfare; and

S. 1751. A bill to authorize abortions in the District of Columbia. Referred to the Committee on the District of Columbia.

By Mr. EASTLAND:

S. 1752. A bill for the relief of Mrs. Bronson Clayton. Referred to the Committee on the Judiciary.

By Mr. MOSS:

S. 1753. A bill to establish a National Institute of Advertising, Marketing, and Society. Referred to the Committee on Commerce.

STATEMENTS ON INTRODUCED BILLS

By Mr. EAGLETON:

S. 1741. A bill to provide increased unemployment compensation benefits for Vietnam era veterans. Referred to the Committee on Finance.

Mr. EAGLETON. Mr. President, today I am introducing legislation to provide supplemental benefits to unemployed Vietnam era veterans which would guarantee them a minimum weekly benefit of $75 for up to 52 weeks.

The largest single problem facing our returning veterans today is that of unemployment. The normal problems of readjustment to civilian life are compounded by what has become the tightest job market in years. The current unemployment rate among returning servicemen is 12 percent—about 352,000 are without jobs. This is double the national unemployment rate of 6 percent, and portends to get even worse.

During the fiscal year 1970, 431,000 recently separated veterans filed claims for unemployment compensation—up 40 percent from the previous year. New claims for unemployment compensation filed by recently separated veterans are now running at the rate of more than 40,000 a month. The Department of Labor reports that veterans' applications for employment are up sharply but placements are down. Nearly 2 million veterans filed new applications for employment in the last fiscal year and this figure is expected to rise by about 300,000 in the current year.

After World War II and the Korean war, special legislation was enacted by Congress to provide special unemployment compensation to veterans who had difficulty in finding work. The "52–20 Club" after World War II provided relief of $20 a week for 52 weeks for the unemployed veteran. The bill I am introducing today could be labeled one for the "52–75 Club."

While expanding the unemployment benefits for veterans is only a stopgap measure until we can improve programs for veteran employment, it is a necessary one. Last year, in the employment and manpower bill of 1970, Congress provided for an expanded job counseling, training, and placement for veterans, but that act was vetoed by the President. Recently, the President announced his jobs for veterans program, but it is too early to tell if it will have any effect on the problem. Meanwhile, something must be done for the veteran who returns from service and finds himself unemployable.

The problem with unemployment compensation as it now exists is twofold: First, there is a great variation in the benefits to which the veteran is entitled, depending on his State, although they are uniformly inadequate; and, second, the period of entitlement is too short, usually 26 weeks. The following table shows the minimum and maximum amount of benefits for each State, along with the number of weeks for which a veteran is eligible for such compensation:

U.S. DEPARTMENT OF LABOR

SIGNIFICANT PROVISIONS OF STATE [UNEMPLOYMENT INSURANCE LAWS, JAN. 4, 1971

[Prepared for ready reference. Consult the State law and State employment security agency for authoritative information]

	Weekly benefit amount for total unemployment (in dollars)		Weeks of benefits for total unemployment	
	Minimum	Maximum	Minimum	Maximum
Alabama	$12	$50	13	26
Alaska	18–23	60–85	14	28
Arizona	10	50	12	26
Arkansas	15	50	10	26
California	25	65	12–14	26
Colorado	14	77	10	26
Connecticut	15–20	82–123	22	26
Delaware	10	65	16	26
District of Columbia	8–9	73	17	34
Florida	10	47	10	26
Georgia	12	50	9	26
Hawaii	5	86	26	26
Idaho	17	59	10	26
Illinois	10	45–88	10–26	26
Indiana	10	40–52	12	26
Iowa	9	61	11	26
Kansas	15	60	10	26
Kentucky	12	56	15	26
Louisiana	10	55	12	28
Maine	10	57	12½–30	26
Maryland	10–13	65	26	26
Massachusetts	12–18	69–104	5–30	30
Michigan	16–18	53–87	11	26
Minnesota	15	57	13	26
Mississippi	10	40	12	26
Missouri	3	57	10–26	26
Montana	13	42	13	26
Nebraska	12	48	17	26
Nevada	16–24	47–67	11	26
New Hampshire	13	60	26	26
New Jersey	10	72	12	26
New Mexico	12	58	18	30
New York	20	75	26	26
North Carolina	12	54	26	26
North Dakota	15	54	18	26
Ohio	10–16	47–66	20	26
Oklahoma	16	49	10	26
Oregon	20	55	11	26
Pennsylvania	11	60	18	30
Puerto Rico	7	46	20	20
Rhode Island	12–59	71–91	12	26
South Carolina	10	53	10	26
South Dakota	12	47	10–16	26
Tennessee	14	50	12	26
Texas	15	45	9	----------
Utah	10	56	10–22	----------
Vermont	15	61	26	----------
Virginia	18	59	12	----------
Washington	17	72	8–21	----------
West Virginia	12	58	26	----------
Wisconsin	11	72	14	----------
Wyoming	10	56	11–24	----------

As the table shows, there is a wide difference in the amount of unemployment compensation between each State. Our veterans receive only the level of unemployment benefits in effect in their States, which currently average $52.15 per week.

Furthermore, the period of eligibility for unemployment benefits rarely exceeds 26 weeks, although veterans' readjustment problems are more difficult than other recipients of unemployment compensation. For the quarter ending in December 1970, 19.3 percent of those veterans who went on unemployment months earlier drew their last check without having found a job. At this point the returning veteran's alternative is to go on welfare.

I believe that this country owes a greater obligation to those who were uprooted from civilian life and thrust into the Vietnam war at risk to their life and limb than to provide them with minimal unemployment compensation, after which they are forgotten. For this reason, I am introducing a bill to provide unemployment compensation of $75 per week for 52 weeks as a stopgap measure until we can improve our governmental systems for giving better employment assistance to our returning veterans. This bill is identical to that introduced last Wednesday by Congressman JONATHAN BINGHAM of New York, with 46 cosponsors. I intend to ask for similar cosponsorship from my colleagues and ask unanimous consent that the bill be printed at this point in the RECORD for their consideration.

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

S. 1741

A bill to provide increased unemployment compensation benefits for Vietnam era veterans

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 "Vietnam Era Veterans' Supplementary Unemployment Compensation Act".

SEC. 2. SUPPLEMENTARY COMPENSATION FOR VIETNAM ERA VETERANS UNDER STATE AGREEMENTS.—(a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State or State agency under which the State agency (1) will make, as agent of the United States, payments of supplementary unemployment compensation to any Vietnam era veteran in such State in accordance with the provisions of this Act, and (2) will otherwise cooperate with the Secretary, and with other State agencies, in making payments of supplementary unemployment compensation under this Act.

(b) Any such agreement shall provide that any determination by a State agency with respect to entitlement to supplementary unemployment compensation pursuant to an agreement under this section shall be made in accordance with the State unemployment compensation law and shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law.

(c) Each agreement shall provide the terms and conditions upon which it may be amended or terminated.

SEC. 3. UNEMPLOYMENT COMPENSATION IN ABSENCE OF STATE AGREEMENTS.—(a) In the case of a Vietnam era veteran who is in a State which has no agreement under this Act with the Secretary, the Secretary, in accordance with regulations prescribed by him, shall, upon the filing by such veteran of a claim for supplementary unemployment compensation under this Act, make payments of supplementary unemployment compensation to him in the same amounts and for the same periods as provided for in this Act. Any determination by the Secretary with respect to entitlement to supplementary unemployment compensation under this subsection shall be made in accordance with the State unemployment compensation law of the State where the veteran is.

(b) In the case of a Vietnam era veteran who is in the Virgin Islands, the Secretary, in accordance with regulations prescribed by him, shall, upon the filing by such veteran of a claim for supplementary unemployment compensation under this subsection, make payments of supplementary unemployment compensation to him in the same amounts and for the same period as provided for in this Act. Any determination by the Secretary with respect to entitlement to unemployment compensation under this subsection shall be made in accordance with the unemployment compensation law of the District of Columbia insofar as such law is applicable.

(c) Any Vietnam era veteran whose claim for unemployment compensation under subsection (a) or (b) of this section has been denied shall be entitled to a fair hearing in accordance with regulations prescribed by the Secretary. Any final determination by the Secretary with respect to entitlement to supplementary unemployment compensation under this section shall be subject to review by the courts in the same manner and to the extent as is provided in section 405(g) of title 42, United States Code, with respect to final decisions of the Secretary of Health, Education, and Welfare under subchapter II of such title.

(d) The Secretary may utilize for the purposes of this section the personnel and facilities of the agency in the Virgin Islands cooperating with the United States Employment Service under chapter 4B of title 29, United States Code. For the purpose of payments made to any such agency under such chapter, the furnishing of such personnel and facilities shall be deemed to be a part of the administration of the public employment office of such agency.

SEC. 4. PAYMENTS TO STATES.—Each State shall be entitled to be paid by the United States an amount equal to payments of supplementary unemployment compensation made by such State under and in accordance with an agreement under this Act, and such payments shall be made subject to the same conditions and limitations which apply with respect to payments to States for compensation under section 8505 (b) through (h) of title 5, United States Code.

SEC. 5. INFORMATION.—(a) All Federal departments and agencies shall make available to State agencies which have agreements under this Act or to the Secretary, as the case may be, such information with respect to military service of any Vietnam era veteran as the Secretary may find practicable and necessary for the determination of such veteran's entitlement to supplementary unemployment compensation under this Act.

(b) Each State agency shall furnish to the Secretary such information as the Secretary may find necessary or appropriate in carrying out the provisions of this Act, and such information shall be deemed reports required by the Secretary for the purposes of paragraph (6) of subsection (a) of section 503 of title 42, United States Code.

SEC. 6. FALSE STATEMENTS AND MISREPRESENTATIONS.—(a) If a State agency, the Secretary of Labor, or a court of competent jurisdiction finds that an individual—

(1) knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact; and

(2) as a result of that action has received an amount as supplementary unemployment compensation under this Act to which he was not entitled;

the individual shall repay the amount to the State agency or the Secretary. Instead of requiring repayment under this subsection, the State agency or the Secretary may recover the amount by deductions from supplementary unemployment compensation payable to the individual under this Act during a two-year period after the date of the finding. A finding by a State agency or the Secretary may be made only after an opportunity for a fair hearing, subject to such review as may be appropriate under section 2(b) of this Act.

(b) An amount repaid under subsection (a) of this section shall be—

(1) deposited in the fund from which payment was made, if the repayment was to a State agency; or

(2) returned to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payment was made, if the repayment was to the Secretary.

SEC. 7. REGULATIONS.—The Secretary is hereby authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act. The Secretary shall, insofar as practicable, consult with representatives of the State agencies before prescribing any rules or regulations which may affect the performance by such agencies of functions pursuant to agreements under this Act.

SEC. 8. NONDUPLICATION OF BENEFITS.—(a) Notwithstanding any other provision of this Act, no payment shall be made under any agreement under this Act, or, in the absence of such an agreement, by the Secretary under this Act to a Vietnam era veteran—

(1) for any week or any part of a week he is eligible (or would be eligible except for the provisions of this Act or except for any action taken by such veteran under this Act) to receive unemployment benefits at a rate equal to or in excess of $75 per week under any Federal or State unemployment compensation law; or

(2) for any period in which he receives a subsistence allowance under chapter 31, or an educational assistance allowance under chapter 35, title 38, United States Code.

SEC. 9. EFFECTIVE PERIOD.—Supplementary unemployment compensation may be paid pursuant to this Act for weeks of unemployment commencing on or after the sixtieth day after the date of the enactment of this Act, but no such compensation may be paid to any Vietnam era veteran for any week beginning on a date which is more than (1) three years after the sixtieth day after such date of enactment, (2) three years after the date on which such veteran is discharged or released from active duty if such discharge or release occurs after such sixtieth day. No benefit may be paid under this Act after a date which is three years after the date on which the Vietnam era is terminated pursuant to section 101(29) of title 38, United States Code.

SEC. 10. DEFINITIONS.—As used in this Act—

(1) The term "Secretary" means the Secretary of Labor of the United States.

(2) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

(3) The term "State agency" means the agency of the State which administers its State unemployment compensation law.

(4) The term "State unemployment compensation law" means the unemployment compensation law of the State, approved

by the Secretary under section 3304 of the Internal Revenue Code of 1954.

(5) The term "supplementary unemployment compensation" means cash benefits payable to Vietnam era veterans with respect to their unemployment in an amount necessary to increase the weekly benefit to which any such veteran is entitled under any State unemployment compensation law (including compensation payable pursuant to chapter 85 of title 5, United States Code, and extended compensation payable pursuant to the Federal-State Extended Unemployment Compensation Act of 1970) to a rate of $75 per week for a total of fifty-two weeks.

(6) The term "Vietnam era veteran" means a person who is a veteran within the meaning of section 101(2) of title 38, United States Code, who served on continuous active duty for ninety days or more during the Vietnam era as defined in section 101(29) of such title.

(7) The term "week" means a week as defined in the applicable State law.

By Mr. ERVIN:

S. 1743. A bill to further protect the constitutional rights of members of the Armed Forces by requiring that pretrial confinement be deducted from the term of any sentence to confinement adjudged by a court-martial. Referred to the Committee on Armed Services.

CREDIT FOR PRETRIAL DETENTION OF MILITARY ACCUSED

Mr. ERVIN. Mr. President, I sent to the desk for appropriate reference a bill to further protect the constitutional rights of members of the Armed Forces by requiring that pretrial confinement be deducted from the terms of any sentence to confinement adjudged by a court-martial.

This bill would grant to the military defendant the same right that a civilian defendant has—to have time spent in jail before conviction counted on any sentence that is imposed. My bill would bring military practice into line with civilian practice embodied in a 1966 amendment to section 3568 of title 18, United States Code.

There is no apparent reason why the same rule should not apply in the administration of military as well as civilian justice, and I urge Congress to act speedily to enact this legilsation.

By Mr. ERVIN:

S. 1744. A bill to provide for compliance with constitutional requirements in the trials of persons who are charged with having committed certain offenses while subject to trial by court-martial, who have not been tried for such offenses and who are no longer subject to trial by court-martial; and

S. 1745. A bill to provide for compliance with constitutional requirements in the trials of persons who, while serving as employees of the United States or while accompanying the Armed Forces, commit certain offenses outside the United States. Referred to the Committee on the Judiciary.

JURISDICTION TO TRY FORMER SERVICEMEN AND CIVILIAN EMPLOYEES OF THE DEFENSE DEPARTMENT

Mr. ERVIN. Mr. President, the recent conviction of Lieutenant Calley for the murder of civilians in Vietnam and the public allegations of other instances of crimes having been committed by American servicemen in Southeast Asia have brought to public attention a serious defect in Federal criminal jurisdiction which has existed since 1955. There is no apparent jurisdiction in any American court, either State, Federal, or military, to try former U.S. servicemen for offenses committed by them while they were in military status. As if to underline this fact, it was recently announced that after extended consultation between the Department of Defense and the Department of Justice it was decided that no solutions could be found to the problem and that therefore other persons implicated in the Mylai affair would not be tried.

In addition to the allegations of criminal activities by some members of our forces in Southeast Asia, many of whom have subsequently been discharged from service over the past year, there have been revelations of apparent criminal activities by servicemen in connection with the operation of NCO clubs throughout the world. Many of those persons accused have also been discharged and are consequently not subject to trial by court-martial.

This gap in jurisdiction results from the fact that the Supreme Court in *Toth* v. *Quarles*, 350 U.S. 11 (1955) and related cases has ruled that parts of the Uniform Code of Military Justice were unconstitutional because they purported to give courts-martial the right to try persons who were not at the time of trial subject to military jurisdiction. As a consequence of these decisions, both former servicemen and civilian Americans stationed overseas are completely immune from justice for the crimes they commit. This is an intolerable situation. No person should be given a license for crime because of the inaction of Congress.

This problem has concerned the Subcommittee on Constitutional Rights for many years. My predecessor as chairman of the subcommittee, the late Senator Thomas Hennings of Missouri, first introduced legislation to cure this defect in 1957. For almost 10 years I have introduced similar legislation designed to grant jurisdiction to Federal district courts to try these cases. We have considered this problem in our hearings in 1962 and 1966 and we have consulted with the Department of Defense, the Department of Justice, and the Department of State throughout the last decade. But so far they have opposed my proposals. Not only have they failed to come forward with an alternative, but they have never yet given any reason for their opposition to my bills. Because of this opposition, the legislation has been stalled these many years. The situation in which we find ourselves today, and the embarrassment of the Army and the Justice Department in not being able to bring to trial the individuals involved in Mylai or the PX scandals, is a direct result of procrastination and indecision by the Justice Department and the Defense Department for over a decade.

I am today reintroducing the two bills which are designed to close the jurisdictional gap. These bills confer jurisdiction on Federal district courts over two classes of persons—former servicemen accused of offenses committed before they were released from service, and civilians who are dependents of servicemen or who are Defense Department employees stationed with the military overseas or their accompanying dependents. The bills are different from those I have introduced in the past in that they now amend title 18, United States Code, rather than title 10. As I first did in the 91st Congress, I have omitted the limitation from the bill applicable to ex-servicemen which made the legislation effective only as to offenses committed after the enactment of the bills.

The bill which applies to ex-servicemen grants jurisdiction to district courts over those crimes which are punishable by confinement for 5 years or more and the maximum punishment is limited to that applicable to persons tried by court-martial for the same offense.

The bill which applies to employees and dependents makes it a criminal offense for those persons who are accompanying the Armed Forces outside the United States to commit acts which if committed within the special maritime and territorial jurisdiction of the United States would have been an offense punishable under title 18 and makes them subject to the same punishment. This bill is not made retroactive.

Whether the legislation can properly be made retroactive is, as I stated when I last introduced similar bills, one of many difficult questions which must be resolved. I believe that a strong case can be made that the legislation can withstand a challenge that it is an ex post facto law.

The ex post facto clause is contained in article I, section 9, as respects Congress, and power to enact ex post facto laws is denied to the States by article 1, section 10 of the Constitution.

The Supreme Court in the early case of *Calder* v. *Bull*, 3 Dall. 386, 390 (1798) stated what laws come within the prohibition:

> First. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action.
>
> Second. Every law that aggravates a crime, or makes it greater than it was, when committed.
>
> Third. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed.
>
> Fourth. Every law that alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offense, in order to convict the offender.

The constitutional aversion to retrospective criminal legislation is based on two fundamental principles: First, that people are entitled to know what they are prohibited from doing so that they may shape their conduct accordingly; and second, that the legislature must be restricted to prospective criminal legislation in order to secure evenhandedness in the administration of justice and to eliminate the possibilities of oppression

and arbitrariness inherent in retrospective legislating.

It is clear from this leading case plus the rationale underlying the principle of ex post facto laws that every statute operating retrospectively in the criminal justice area is not automatically prohibited. Under these operating principles, therefore, it becomes no easy matter to offer a judgment that the bill is unconstitutional. Certain things are clear about the bill:

It does not make criminal any conduct which was innocent when done. The crimes which would be triable are defined by the Uniform Code of Military Justice and are offenses against the United States. They were prohibited by law when the alleged unlawful acts were committed.

The punishment permitted would not be increased by the proposal.

It would not aggravate a crime, nor make it greater than it was when committed.

It would not alter any rule of evidence so that the defendant could be convicted on less of a showing than if he had been tried by court-martial.

What the bill does is to provide a forum for an act which was punishable by Federal law when committed.

The Supreme Court has had occasion to consider the application of the ex post facto prohibition to this very same kind of statute. In *Cook* v. *United States* (138 U.S. 157 (1891)), the court held that a change of the place of trial of an offense after its commission is not an ex post facto law.

In a unanimous opinion the Court stated:

> This principle (*ex post facto*) has no application to the present case. The act of 1889 does not touch the offense nor change the punishment therefor. It only includes the place of the commission of the alleged offense within a particular judicial district, and subjects the accused to trial in that district rather than in the court of some other judicial district established by the government against whose laws the offense was committed. This does not alter the situation of the defendants in respect to their offense or its consequences. "An *ex post facto* law, this court said in *Gurt* v. *The State*, 9 Wall 35, 38, "does not involve, in *any* of its definitions, a change of the place of trial of an alleged offense after its commission." (138 U.S. at 183.)

The Cook case can also be read as being foursquare on the issue. Although the facts of the case are somewhat obscure, it appears that the statute in question was not simply a change in court jurisdiction, but in fact the creation of jurisdiction when none had existed when the offense was committed. If so, then the case is almost identical to the situation presented by this proposal.

It would thus appear at least arguable that Congress can retroactively provide for a different place of trial for offenses against the United States without violating the constitutional prohibitions against ex post facto laws. Whether Congress can indeed do so, or whether it should even if it constitutionally may, are questions upon which I reserve final judgment for the time being. Given the numerous allegations of serious crime having been committed by servicemen who are no longer subject to trial by court-martial, it is clear that this legislation or some viable alternative is urgently needed. There has been a serious gap in jurisdiction since 1955. Despite repeated prodding from the Constitutional Rights Subcommittee, and despite the public clamor over the past year, the executive branch has refused to suggest a solution. I hope that Congress will exercise its responsibilities to make laws and enact legislation to close that gap.

For the guidance of the Senate, I ask unanimous consent that the bills and sectional analyses thereof, and the cases of Cook against United States and Calder against Bull be printed in full at this point in the RECORD.

There being no objection, the bills, analyses, and cases were ordered to be printed in the RECORD, as follows:

S. 1744

A bill to provide for compliance with constitutional requirements in the trials of persons who are charged with having committed certain offenses while subject to trial by court-martial, who have not been tried for such offenses, and who are no longer subject to trial by court-martial

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 1 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 16. Jurisdiction for the trial of persons for certain offenses committed while subject to trial by court-martial

"(a) Subject to the provisions of subsection (b) of this section, any person who is charged with having committed, while in a status in which he was subject to trial by court-martial, an offense punishable under chapter 47 of title 10, United States Code, by confinement for five years or more, and who has not been tried for such offense and is not subject to trial by court-martial for such offense may be tried upon indictment for such offense—

"(1) in the United States district court for any judicial district in which any act or omission constituting an element of such offense was committed, if such offense was committed in the United States, or

"(2) in the United States district court for the judicial district in which such person is found or into which he is first brought, if such offense was committed outside the United States or within the special maritime and territorial jurisdiction of the United States.

"(b) An indictment may be found at any time without limitation with respect to any offense referred to in section 843(a) of title 10, United States Code, for which the death penalty may be imposed. Except as provided in section 843(f) of such title (article 43(f)), no person shall be tried or punished under this section (1) for any offense referred to in section 843(b) of such title unless an indictment is found or an information is instituted within three years next after such offense shall have been committed, or (2) for any offense referred to in section 843(c) of such title unless an indictment is found or an information is instituted within two years next after such offense shall have been committed. No person may be tried or punished under authority of this section for any offense if such person has been tried for substantially the same offense by a court of competent jurisdiction of a foreign country.

"(c) The maximum punishment which may be imposed in the case of any person for an offense referred to in subsection (a) of this section shall be the same as that applicable to any person tried for the same offense under chapter 47 of title 10, United States Code, but the provisions of such chapter relating to the forfeiture of pay and allowances shall not be applicable in the case of any person tried under authority of this section.

"(d) For purposes of all proceedings for or ancillary to the trial of any person for an offense referred to in subsection (a) of this section in any district court of the United States, such offense shall be considered to be an offense prohibited by and punishable under the provisions of this title.

"(e) Nothing in this section shall be construed as depriving courts-martial, military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or law of war may be tried by courts-martial, military commissions, provost courts, or military tribunals.

"(f) As used in this section the term 'outside the United States' means outside the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands."

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof a new item as follows:

"16. Jurisdiction for the trial of persons for certain offenses committed while subject to trial by court-martial."

SEC. 2. The amendments made by the first section of this Act shall be effective with respect to offenses committed prior to, on, and subsequent to the date of the enactment of this Act.

S. 1744—SECTIONAL ANALYSIS

The bill adds a new section to chapter 1 of Title 18, United States Code.

Subsection (a) provides for trial in a United States District Court of a person charged with having committed a crime punishable by five years confinement or more while a member of the armed services who has been discharged without having been tried. If the offense was committed in the United States, trial is in the judicial district where the offense was committed. If committed outside the United States, in the judicial district in which the person is found or into which he is first brought.

Subsection (b) specifies the same statute of limitations as is provided for in the Uniform Code of Military Justice for the same offenses. Additionally, it provides protection from being tried in the District Court if he has been tried for substantially the same offense by a court of a foreign country.

Subsection (c) states that the maximum punishment shall be the same as that applicable to any person for the same offense under the Uniform Code of Military Justice.

Subsection (d) provides that for all other purposes, the trial of any person for an offense referred to in subsection (a) shall be considered to be a trial for an offense prohibited by and punishable under the provisions of Title 18, United States Code.

Subsection (e) provides that nothing in this section shall be construed as depriving courts-martial, military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or law of war may be tried by such tribunals.

Subsection (f) defines the term "outside the United States" as being outside the several states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

Section (b) amends the table of sections by adding the section provided in the bill.

S. 1745

A bill to provide for compliance with constitutional requirements in the trials of persons who, while serving as employees of the United States or while accompanying the Armed Forces, commit certain offenses outside the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 1 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 16. Jurisdiction for the trial of certain persons for offenses committed outside the United States

"(a) (1) Any citizen, national, or other person owing allegiance to the United States, who, while employed by the United States, or while serving in a civilian capacity with or accompanying the Armed Forces, and while outside the United States, commits an act of commission or omission which, if committed within the special maritime and territorial jurisdiction of the United States, would have been an offense punishable under this title, shall be guilty of an offense against the United States and shall be subject to the same punishment for such offense as that prescribed by this title for the same offense committed within the special maritime and territorial jurisdiction of the United States.

"(2) Any dependent of any person referred to in paragraph (1) of this subsection who, while outside the United States and while residing with such person, commits an act of commission or omission which, if committed within the special maritime and territorial jurisdiction of the United States, would have been an offense punishable under this title, shall be guilty of an offense against the United States and shall be subject to the same punishment for such offense as that prescribed by this title for the same offense committed within the special maritime and territorial jurisdiction of the United States.

"(b) Any person charged with having committed an offense made punishable by subsection (a) of this section may be tried for such offense in the United States district court for the judicial district in which such person is found or into which he is first brought.

"(c) No person may be tried under authority of this section for any offense if such person has been tried for substantially the same offense by a court of competent jurisdiction in a foreign country.

"(d) Nothing in this section shall be construed as depriving courts-martial, military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or law of war may be tried by courts-martial, military commissions, provost courts, or military tribunals.

"(e) As used in this section (1) the term 'Armed Forces' means the United States Army, Navy, Air Force, and Coast Guard, and (2) the term 'outside the United States' means outside the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, possessions, and the special maritime and territorial jurisdiction of the United States."

(b) The table of sections at the beginning of chapter 1 of such title is amended by adding at the end thereof a new item as follows:

"16. Jurisdiction for the trial of certain persons for offenses committed outside the United States."

SEC. 2. The amendments made by the first section of this Act shall apply in the case of offenses committed on or after the date of enactment of this Act.

S. 1745

SECTIONAL ANALYSIS

This bill adds a new section to Title 18, United States Code, which provides jurisdiction for trial of certain persons for offenses committed outside the United States.

Subsection (a) (1) makes it a crime against the United States for any person owing allegiance to the United States, who while employed by the United States while accompanying the Armed Forces outside the United States, to commit any act which, if committed within the special maritime and territorial jurisdiction of the United States, would have been an offense punishable under Title 18, United States Code, and subjects him to the same punishment.

Subsection (a) (2) makes the same provisions for any dependent of any person referred to in (a) (1), if the dependent is residing with such person.

Subsection (b) gives jurisdiction to try such cases to the United States District Court for the judicial district in which such person is found or into which he is first brought.

Subsection (c) provides against trial if the person has been tried for substantially the same offense by a court of competent jurisdiction in a foreign country.

Subsection (d) provides that nothing in the section shall be construed as depriving courts-martial, military commissions, provost courts, or other military tribunals of concurrent jurisdictions with respect to offenders or offenses that by statute or law of war may be tried by such tribunals.

Subsection (e) defines the term "Armed Forces" as the United States Army, Navy, Air Force, and Coast Guard, and (2) the term "outside the United States" as meaning outside the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, possessions, and the special maritime and territorial jurisdictions of the United States.

Section (b) adds an appropriate item to the table of sections at the beginning of Chapter 1 of Title 18.

Section 2 of the bill provides that the amendments made by the first section shall apply in the case of offense committed on or after the date of enactment of the Act.

AUGUST TERM, 1798

CALDER AND WIFE V. BULL AND WIFE

Constitutional law.—Eminent domain.—Ex post facto laws

The judiciary is a co-ordinate branch of the government, and may declare a statute to be void, as repugnant to the constitution.

Private property may be taken for public use, by allowing the owners a reasonable equivalent.

A statute granting a new trial in a particular case, is not unconstitutional, as an *ex post facto* law.[1]

An *ex post facto* law, within the meaning of the constitution, is one that punishes as a crime, an act done before its passage, and which, when committed, was not punishable; an act that aggravates a crime, or inflicts a greater punishment, than the law annexed to it, when committed; or a law that alters the rules of evidence, in order to convict an offender.

If congress, or a state legislature, pass a law, within the general scope of their constitutional power, the courts cannot pronounce it void, merely because, in their judgment, contrary to the principles of natural justice.[2] IREDELL, J.

An act of the legislature, contrary to the first principles of the social compact, cannot be considered a rightful exercise of legislative power. CHASE, J.

In error from the State of Connecticut. The cause was argued at the last term (in the absence of the Chief Justice) and now the court delivered their opinions *seriatim.*

CHASE, Justice.—The decision of one question determines (in my opinion) the present dispute. I shall, therefore, state from the record no more of the case, than I think necessary for the consideration of that question only.

The legislature of Connecticut, on the 2d Thursday of May 1795, passed a resolution or law, which, for the reasons assigned, set aside a decree of the Court of Probate for Hartford, on the 21st of March 1793, which decree disapproved of the will of Normand Morrison (the grandson), made the 21st of August 1779, and refused to record the said will; and granted a new hearing by the said court of probate, with liberty of appeal therefrom, in six months. A new hearing was had, in virtue of this resolution or law, before the said court of probate, who, on the 27th of July 1795, approved the said will, and ordered it to be recorded. At August 1795, appeal was then had to the superior court at Hartford, who, at February term 1796, affirmed the decree of the court of probate. Appeal was had to the supreme court of errors of Connecticut, who, in June 1796, adjudged that there were no errors. More than eighteen months elapsed from the decree of the court of probate (on the 1st of March 1793), and thereby Caleb Bull and wife were barred of all right of appeal, by a statute of Connecticut. There was no law of that state whereby a new hearing or trial, before the said court of probate, might be obtained. Calder and wife claimed the premises in question, in right of the wife, as heiress of N. Morrison, physician; Bull and wife claimed under the will of N. Morrison, the grandson.

The counsel for the plaintiffs in error contend, that the said resolution or law of the legislature of Connecticut, granting a new hearing, in the above case, is an *ex post facto* law, prohibited by the constitution of the United States; that any law of the federal government, or of any of the state government, contrary to the constitution of the United States, is void; and that this court possesses the power to declare such law void.

It appears to me a self-evident proposition, that the several state legislatures retain all the powers of legislation, delegated to them by the state constitutions; which are not expressly taken away by the constitution of the United States. The establishing courts of justice, the appointment of judges, and the making regulations for the administration of justice within each state, according to its laws, on all subjects not intrusted to the federal government, appears to me to be the peculiar and exclusive province and duty of the state legislatures. All the powers delegated by the people of the United States to the federal government are defined, and no *constructive* powers can be exercised by it, and all the powers that remain in the state governments are indefinite; except only in the constitution of Massachusetts.

The effect of the resolution or law of Connecticut, above stated, is to revise a decision of one of its inferior courts, called the court of probate for Hartford, and to direct a new hearing of the case by the same court of probate, that passed the decree

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[1] It has been decided in Pennsylvania, that as the legislature possesses no judicial power, it cannot order a new trial. Chastellux *v.* Fairchild, 15 Penn. St. 18. Nor direct the court to entertain a bill of review. Boggs' Appeal, 43 Id. 512.

[2] To the same effect, see Sharpless *v.* Philadelphia, 21 Penn. St. 147; Erie and North East Railroad, 26 Id. 287.

against the will of Normand Morrison. By the existing law of Connecticut, a right to recover certain property had vested in Calder and wife (the appellants), in consequence of a decision of a court of justice, but in virtue of a subsequent resolution or law, and the new hearing thereof, and the decision in consequence, this right to recover certain property was divested, and the right to the property declared to be in Bull and wife, the appellees. The sole inquiry is, whether this resolution or law of Connecticut, having such operation, is an *ex post facto* law, within the prohibition of the federal constitution?

Whether the legislature of any of the states can revise and correct by law, a decision of any of its courts of justice, although not prohibited by the constitution of the state, is a question of very great importance, and not necessary now to be determined; because the resolution or law in question does not go so far. I cannot subscribe to the omnipotence of a state legislature, or that it is absolute and without control; although its authority should not be expressly restrained by the constitution, or fundamental law of the state. The people of the United States erected their constitutions or forms of government, to establish justice, to promote the general welfare, to secure the blessings of liberty, and to protect their persons and property from violence. The purposes for which men enter into society will determine the nature and terms of the social compact; and as they are the foundation of the legislative power, they will decide what are the proper objects of it. The nature, and ends of legislative power will limit the exercise of it. This fundamental principle flows from the very nature of our free republican governments, that no man should be compelled to do what the laws do not require; nor to refrain from acts which the laws permit. There are acts which the federal, or state legislature cannot do, without exceeding their authority. There are certain vital principles in our free republican governments, which will determine and overrule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away that security for personal liberty, or private property, for the protection whereof the government was established. An act of the legislature (for I cannot call it a law), contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority. The obligation of a law, in governments established on express compacts, and on republican principles, must be determined by the nature of the power on which it is founded.

A few instances will suffice to explain what I mean. A law that punished a citizen for an innocent action, or, in other words, for an act, which, when done, was in violation of no existing law; a law that destroys or impairs the lawful private contracts of citizens; a law that makes a man a judge in his own cause; or a law that takes property from A. and gives it to B.: it is against all reason and justice, for a people to intrust a legislature with such powers; and therefore, it cannot be presumed that they have done it. The genius, the nature and the spirit of our state governments, amount to a prohibition of such acts of legislation; and the general principles of law and reason forbid them. The legislature may enjoin, permit, forbid and punish; they may declare new crimes; and establish rules of conduct for all its citizens in future cases; they may command what is right, and prohibit what is wrong; but they cannot change innocence into guilt; or punish innocence as a crime; or violate the right of an antecedent lawful private contract; or the right of private property. To maintain that our federal, or state legislature possesses such powers, if they had not been expressly restrained; would, in my opinion, be a political heresy, altogether inadmissible in our free republican governments.

All the restrictions contained in the constitution of the United States on the power of the state legislatures, were provided in favor of the authority of the federal government. The prohibition against their making any *ex post facto* laws was introduced for greater caution, and very probably arose from the knowledge, that the parliament of Great Britain claimed and exercised a power to pass such laws, under the denomination of bills of attainder, or bills of pains and penalties; the first inflicting capital, and the other less punishment. These acts were legislative judgements; and an exercise of judicial power. Sometimes, they respected the crime, by declaring acts to be treason, which were not treason, when committed;[3] at other times, they violated the rules of evidence (to supply a deficiency of legal proof) by admitting one witness, when the existing law required two; by receiving evidence without oath; or the oath of the wife against the husband; or other testimony, which the courts of justice would not admit;[4] at other times, they inflicted punishments, where the party was not, by law, liable to any punishment;[5] and in other cases, they inflicted greater punishment, than the law annexed to the offense.[6] The ground for the exercise of such legislative power was this, that the safety of the kingdom depended on the death, or other punishment, of the offender: as if traitors, when discovered, could be so formidable, or the government so insecure! With very few exceptions, the advocates of such laws were stimulated by ambition, or personal resentment and vindictive malice. To prevent such and similar acts of violence and injustice, I believe, the federal and state legislatures were prohibited from passing any bill of attainder, or any *ex post facto* law.

The constitution of the United States, article I, section 9, prohibits the legislature of the United States from passing any *ex post facto* law; and, in § 10, lays several restrictions on the authority of the legislatures of the several states; and, among them, "that no state shall pass any *ex post facto* law."

It may be remembered, that the legislatures of several of the states, to wit, Massachusetts, Pennsylvania, Delaware, Maryland, and North and South Carolina, are expressly prohibited, by their state constitutions, from passing any *ex post facto* law.

I shall endeavor to show what law is to be considered an *ex post facto* law, within the words and meaning of the prohibition in the federal constitution. The prohibition, "that no state shall pass any *ex post facto* law," necessarily requires some explanation; for, naked and without explanation, it is unintelligible, and means nothing. Literally, it is only, that a law shall not be passed concerning, and after the fact, or thing done, or action committed. I would ask, what fact; of what nature or kind; and by whom done? That Charles I., king of England, was beheaded; that Oliver Cromwell was protector of England; that Louis XVI, late king of France, was guillotined; are all facts that have happened; but it would be nonsense to suppose, that the states were prohibited from making any law, after either of these events, and with reference thereto. The prohibition, in the letter, is not to pass any law concerning, and after the fact; but the plain and obvious meaning and intention of the prohibition is this: that the legislatures of the several states, shall not pass laws, after a fact done by a subject or citizen, which shall have relation to such fact, and shall punish him for having done it. The prohibition considered in this light, is an additional bulwark in favor of the personal security of the subject, to protect his person from punishment by legislative acts, having a retrospective operation. I do not think it was inserted, to secure the citizen in his private rights of either property or contracts. The prohibitions not to make anything but gold and silver coin a tender in payment of debts, and not to pass any law impairing the obligation of contracts, were inserted to secure private rights; but the restriction not to pass any *ex post facto* law, was to secure the person of the subject from injury or punishment, in consequence of such law. If the prohibition against making *ex post facto* laws was intended to secure personal rights from being affected or injured by such laws, and the prohibition is sufficiently extensive for that object, the other restraints I have enumerated, were unnecessary, and therefore, improper; for both of them are retrospective.[7][8]

I will state what laws I consider *ex post facto* laws, within the words and the intent of the prohibition. 1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law the aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offense, in order to convict the offender. All these, and similar laws, are manifestly unjust and oppressive. In my opinion, the true distinction is between *ex post facto* laws, and retrospective laws. Every *ex post facto* law must necessarily be retrospective; but every retrospective law is not an *ex post facto* law: the former only are prohibited. Every law that takes away or impairs rights vested, agreeable to existing laws, is retrospective, and is generally unjust, and may be oppressive; and it is a good general rule, that a law should have no retrospect: but there are cases in which laws may justly, and for the benefit of the community, and also of individuals, relate to a time antecedent to their commencement; as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law *ex post facto*, within the prohibition, that mollifies the rigor of the criminal law: but only those that create or aggravate the crime; or increase the punishment, or change the rules of evidence, for the purpose of conviction. Every law that is to have an operation before the making thereof, as to commence at an antecedent time; or to save time from the statute of limitations; or to excuse acts which were unlawful, and before committed, and the like, is retrospective. But such laws may be proper or necessary, as the case may be. There is a great and apparent difference between making an unlawful act lawful; and the making an innocent action criminal, and punishing it as a crime. The expressions "*ex post facto* laws," are technical, they had been in use long bebefore the revolution, and had acquired an appropriate meaning, by legislators, lawyers and authors. The celebrated and judicious Sir William Blackstone, in his commentaries, considers an *ex post facto* law precisely in the same light as I have done. His opinion is confirmed by his successor, Mr. Wooddeson; and by the author of the *Federalist*, who I esteem superior to both, for his extensive and accurate knowledge of the true principles of government.

I also rely greatly on the definition or explanation *ex post facto* laws, as given by the

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[3] The case of the Earl of Strafford, in 1641.

[4] The case of Sir John Fenwick, in 1696.

[5] The banishment of Lord Clarendon, 1669 (19 Car. II., c. 10), and of the Bishop of Atterbury, in 1723 (9 Geo. I., c. 17).

[6] The Coventry act, in 1670 (22 & 23 Car. II, c. 1).

[7] Southwick *v.* Southwick, 49 N.Y. 510.

[8] Watson *v.* Mercer, 8 Pet. 88; Carpenter *v.* Pennsylvania, 17 How. 456; Locke *v.* New Orleans, 4 Wall. 172; Cummings *v.* Missouri, Id. 277; United States *v.* Hall, 2 W.C.C. 366: Shepherd *v.* People, 25 N.Y. 406.

conventions of Massachusetts, Maryland and North Carolina, in their several constitutions or forms of government. In the declaration of rights, by the convention of Massachusetts, part 1st, § 24, "Laws made to punish actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, &c." In the declaration of rights, by the convention of Maryland, art. 15th, "Retrospective laws punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, &c." In the declaration of rights, by the convention of North Carolina, art. 24th, I find the same definition, precisely in the same words, as in the Maryland constitution. In the declaration of rights, by the convention of Delaware, art. 11th, the same definition was clearly intended, but in accurately expressed: by saying "laws punishing offences (instead of actions or facts) committed before the existence of such laws, are oppressive, &c."

I am of opinion, that the fact, contemplated by the prohibition, and not to be affected by a subsequent law, was some fact to be done by a citizen or subject. In 2 Lord Raymond 1352, RAYMOND, Justice, called the stat. 7 Geo. I., stat. 2, par. 8, about registering contracts for South Sea stock, an *ex post facto* law; because it affected contracts made before the statute.

In the present case, there is no fact done by Bull and wife, plaintiffs in error, that is in any manner affected by the law or resolution of Connecticut: it does not concern, or relate to, any act done by them. The decree of the court of probate of Hartford (on the 21st March), in consequence of which Calder and wife claim a right to the property in question, was given before the said law or resolution, and in that sense, was affected and set aside by it; and in consequence of the law allowing a hearing and the decision in favor of the will, they have lost what they would have been entitled to, if the law or resolution, and the decision in consequence thereof, had not been made. The decree of the court of probate is the only fact, on which the law or resolution operates. In my judgment, the case of the plaintiffs in error, is not within the letter of the prohibition; and for the reasons assigned, I am clearly of opinion, that it is not within the intention of the prohibition; and if within the intention, but out of the letter, I should not, therefore, consider myself justified to construe it within the prohibition, and therefore, that the whole was void.

It was argued by the counsel for the plaintiffs in error, that the legislature of Connecticut had no constitutional power to make the resolution (or law) in question, granting a new hearing, &c. Without giving an opinion, at this time, whether this court has jurisdiction to decide that any law made by congress, contrary to the constitution of the United States, is void: I am fully satisfied, that this court has no jurisdiction to determine that any law of any state legislature, contrary to the constitution of such state, is void.[9] Further, if this court had such jurisdiction, yet it does not appear to me, that the resolution (or law) in question, is contrary to the charter of Connecticut, or its constitution, which is said by counsel to be composed of its acts of assembly, and usages and customs. I should think, that the courts of Connecticut are the proper tribunals to decide, whether laws contrary to the constitution thereof, are void. In the present case, they have, both in the inferior and superior courts, determined that the resolution (or law) in question was not contrary to either their state, or the federal constitution.

To show that the resolution was contrary to the constitution of the United States, it was contended, that the words, *ex post facto* law have a precise and accurate meaning, and convey but one idea to professional men, which is, "by matter of after fact; by something after the fact." And Co. Litt, 241; Fearne's Cont. Rem. (Old Ed.) 175 and 203; Powell on Devises 113, 133, 134, were cited; and the table to Coke's Reports (by Wilson), title *ex post facto*, was referred to. There is no doubt, that a man may be a trespasser from the beginning, by matter of *after fact;* as where an entry is given by law, and the party abuses it; or where the law gives a distress, and the party kills or works the distress.

I admit, an act unlawful in the beginning may, in some cases, become lawful by matter of *after fact*. I also agree, that the words *"ex post facto"* have the meaning contended for, and no other, in the cases cited, and in all similar cases, where they are used unconnected with, and without relation to, legislative acts or laws. There appears to me a manifest distinction between the case where one fact relates to, and affects, another fact, as where an after fact, by operation of law, makes a former fact either lawful or unlawful; and the case where a law made after a fact done, is to operate on, and to affect, such fact. In the first case, both the acts are done by private persons; in the second case, the first act is done by a private person, and the second act is done by the legislature, to affect the first act.

I believe, that but one instance can be found in which a British judge called a statute, that affected contracts made before the statute, an *ex post facto* law; but the judges of Great Britain always considered penal statutes, that created crimes, or increased the punishment of them, as *ex post facto* laws. If the term *ex post facto* law is to be construed to include and to prohibit the enacting any law, after a fact, it will greatly restrict the power of the federal and state legislatures; and the consequences of such a construction may not be foreseen. If the prohibition to make no *ex post facto* law extends to all laws made after the fact, the two prohibitions, not to make anything but gold and silver coin a tender in payment of debts; and not to pass any law impairing the obligation of contracts, were improper and unnecessary.

It was further urged, that if the provision does not extend to prohibit the making any law, after a fact, then all *choses in action;* all lands by devise; all personal property by bequest, or distribution; by *elegit;* by execution; by judgments, particularly on *torts;* will be unprotected from the legislative power of the states; rights vested may be divested at the will and pleasure of the state legislatures; and therefore, that the true construction and meaning of the prohibition is, that the states pass no law to deprive a citizen of any right vested in him by existing laws.

It is not to be presumed, that the federal or state legislatures will pass laws to deprive citizens of rights vested in them by existing laws; unless for the benefit of the whole community; and on making full satisfaction. The restraint against making any *ex post facto* laws was not considered by the framers of the constitution, as extending to prohibit the depriving a citizen even of a vested right to property; or the provision "that private property should not be taken for public use, without just compensation," was unnecessary.

It seems to me, that the right of property, in its origin, could only arise from compact, express or implied, and I think it the better opinion, that the right, as well as the mode, or manner of acquiring property, and of alienating or transferring, inheriting or transmitting it, is conferred by society; is regulated by civil institution, and is always subject to the rules prescribed by positive law. When I say, that a right is vested in a citizen, I mean, that he has the power to do certain actions; or to possess certain things, according to the law of the land.

If any one has a right to property, such a right is perfect and exclusive right; but no one can have such right, before he has acquired a better right to the property, than any other person in the world: a right, therefore, only to recover property, cannot be called a perfect and exclusive right. I cannot agree, that a right to property vested in Calder and wife, in consequence of the decree (of the 21st of March 1783) disapproving of the will of Morrison, the grandson. If the will was valid, Mrs. Calder could have no right, as heiress of Morrison, the physician; but if the will was set aside, she had an undoubted title. The resolution (or law) alone had no manner of effect on any right whatever vested in Calder and wife. The resolution (or law), combined with the new hearing, and the decision in virtue of it, took away their right to recover the property in question. But when combined, they took away no right of property vested in Calder and wife; because, the decree against the will (21st March 1783) did not vest in or transfer any property to them.

I am under a necessity to give a construction or explanation of the words, *"ex post facto* law," because they have not any certain meaning attached to them. But I will not go further than I feel myself bound to do; and if I ever exercise the jurisdiction, I will not decide any law to be void, but in a very clear case.

I am of opinion, that the decree of the supreme court of errors of Connecticut be affirmed, with costs.

PATERSON, Justice.—The constitution of Connecticut is made up of usages, and it appears, that its legislature have, from the beginning, exercised the power of granting new trials. This has been uniformly the case, until the year 1762, when this power was, by a legislative act, imparted to the superior and county courts. But the act does not remove or annihilate the pre-existing power of the legislature, in this particular; it only communicates to other authorities a concurrence of jurisdiction, as to the awarding of new trials. And the fact is, that the legislature have, in two instances, exercised this power, since the passing of the law in 1762. They acted in a double capacity, as a house of legislation, with undefined authority, and also as a court of judicature, in certain exigencies. Whether the latter arose from the indefinite nature of their legislative powers, or in some other way, it is not necessary to discuss. From the best information, however, which I have been able to collect on this subject, it appears, that the legislature, or general court of Connecticut, originally possessed and exercised all legislative, executive and judicial authority; and that, from time to time, they distributed the two latter in such manner as they thought proper; but without parting with the general superintending power, or the right of exercising the same, whenever they should judge it expedient. But be this as it may, it is sufficient for the present, to observe, that they have, on certain occasions, exercised judicial authority, from the commencement of their civil polity. This usage makes up part of the constitution of Connecticut, and we are bound to consider it as such, unless it be inconsistent with the constitution of the United States. True it is, that the awarding of new trials falls properly within the province of the judiciary; but if the legislature of Connecticut have been in the uninterrupted exercise of this authority, in certain cases, we must, in such cases, respect their decisions, as flowing from a competent jurisdiction or constitutional organ. And therefore, we may, in the present instance, consider the legislature of the state as having acted in their customary judicial capacity. If so, there is an end of the question. For if the power, thus exercised, comes more properly within the description of a judicial than of a legislative power; and

[9] Hunt *v.* Lamphier, 3 Pet. 280; Watson *v.* Mercer, 8 Id. 88; Gilchrist v Little Rock, 1 Dill. 261; Runlett v. Leavenworth, Id. 263.

if by usage or the constitution, which, in Connecticut, are synonymous terms, the legislature of that state acted in both capacities; then, in the case 396 now before us, it would be fair to consider the awarding of a new trial, as an act emanating from the judiciary side of the department.

But as this view of the subject militates against the plaintiffs in error, their counsel has contended for a reversal of the judgment, on the ground, that the awarding of a new trial was the effect of a legislative act, and that it is unconstitutional, because an *ex post facto* law. For the sake of ascertaining the meaning of these terms, I will consider the resolution of the general court of Connecticut, as the exercise of a legislative and not a judicial authority. The question, then, which arises on the pleadings in this cause, is, whether the resolution of the legislature of Connecticut, be an *ex post facto* law, within the meaning of the constitution of the United States? I am of opinion, that it is not. The words, *ex post facto*, when applied to a law, have a technical meaning, and, in legal phraseology, refer to crimes, pains and penalties. Judge Blackstone's description of the terms is clear and accurate. "There is," says he, "a still more unreasonable method than this, which is called making of laws, *ex post facto*, when, after an action, indifferent in itself, is committed, the legislature, then, for the first time, declares it to have been a crime, and inflicts a punishment upon the person who has committed it. Here, it is impossible, that the party could foresee, that an action, innocent when it was done, should be afterwards converted to guilt, by a subsequent law; he had, therefore, no cause to abstain from it; and all punishment for not abstaining, must, of consequence, be cruel and unjust." 1 Bl. Com. 46. Here, the meaning annexed to the terms *ex post facto* laws, unquestionably refers to crimes, and nothing else. The historic page abundantly evinces, that the power of passing such laws should be withheld from legislators; as it is a dangerous instrument in the hands of bold, unprincipled, aspiring and party men, and has been too often used to effect the most detestable purposes.

On inspecting such of our state constitutions, as take notice of laws made *ex post facto*, we shall find, that they are understood in the same sense. The constitution of Massachusetts, article 24th of the declaration of rights: "Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government." The constitution of Delaware, article 11th of the declaration of rights: "That retrospective laws punishing offenses committed before the existence of such laws, are oppressive and unjust, and ought not to be made." The constitution of Maryland, article 15th of the declaration of rights: "That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore, no *ex post facto* law ought to be made." The constitution of North Carolina, article 24th of the declaration of rights: "That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore, no *ex post facto* law ought to be made."

From the above passages, it appears that *ex post facto* laws have an appropriate signification; they extend to penal statutes and no further; they are restricted, in legal estimation, to the creation, and perhaps, enhancement of crimes, pains and penalties. The enhancement of a crime or penalty seems to come within the same mischief as the creation of a crime or penalty; and therefore, they may be classed together.

Again, the words of the constitution of the United States are, "That no state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts." Article I., § 10. Where is the necessity or use of the latter words, if a law impairing the obligation of contracts, be comprehended within the terms *ex post facto* law? It is obvious, from the specification of contracts in the last member of the clause, that the framers of the constitution did not understand or use the words in the sense contended for on the part of the plaintiffs in error. They understood and used the words in their known and appropriate signification, as referring to crimes, pains and penalties, and no further. The arrangement of the distinct members of this section, necessarily points to this meaning.

I had an ardent desire to have extended the provision in the constitution to retrospective laws in general. There is neither policy or safety in such laws; and therefore, I have always had a strong aversion against them. It may, in general, be truly observed of retrospective laws of every description, that they neither accord with sound legislation, nor the fundamental principles of the social compact. But on full consideration, I am convinced, that *ex post facto* laws must be limited in the manner already expressed; they must be taken in their technical, which is also their common and general, acceptation, and are not to be understood in their literal sense.

IREDELL, Justice.—Though I concur in the general result of the opinions which have been delivered, I cannot entirely adopt the reasons that are assigned upon the occasion.

From the best information to be collected, relative to the constitution of Connecticut, it appears, that the legislature of that state has been in the uniform, uninterrupted habit of exercising a general superintending power over its courts of law, by granting new trials. It may, indeed, appear strange to some of us, that in any form, there should exist a power to grant, with respect to suits depending or adjudged, new rights of trial, new privileges of proceeding, not previously recognised and regulated by positive institutions; but such is the established usage of Connecticut, and it is obviously consistent with the general superintending authority of her legislature. Nor is it altogether without some sanction, for a legislature to act as a court of justice. In England, we know that one branch of the parliament, the House of Lords, not only exercises a judicial power, in cases of impeachment, and for the trial of its own members, but as the court of dernier resort, takes cognisance of many suits of law and inequity; and that in construction of law, the jurisdiction there exercised is by the king in full parliament; which shows that, in its origin, the causes were probably heard before the whole parliament. When Connecticut was settled, the right of empowering the legislature to superintend the courts of justice, was, I presume, early assumed; and its expediency, as applied to the local circumstances and municipal policy of the state, is sanctioned by a long and uniform practice. The power, however, is judicial in its nature; and whenever it is exercised, as in the present instance, it is an exercise of judicial, not of legislative authority.

But let us, for a moment, suppose, that the resolution, granting a new trial, was a legislative act, it will by no means follow, that it is an act affected by the constitutional prohibition, but "no state shall pass any *ex post facto* law." I will endeavor to state the general principles which influence me, on this point, succinctly and clearly, though I have not had an opportunity to reduce my opinion to writing.

If, then, a government, composed of legislative, executive and judicial departments, were established, by a constitution which imposed no limits on the legislative power, the consequence would inevitably be, that whatever the legislative power chose to enact, would be lawfully enacted, and the judicial power could never interpose to pronounce it void. It is true, that some speculative jurists have held, that a legislative act against natural justice must, in itself, be void; but I cannot think that, under such a government any court of justice would possess a power to declare it so. Sir William Blackstone, having put the strong case of an act of parliament, which authorize a man to try his own cause, explicitly adds, that even in that case, "there is no court that has power to defeat the intent of the legislature, when couched in such evident and express words, as leave no doubt whether it was the intent of the legislature, or no." 1 Bl. Com. 91.

In order, therefore, to guard against so great an evil, it has been the policy of all the American states, which have, individually, framed their state constitutions, since the revolution, and of the people of the United States, when they framed the federal constitution, to define with precision the objects of the legislative power, and to restrain its exercise within marked and settled boundaries. If any act of congress, or of the legislature of a state, violates those constitutional provisions, it is unquestionably void; though, I admit, that as the authority to declare it void is of a delicate and awful nature, the court will never resort to that authority, but in a clear and urgent case. If, on the other hand, the legislature of the Union, or the legislature of any member of the Union, shall pass a law, within the general scope of their constitutional power, the court cannot pronounce it to be void, merely because it is, in their judgment, contrary to the principles of natural justice. The ideas of natural justice are regulated to no fixed standard; the ablest and the purest men have differed upon the subject; and all that the court could properly say, in such an event, would be, that the legislature (possessed of an equal right of opinion) had passed an act which, in the opinion of the judges, was consistent with the abstract principles of natural justice. There are then but two lights, in which the subject can be viewed: 1st. If the legislature pursue the authority delegated to them, their acts are valid. 2d. If they transgress the boundaries of that authority, their acts are invalid. In the former case, they exercise the discretion vested in them by the people, to whom alone they are responsible for the faithful discharge of their trust: but in the latter case, they violate a fundamental law, which must be our guide, whenever we are called upon, as judges, to determine the validity of a legislative act.

Still, however, in the present instance, the act or resolution of the legislature of Connecticut, cannot be regarded, as an *ex post facto* law; for the true construction of the prohibition extends to criminal, not to civil cases. It is only in criminal cases, indeed, in which the danger to be guarded against, is greatly to be apprehended. The history of every country in Europe will furnish flagrant instances of tyranny exercised under the pretext of penal dispensations. Rival factions, in their efforts to crush each other, have superseded all the forms, and suppressed all the sentiments of justice; while attainders, on the principle of retaliation and proscription, have marked all the vicissitudes of party triumph. The temptation to such abuses of power is unfortunately too alluring for human virtue; and therefore, the framers of the American constitutions have wisely denied to the respective legislatures, federal as well as state, the possession of the power itself: they shall not pass any *ex post facto* law; or, in other words, they shall not inflict a punishment for any act, which was innocent at the time it was committed; nor increase the degree of punishment previously denounced for any specific offence.

The policy, the reason and humanity of the prohibition, do not, I repeat, extend to civil cases, to cases that merely affect the private

property of citizens. Some of the most necessary and important acts of legislation are, on the contrary, founded upon the principle, that private rights must yield to public exigencies. Highways are run through private grounds; fortifications, light-houses, and other public edifices, are necessarily sometimes built upon the soil owned by individuals. In such, and similar cases, if the owners should refuse voluntarily to accommodate the public, they must be constrained, so far as the public necessities require; and justice is done, by allowing them a reasonable equivalent. Without the possession of this power, the operations of government would often be obstructed, and society itself would be endangered. It is not sufficient to urge, that the power may be abused, for such is the nature of all power—such is the tendency of every human institution; and, it might as fairly be said, that the power of taxation, which is only circumscribed by the discretion of the body in which it is vested, ought not to be granted, because the legislature, disregarding its true objects might, for visionary and useless projects, impose a tax to the amount of nineteen shillings in the pound. We must be content to limit power, where we can, and where we cannot, consistently with its use, we must be content to repose a salutary confidence. It is our consolation, that there never existed a government, in ancient or modern times, more free from danger in this respect, than the governments of America.

Upon the whole, though there cannot be a case, in which an *ex post facto* law in criminal matters is requisite or justifiable (for providence never can intend to promote the prosperity of any country by bad means), yet, in the present instance, the objection does not arise: because, 1st, if the act of the legislature of Connecticut was a judicial act, it is not within the words of the constitution; and 2d, even if it was a legislative act, it is not within the meaning of the prohibition.

CUSHING, Justice.—The case appears to me to be clear of all difficulty, taken either way. If the act is a judicial act, it is not touched by the federal constitution: and if it is a legislative act, it is maintained and justified by the ancient and uniform practice of the State of Connecticut.

Judgment affirmed.

[No. 1311. Argued December 11, 12, 1890.—Decided January 26, 1891]

COOK v. UNITED STATES

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS

By the act of March 1, 1889, 25 Stat. 783, c. 333, "to establish a United States court in the Indian Territory, and for other purposes," the strip of public land lying south of Kansas and Colorado, and between the one hundredth and the one hundred and third meridians, and known as No Man's Land, was brought within the jurisidiction of the court for the Indian Territory so established, and was attached for limited judicial purposes to the Eastern District of Texas.

The history of and the legislation concerning the Indian Territory considered and reviewed.

By the act of March 1, 1889, 25 Stat. 783, c. 333, the intention of Congress to confer upon the Circuit Court of the United States in the Eastern District of Texas power to try defendants for the offence of murder, committed before its passage, where no prosecution had been commenced, was so clearly expressed as to take it out of the well settled rule that a statute should not be interpreted to have a retroactive operation where vested rights are injuriously affected by it; and it must be construed as operating retroactively.

The provision in Article 3 of the Constitution of the United States as to crimes "not committed within any State" that "the trial shall be at such place or places as the Congress may by law have directed" imposes no restrictions as to the place of trial, except that the trial cannot occur until Congress designates the place, and may occur at any place which shall have been designated by Congress previous to the trial; and it is not infringed by the provision in the act of March 1, 1889; 25 Stat. 783, c. 333, conferring jurisdiction upon the Circuit Court in the Eastern District of Texas to try defendants for the offence of murder committed before its passage.

The Sixth Amendment to the Constitution, providing for the trial in criminal prosecutions by a jury "of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law," has reference only to offences against the United States committed within a State, and is not infringed by the act of March 1, 1889, 25 Stat. 783, c. 333.

The act of March 1, 1889, 25 Stat. 783, c. 333, although it subjects persons charged with murder committed in a place under the exclusive jurisdiction of the United States, but not within any State, to trial in a judicial district different from the one in which they might have been tried at the time the offence was committed, is not repugnant to Art. I, Sec. 9 of the Constitution of the United States as an *ex post facto* law; since an *ex post facto* law does not involve, in any of its definitions, a change of the place of trial of an alleged offence, after its commission.

The Circuit Court of the United States for the Eastern District of Texas, held at Paris, in that District, at the October Term, in 1889, had jurisdiction of an indictment for murder, charged to have been committed in the country known as "No Man's Land" July 25, 1888.

The Attorney General having, by his brief, confessed, as it was his duty to do that there was error in an important ruling in the court below, entitling the defendants to a reversal, this court reverses the judgment of that court, and remands the case for a new trial.

There was, in July, 1888, a parallelogram of unorganized public land extending from the 100th meridian on the east to the 103d on the west, and from latitude 36°30′ to latitude 37°. It was called "Public Land" upon the maps, but was commonly known as "No Man's Land." It was originally a part of the Republic of Texas; but, in the annexation, the parallel of 36°30′ was made the northerly line of the State, presumably in order to apply the rule of the Missouri Compromise. Kansas and Colorado were subsequently organized, in part out of this acquired territory north of 36°30′, with their southern boundaries on the 37th parallel; the west line of the Indian Territory was fixed at the 100th meridian; and the eastern boundary of New Mexico was fixed on the 103d meridian, thus leaving this small strip of land not included in any organized State or Territory.

By the act of March 1, 1889, 25 Stat. 783, c. 333, it was provided that "a United States court is hereby established whose jurisdiction shall extend over the Indian Territory bounded as follows, to wit: north by the State of Kansas, east by the States of Missouri and Arkansas, south by the State of Texas, and west by the State of Texas and the Territory of New Mexico." It will be seen that the Indian Territory as thus defined on the west stretches to the border of New Mexico. To do this its northern line must run upon a portion of the southern line of Colorado. But Colorado is not mentioned in the act; only Kansas.

Under the provisions of the 17th section of that act it was provided that this part of the Indian Territory should "from and after the passage of this act be annexed to and constitute a part of the Eastern Judicial District of the State of Texas for judicial purposes." p. 786.

By the act of May 2, 1890, 26 Stat. 81, c. 102, this parallelogram was made a part of the Territory of Oklahoma; but by section 9 of that act it was provided that crimes committed therein "prior to the passage of this act shall be tried and prosecuted and proceeded with, until finally disposed of, in the courts now having jurisdiction thereof, as if this act had not been passed." 26 Stat. 86.

The plaintiffs in error were, at October term, 1889, of the Circuit Court of the United States for the Eastern District of Texas, sitting at Paris in that State indicated for murder committed in No Man's Land. The allegations in the indictment were as follows:

"Eastern District of Texas, ss.: The grand jurors of the United States of America, duly elected, impanelled, tried, sworn and charged to inquire into and due presentment make of offences against the laws of the United States of America in and for the district and circuit aforesaid, on their oath in said court present: That heretofore, to wit, on the twenty-fifth day of July in the year of our Lord one thousand eight hundred and eighty-eight, in that section of the country lying between Kansas and Texas, bounded on the west by New Mexico, and extending east to the hundredth meridian of longitude, commonly called the Neutral Strip or 'No Man's Land,' in the Indian Territory, the same being attached to and constituting part of the Eastern District of Texas for judicial purposes, and within the jurisdiction of this court," etc.—(then charging the homicide).

The trial, at which various exceptions to the ruling of the court were duly taken, resulted in conviction and sentence, to review which this writ of error was brought. Several assignments of error were made, but the only ones considered by this court were those which related to the jurisdiction of the court below, and the following:

"*Tenth.* The court erred in permitting the counsel for the government to read from the report of Attorney General Bradford in the hearing of the jury certain statements, then to ask the witness Bradford if he did not make the statements so read in said report, and in overruling the objections of plaintiffs in error thereto. And the court erred in admitting in evidence, over the objections of plaintiffs in error, certain parts of said report, as shown of record, because said witness Bradford was placed upon the witness stand by the government as a rebutting witness after counsel for government knew what he would testify to and said witness had testified as such rebutting witness to the exact facts that the government's counsel had expected him to testify to; and because said witness had stated that plaintiff in error, C. E. Cook, did not state to him in language or in substance the statement contained in said report; because what witness stated in said report was not a report required of him in his official capacity as Attorney General of the State of Kansas. Neither said report nor any part thereof was relevant or competent, and is hearsay; and ought not to have been admitted in evidence."

Mr. Gregory R. Peck and *Mr. John F. Dillon,* (with whom were *Mr. William R. Day, Mr. Joseph Frease* and *Mr. W. H. Rossington,* on the brief,) for plaintiffs in error, made the following points upon the question of jurisdiction:

The Circuit Court of the United States for the Eastern District of Texas had no jurisdiction of the offence charged in the indictment for the following distinct reasons:

(1) The Neutral Strip or "No Man's Land" at the date of the homicide alleged in the indictment (July 25, 1888) was outside of the jurisdiction of any particular state or federal district; and no court of the United States had jurisdiction to prosecute criminally the alleged homicide; or, if any court had jurisdiction, it was not the Circuit Court for the Eastern District of Texas, but was the district where the defendants were found or arrested.

(2) The allegation in the indictment on which the court below assumed jurisdiction, viz., that on the 25th day of July, 1888, the Neutral Strip or "No Man's Land" was "in the Indian Territory, the same being attached to and constituting part of the Eastern District of Texas for judicial purposes, and within the jurisdiction of this court," is untrue in point of fact and of law.

(3) If "No Man's Land" was, at the date of the commission of the alleged homicide (July 25, 1888), within or attached to any judicial district of the United States, it was the *Northern* District of Texas and not the Eastern District of Texas.

(4) The Circuit Court of the United States for the Eastern District of Texas assumed jurisdiction by virtue of sec. 18 of the act of March 1, 1889, 25 Stat. 786. If this act operated to extend the jurisdiction of that court to offences committed in No Man's Land, it did so only as to offences committed after the approval of that act. It could not, under the Constitution, make a past offence triable in the district created by that act instead of the district which existed when the offence was committed; nor could the act be made retrospective, so as to embrace an offence committed before its passage.

The legislation bearing upon these propositions is as follows:

Indian Territory. 4 Stat. 729, c. 161; 5 Stat. 680, c. 103; 16 Stat. 362, c. 296, § 12; 18 Stat. 51, c. 205; 18 Stat. 420, c. 132; 19 Stat. 176, c. 289; 19 Stat. 254, c. 72; 19 Stat. 272, c. 101; 19 Stat. 323, c. 103; 19 Stat. 338, c. 103; 19 Stat. 356, c. 105; 22 Stat. 405, c. 13; 25 Stat. 783, c. 333.

No Man's Land. 5 Stat. 797, Resolution No. 8; 9 Stat. 446, c. 49; 4 Stat. 729, c. 161; 5 Stat. 680, c. 103; 19 Stat. 230, c. 41; 22 Stat. 400, c. 13; 20 Stat. 318, c. 97; 25 Stat. 783, c. 333.

On this legislation we submit that it is entirely clear that the allegations in the indictment that the Neutral Strip or "No Man's Land" was, on July 25, 1888 (the date of the homicide), in the "Indian Territory," and that the same was attached to and constituted part of the *Eastern* Judicial District of Texas, are, and each of those allegations is, wholly without foundation. On the contrary, it appears from the foregoing legislation that on the 25th of July, 1888, "No Man's Land" was no part of the Indian Territory, and was not at that time situated in or annexed to any judicial district of the United States. It was not part of the Indian Territory, or part of the Indian Country, as it stood annexed by the acts of 1834 and 1844, noticed above, to the District of Arkansas, and it was no part of the "Indian Territory," as it was by the act of January 31, 1877, annexed by the then well known name, "Indian Territory," to the Western District of Arkansas; it was not part of the "Indian Territory" within the meaning of the act of January 6, 1883, which divided the jurisdiction over the Indian Territory between Kansas and the *Northern* District of Texas. The result is, that it was not, on July 25, 1888, the date of the alleged homicide, part of any judicial district. If this be so, the conclusion necessarily follows that the Circuit Court for the Eastern District of Texas had no jurisdiction.

But we contend further that no federal court has jurisdiction.

The Constitution of the United States provides (Sec. 2, Art. III.) that when crimes are not committed within any State "the trial shall be at such place or places as the Congress may by law have directed." This means that the place or places of trial must have been directed by Congress by statute prior to the commission of the offence.

Section 730 of the Revised Statutes provides that the trial of all offences committed on the high seas or elsewhere, out of the jurisdiction of any particular state or district, shall be in the district where the offender is found, or into which he is first brought. It has been held that this refers only to maritime offences, and not to offences committed on land. *United States* v. *Alberty*, Hemp. 444. And in *Ex parte Bollman*, 4 Cranch. 75, it was held that if an offence be committed on land, the offender must be tried by the court having jurisdiction over the territory where the offence was committed.

We therefore submit that "No Man's Land" was on July 25, 1888, the date of the alleged homicide, no part of any judicial district, and that Congress had not previously to that time prescribed any place for the trial of offenses committed within that region; and that, under the Constitution, Congress could not, if it had undertaken to do so (which it did not), afterwards prescribe a place of trial. Such act would not only be in conflict with Sec. 2, Art. III, of the Constitution, above referred to, but would also be *ex post facto* within the meaning of the Constitution, as is shown by the decision and reasoning in *Kring* v. *Missouri*, 107 U.S. 221.

But if we are mistaken in this, and if section 730 of the Revised Statutes does apply to offenses committed on land, outside of any particular State or district, then the distinct provision is that the trial "shall be in the district where the offender is found, or into which he is first brought;" and that fact ought to be alleged in the indictment; certainly in some proper mode to appear of record. Such allegation in the indictment would seem to be necessary in order to show that the crime is within the limited jurisdiction of the particular federal court. In point of fact the defendants were residents of and were arrested in, Kansas, and applied to Mr. Justice Brewer to be released on habeas corpus. *In re Jackson*, 40 Fed. Rep. 372.

We have thus far considered the question on the hypothesis that at the time the homicide was committed, No Man's Land was within no judicial district. But if we are mistaken in this position, then it belonged, if to any, to the *Northern* District of Texas by virtue of the act of January 6, 1883, 22 Stat. 400, c. 13. The result would be that the *Eastern* District of Texas would have no jurisdiction; and, confessedly, it has none, except it is conferred by the eighteenth section of the act of March 1, 1889, 25 Stat. 783, which was passed after the date of the alleged homicide.

Nothing seems to us to be plainer than that the act of 1889 does not undertake to give any jurisdiction to the Circuit Court for the Eastern District of Texas as to past offences. The only language relating to jurisdiction is the following: "And the United States Courts herein provided to be held at Paris shall have exclusive original jurisdiction of all offences against the laws of the United States within the limits of that portion of the Indian Territory attached to the Eastern Judicial District of the State of Texas by the provisions of this act,.' et cet.

There is no reason to suppose that Congress in the use of the words that the "Court herein provided to be held at Paris shall have exclusive original jurisdiction of all offences against the laws of the United States," meant to refer to past offences. There is not the slightest evidence or indication of any such intention to be found in the act. The ordinary principles of construction apply, namely, that a statute shall have a prospective operation only, unless in clear terms it is given a retrospective operation.

It is a sound rule of construction that a statute should have a prospective operation only, unless its terms show clearly a legislative intention that it should operate retrospectively. *Chew Heong* v. *United States*, 112 U.S. 536; *United States* v. *Starr*, Hemp. 469.

But if the act of March 1, 1889, 25 Stat. 783, shall be construed to be retrospective, and to have been intended to apply to offences committed in "No Man's Land" prior to the passage of that act, the said act is void because in conflict with Sec. 2, Art. III, of the Constitution, for the reason that Congress had no power to fix or change the district in which the trial should be had after the commission of the offence.

This section provides that in the States crimes shall be prosecuted within the States where committed, and when the crime is committed without the States the trial shall be at such place or places as the Congress may by law have directed. When introduced the last clause read as follows: "As the legislature may direct." It was changed so as to read "as the Congress may by law have directed."

The object of this provision is plain. It was intended to secure to the accused a trial by jury in the place where the crime was committed. If Congress might fix the place of trial after the commission of an offense it could provide for trial in a district remote from the residence of the accused, at such a distance from the witnesses as to deprive him of their presence and testimony. All such attempts are rendered void by the constitutional provisions above quoted. *United States* v. *Maxon*, 5 Blatchford, 360; *Gut* v. *The State*, 9 Wall. 35, 37; *Ex parte Devoe M'f'g Co.*, 108 U.S. 401, 417.

Mr. Attorney General and *Mr. Solicitor General* for defendants in error. Their brief contained the following paragraphs, entitled, "Confession of error."

The admission of the report of the Attorney General of Kansas upon the murder, and the charge of the court to the jury with respect to the effect thereof, were error prejudicial to the defendants below. . . .

It will be seen from the foregoing that the government was permitted to contradict its own witness by introducing a written statement signed by him, made at another time, and that this was done without any professional statement to the court to counsel for the government that they were surprised and misled into calling him. Such a course is contrary to all the rules of evidence. . . . It is not necessary to discuss the question whether the charge was erroneous. It was grossly so, and must have been very prejudicial. It was the admission of the purest hearsay evidence upon the crucial point in the case.

Mr. JUSTICE HARLAN delivered the opinion of the court.

The plaintiffs in error, with others, were indicted in the court below at its October term, 1889, and were convicted and sentenced to suffer death, for the crime of murder alleged to have been committed on the 25th day of July, 1888, in that part of the United States designated in numerous public documents as the Public Land Strip, but commonly called No Man's Land. It is 167 miles in length, 34½ miles in width, lies between the 100th meridian of longitude and the Territory of New Mexico, and is bounded on the south by that part of Texas known as the Panhandle, and by Kansas and Colorado on the north.

The prosecution was based upon section 5339 of the Revised Statutes, providing that "every person who commits murder within any fort, arsenal, dock-yard, magazine or in any other place or district of country under the exclusive jurisdiction of the United States, . . . shall suffer death;" and upon the act of Congress of March 1, 1889, establishing a court of the United States for the Indian Territory and for other purposes, and attaching a part of that Territory, for limited judicial purposes, to the Eastern District of Texas. 25 Stat. 783, c. 333.

The principal assignment of error is based upon these general propositions: That at the date of the alleged homicide the Public Land Strip was not within the jurisdiction of any particular state or federal district, and that no court of the United States had jurisdic-

tion to try the alleged offence, or if any court had jurisdiction it was not the court below, but the Circuit Court of the United States for the Northern District of Texas, or that of the District of Kansas in which the defendants were found and arrested; and that if the above act of March 1, 1889—under which alone this prosecution was conducted—placed the Public Land Strip within the limits of the Eastern District of Texas, it did not, and consistently with the Constitution of the United States could not, give the Circuit Court for that district jurisdiction of offences committed prior to its enactment.

Did Congress intend to attach the Public Land Strip to the Eastern District of Texas for any purpose? That necessarily is the question to be first considered. And it must be determined without reference to the act of May 2, 1890, providing a temporary government for Oklahoma; for that act, while including this strip within the Territory of Oklahoma, declares that all "crimes committed in said Territory" prior to its passage "shall be tried and prosecuted, and proceeded with until finally disposed of, in the courts now [then] having jurisdiction thereof," as if that act had not been passed. 26 Stat. 81, 86, c. 182, §§ 1, 9. We shall be aided in the solution of the question of jurisdiction by recalling the history of the Public Land Strip, and various acts of Congress, preceding that of 1889, which are supposed to have some bearing upon this case.

The Public Land Strip was once a part of the possessions of Mexico. This appears from the treaty of January 12, 1828, between the United States of America and the United Mexican States, confirming the previous treaty of February 22, 1819, with the Monarchy of Spain. 8 Stat. 372, 374. When Texas achieved its independence this strip was within its limits. Indeed, the Republic of Texas originally embraced the present territory of the State of Texas, as well as parts of what now constitutes New Mexico, Arizona, Colorado and Kansas. On the day of its admission into the Union, by the Joint Resolution of December 29, 1845, the judicial District of Texas was established, embracing the entire State. 9 Stat. 1, 108.

Congress, by an act of September 9, 1850, 9 Stat. 446, c. 49, made certain propositions to Texas, one of which was that its boundary on the north should commence at the point where the meridian of one hundred degrees west from Greenwich is intersected by the parallel of thirty-six degrees thirty minutes north latitude, and run from that point due west to the meridian of one hundred and three degrees; thence due south to the thirty-second degree of north latitude; thence on the latter parallel to the Rio Bravo del Norte; and thence with the channel of that river to the Gulf of Mexico. This proposition was accepted by Texas. Oldham and White's Digest Laws of Texas, p. 55. By the same act, § 2, the eastern boundary of New Mexico was established on the one hundred and third meridian. The remaining territory of Texas, as it was when admitted into the Union, passed by that act under the jurisdiction of the United States. The Territory of Kansas was organized by the act of May 30, 1854, c. 59, § 19, 10 Stat. 277, 283, its southern line being fixed on the 37th parallel of north latitude. The Territory of Colorado was organized by an act approved February 28, 1861, 12 Stat, 172, c. 59, its eastern boundary being on the 102d meridian, and its southern boundary being on the 37th parallel of north latitude. Id. § 1. The result of all these enactments was that the body of public lands, known as the Public Land Strip, was left outside of Texas as as well as of the Territories of New Mexico, Kansas and Colorado.

By the act of February 21, 1857, the State of Texas was divided into two judicial districts, the Western and the Eastern. 11 Stat. 164, c. 57. The Northern District was established by an act passed February 24, 1879, with courts at Waco, Dallas County, and Graham, Young County, embracing one hundred and ten counties by name, including Sherman, Hansford, Ochiltree and Lipscomb in the panhandle, immediately south of the Public Land Strip, and Hemphill, Wheeler, Collingsworth and Childress immediately west of the 100th meridian, and Hardeman, Wilbarger, Wichita, Clay, Montague, Cooke, Grayson, Fannin and Lamar immediately south of the Indian Territory, in the central and eastern parts of Texas, but excluding the counties of Red River and Bowie in the latter State near the Arkansas line. The same act enlarges the Eastern District of Texas, and designates all the counties that should thereafter compose the Eastern and Western Districts, respectively. Under this act the Eastern District embraced, among others, the counties next to Louisiana and Arkansas, including Red River and Bowie. 20 Stat. 318, c. 97.

An act of Congress was passed January 6, 1883, for the holding at Wichita of a term of the District Court of the United States for the District of Kansas and for other purposes, 22 Stat. 400. c. 13. By that act (§ 2) "all that portion of the Indian Territory lying north of the Canadian River and east of Texas and the one hundredth meridian not set apart and occupied by the Cherokee, Creek and Seminole Indian tribes," was annexed to the District of Kansas; and the United States District Courts at Wichita and Fort Scott in that district were given "exclusive original jurisdiction of all offences committed within the limits of the territory hereby annexed to said District of Kansas against any of the laws of the United States now or that may hereafter be operative therein." It was further provided: "§ 3. That all that portion of the Indian Territory not annexed to the District of Kansas by this act, and not set apart and occupied by the Cherokee, Creek, Choctaw, Chicasaw and Seminole Indian tribes, shall, from and after the passage of this act, be annexed to and constitute a part of the United States judicial district known as the Northern District of Texas; and the United States District Court at Graham, in said Northern District of Texas, shall have exclusive original jurisdiction of all offences committed within the limits of the territory hereby annexed to said Northern District of Texas against any of the laws of the United States now or that may hereafter be operative therein. § 4. That nothing contained in this act shall be construed to affect in any manner any action or proceeding now pending in the Circuit or District Court for the Western District of Arkansas, nor the execution of any process relating thereto; nor shall anything in this act be construed to give to said District Courts of Kansas and Texas, respectively, any greater jurisdiction in that part of said Indian Territory so as aforesaid annexed, respectively, to said District of Kansas and said Northern District of Texas, than might heretofore have been lawfully exercised therein by the Western District of Arkansas; nor shall anything in this act contained be construed to violate or impair, in any respect, any treaty provision whatever." It is insisted, on behalf of the United States, that this act attached the Public Land Strip to the Northern District of Texas; that the words, "Indian Territory," were used to include that strip; and that such a construction is sustained both by executive recognition and by the legislation of Congress.

Then comes the act of March 1, 1889, c. 333, above referred to, 25 Stat. 783, which, it is contended, transferred the Public Land Strip from the Northern District to the Eastern District of Texas. By its first section a United States Court, to be held at Muscogee, is established, "whose jurisdiction shall extend over the Indian Territory, bounded as follows, to wit: North by the State of Kansas, east by the States of Missouri and Arkansas, south by the State of Texas, and west by the State of Texas and the Territory of New Mexico." It is given (§ 5) "exclusive original jurisdiction over all offenses against the laws of the United States committed within the Indian Territory as in this act defined, not punishable by death or by imprisonment at hard labor." That court was also given (§ 6) "jurisdiction in all civil cases between citizens of the United States who are residents of the Indian Territory, or between citizens of the United States, or of any State or Territory therein, and any citizen of or person or persons residing or found in the Indian Territory, and when the value of the thing in controversy, or damages or money claimed shall amount to one hundred dollars or more: *Provided*, That nothing herein contained shall be so construed as to give the court jurisdiction over controversies between persons of Indian blood only."

The seventeenth, eighteenth and twenty-eighth sections of that act are as follows:

"SEC. 17. That the Chickasaw Nation and the portion of the Choctaw Nation within the following boundaries, to wit: Beginning on Red River at the southeast corner of the Choctaw Nation; thence north with the boundary line between the said Choctaw Nation and the State of Arkansas, to a point where Big Creek, a tributary of the Black Fork of the Kimishi River, crosses the said Black Fork to the junction of the said Black Fork with Buffalo Creek; thence northwesterly with said Buffalo Creek to a point where the same is crossed by the old military road from Fort Smith, Arkansas, to Boggy Depot, in the Choctaw Nation; thence southwesterly with the said road to where the same crosses Perryville Creek; thence northwesterly up said creek to where the same is crossed by the Missouri, Kansas and Texas Railway track; thence northerly up the centre of the main track of the said road to the South Canadian River; thence up the centre of the main channel of the said river to the western boundary line of the Chickasaw Nation, the same being the northwest corner of the said nation; thence south on the boundary line between the said nation and the reservation of the Wichita Indians; thence continuing south with the boundary line between the said Chickasaw Nation and the reservations of the Kiowa, Comanche and Apache Indians to Red River; thence down said river to the place of beginning; and all that portion of the Indian Territory not annexed to the District of Kansas by the act approved January sixth, eighteen hundred and eighty-three, and not set apart and occupied by the five civilized tribes, shall, from and after the passage of this act, be annexed to and constitute a part of the Eastern Judicial District of the State of Texas, for judicial purposes.

"SEC. 18. That the counties of Lamar, Fannin, Red River and Delta of the State of Texas, and all that part of the Indian Territory attached to the said Eastern Judicial District of the State of Texas by the provisions of this act, shall constitute a division of the Eastern Judicial District of Texas; and terms of the Circuit and District Courts of the United States for the said Eastern District of the State of Texas shall be held twice in each year at the city of Paris, on the third Mondays in April and the second Mondays in October; and the United States courts herein provided to be held at Paris shall have exclusive, original jurisdiction of all offences committed against the laws of the United States within the limits of that portion of the Indian Territory attached to the Eastern Judicial District of the State of Texas by the provisions of this act, of which jurisdiction is not given by this act to the court herein established in the Indian Territory; and all civil process, issued against persons resident in the said counties of Lamar, Fannin, Red River and Delta, cognizable before the United States courts, shall be made returnable to the courts, respectively, to be held in the city of Paris, Texas. And all prosecutions for

offences committed in either of said last-mentioned counties shall be tried in the division of said eastern district of which said counties form a part: *Provided*, That no process issued or prosecution commenced or suit instituted before the passage of this act shall be in any way affected by the provision thereof."

"SEC. 28. That all laws and parts of laws inconsistent with the provisions of this act be, and the same are hereby, repealed."

Other sections prescribe the modes of procedure in the court established by that act and the punishment for numerous offences.

From this history of the Public Land Strip it appears: 1. That by the act of 1883 all of the "Indian Territory" north of the Canadian River and east of Texas and the 100th meridian, not set apart and occupied by the Cherokee, Creek and Seminole Indian tribes, was attached to the District of Kansas, while the portion not so annexed and not set apart and occupied by the Cherokee, Creek, Choctaw, Chickasaw and Seminole Indian tribes, was annexed to the Northern District of Texas, saving actions or proceedings pending in the Circuit or District Court for the Western District of Arkansas. 2. That, by the act of 1889, the court established for the Indian Territory was given exclusive original jurisdiction over all offences against the laws of the United States committed within the Indian Territory as defined by that act, not punishable by death or by imprisonment at hard labor. 3. That exclusive original jurisdiction was given by the act of 1889 to the courts of the United States, sitting at Paris, Texas, of all such offences, committed within the portion of the Indian Territory annexed to the Eastern District of that State, of which jurisdiction was not given to the court established in and for the Indian Territory.

Much of the discussion by counsel was directed to the inquiry whether the act of 1883 attached the Public Land Strip to the Northern District of Texas. In view of the relations which certain Indian tribes once held to that strip, under treaties with the United States—which treaties will be referred to in another connection—there are some reasons for holding, in accordance with the contention of the government, that it was so attached to that district. But it is not necessary to decide that point; for, however it might be determined, the question would remain whether the Public Land Strip was not within that portion of the Indian Territory, defined in the act of 1889, which was assigned, by that act, for certain judicial purposes, to the Eastern District of Texas. If it was, the court below had jurisdiction of the offence charged in the indictment, unless the later act is construed as having no application to offences committed prior to its passage. The act of 1883 is chiefly important in the present inquiry as it may serve to explain the provisions of the act of 1889.

It is certain that after, as well as before, the passage of the act of 1883, various public officers and committees in Congress described the "Indian Territory" as lying east of the 100th meridian, and represented the Public Land Strip as being unattached to any judicial district.[1] The most significant, perhaps, of all the official documents of this class are the letter of the Attorney General of the United States to the President under date of November 15, 1887, and that of the Secretary of the Treasury to the Speaker of the House of Representatives, under date of May 1, 1888. The former describes the Public Land Strip as "bounded on the north by the States of Kansas and Colorado, on the east by the Indian Territory, on the south by Texas, and on the west by New Mexico," and says that it was not then "embraced in any district established by law of the United States." The latter, speaking of the urgent need of legislation to enforce the revenue laws of the United States in the Public Land Strip, says that "the land referred to is not embraced in any judicial district, and not being within the jurisdiction of any United States court the laws of the United States are inoperative, or, at least, cannot be enforced therein."

The public documents to which reference has been made undoubtedly show that, in the opinion of many gentlemen in the legislative and executive branches of the government, the "Indian Territory" did not extend further west than the one hundredth meridian, and that, even after the passage of the act of 1883 it remained unattached to any judicial district. So that, if Congress intended by the act of 1883 to annex the Public Land Strip to the Northern District of Texas, it was informed by these documents that that act was not so construed by certain officers of the government. But I was further informed that the public interests absolutely demanded that that portion of the public domain should no longer remain in the condition in which it had been left for many years, namely, without being clearly included in some judicial district, whereby the rights of the general government, as well as of individuals, could be enforced against criminals and wrongdoers of every class. No possible reason can be suggested why, at the time of the passage of the act of 1889, the Public Land Strip should not have been brought within some judicial district.

Upon a careful scrutiny of the act of 1889, giving full effect to all of its clauses, according to the reasonable meaning of the words used, yet interpreting it in the light of the previous history of the Public Land Strip, and of the information communicated to Congress by public officers, we do not doubt that Congress intended to bring that strip within the jurisdiction of the court established for the Indian Territory, and to attach it, for limited judicial purposes, to the Eastern District of Texas; thus enabling the general government to protect its own interests, as well as the rights of individuals. That act was so interpreted by Mr. Justice Brewer before his accession to this Bench. *In re Jackson*, 40 Fed. Rep. 372. Observe, that the country over which the court established by that act was to exercise jurisdiction was not described as being east of the 100th meridian and south of Kansas, nor simply as the Indian Territory, but, *ex industria*, as the Indian Territory bounded "north by the State of Kansas, [the southern line of that State constituting about two-thirds of the northern boundary of the Public Land Strip,] east by the States of Missouri and Arkansas, south by the State of Texas, and west by the State of Texas *and* the *Territory of New Mexico*." If the act had bounded it on the north by Kansas *and Colorado*, the description, beyond all question, would have included the Public Land Strip. But the description, as it is, necessarily includes that strip because the "Indian Territory," for which the new court, to sit at Muscogee, was established, being bounded on the north by Kansas, *and* west, in part, by "the Territory of New Mexico"—the eastern boundary of which is on the 103d meridian—must include within its limits the Public Land Strip, lying between New Mexico and the 100th meridian. This fact is of greater significance than the careless omission to state, in the act, that the Indian Territory, described in it, was bounded on the north by Colorado as well as by Kansas. The court at Muscogee was given exclusive original jurisdiction over all offences against the United States, not punishable by death or by imprisonment at hard labor, committed, not simply within the Indian Territory, but within the Indian Territory, "as in this [that] act defined," while the court at Paris was given exclusive original jurisdiction of all offences against the laws of the United States within the limits of that portion of the Indian Territory attached to the Eastern District of Texas "by the provisions of this [that] act," of which jurisdiction was not given to the court at Muscogee. If Congress did not intend to bring the Public Land Strip within the jurisdiction of the court established for the Indian Territory, and, for certain judicial purposes, within the jurisdiction of the courts held at Paris, in the Eastern District of Texas, why did it declare that the Indian Territory, for which it legislated in the act of 1889, was bounded on the west "by the State of Texas *and* the Territory of New Mexico?" We cannot hold the words, "and the Territory of New Mexico," to be meaningless, simply because the northern boundary of that strip was not described with precision and fullness; especially as every consideration of policy demanded that that part of the public domain should no longer be left without courts for the protection of the government and the people.

It is contended that this interpretation of the words "Indian Territory" in the act of 1889 is wholly unauthorized by anything in the history of the Public Land Strip; for, it is said, that there are no facts whatever that make those words at all appropriate as embracing that strip. This broad statement is scarcely justified by the facts. By the treaty of July 27, 1853, made and concluded at Fort Atkinson, in the Indian Territory, 10 Stat. 1013, between the United States and the Camanche, Kiowa and Apache tribes or nations, "inhabiting the said territory south of the Arkansas River," it was provided that the annuities stipulated to be given by the United States should be delivered yearly in July to those tribes, collectively, at or in the vicinity of Beaver Creek, a large part of which is within the Public Land Strip. By another treaty with those tribes, October 18, 1865, 14 Stat. 717–721, the United States agreed that a certain district of country, or such parts as the President should from time to time designate, should be and was set apart for their "absolute and undisturbed use and occupation," and that of "such other friendly tribes" as had theretofore "resided within said limits, or as they may from time to time agree to admit among them, and that no white person, except officers, agents and employees of the government, shall go upon or settle within the country embraced within said limits, unless formally admitted and incorporated into some one of the tribes lawfully residing there, according to its laws and usages." The boundaries of said district were: "Commencing at the northeast corner of New Mexico; thence south to the southeast corner of the same; thence northeast-wardly to a point on main Red River, opposite the mouth of the north fork of said river; thence down said river to the 98th degree of west longitude; thence due north on said meridian to the Cimarone River ; thence up said river to a point where the same crosses the southern boundary of the State of Kansas; thence along said southern boundary of Kansas to the southwest corner of said State; thence west to the place of beginning." These boundaries, it is true, included apart of the State of Texas, and the treaty was, in that respect, ineffectual. Nevertheless, the cession included the Public Land Strip, then a part of the public domain of the United States. By a subsequent treaty with two of the same tribes, concluded Oc-

[1] Report of Commissioner of Indian Affairs, 1872, p. 33; Letter of Commissioner of General Land Office to Durant, September 17, 1873, Rec. Com. Gen. Land Office, vol. 27, p. 304; Report of Land Commission, p. 462; Report Com. Land Office, 1884; House Judiciary Committee, Rep. No. 2030, July 2, 1864; *id.* Report, Doc. No. 389, February 11, 1886, embodying letter of Com'r Land Office of January 29, 1886; House Com. on Territories, 1887, Report No. 1684; *id.* 1888, Rep. No. 2857; *id.* February 7, 1888. Rep. 263.

tober 21, 1867, 15 Stat. 581, 584, they were restricted in territory to the southwest corner of the Indian Territory, but they reserved the right "to hunt on any lands south of the Arkansas River, so long as the buffalo may range thereon in such numbers as to justify the chase." These treaties are referred to as showing that as late as 1867 the Public Land Strip, in the mode of its use, had some connection with Indians west of the Mississippi, and especially with some of those now occupying permanent reservations in the Indian Territory. That strip, we are informed, has not been occupied by Indians since 1867, but it was not opened to settlement, and could have been used for any of the purposes that the government had in view for Indians.

There are other circumstances that are not without significance as indicating why Congress in the act of 1889 used the words "Indian Territory," as describing not only lands east of the 100th meridian, south of Kansas, but lands north of Texas and between that meridian and New Mexico. Among them the following may be named: 1. To a report of the commissioner of the general land office, made in 1864, was annexed a map, "constructed from the Public Surveys and other official sources in the general land office," in which the Public Land Strip is included within the boundaries of the Indian Territory; and a similar map, "constructed from the plats and official sources of the general land office," under the direction of Commissioner Wilson, was issued in 1867. 2. By an act of March 2, 1887, Congress granted a right of way through the "Indian Territory" to a railroad company, beginning at a point on the northern line of said Territory at or near the south line of Kansas, crossed by the 101st meridian; thence in a southwesterly direction to El Paso, New Mexico. It could not commence at the point designated and reach El Paso by a southwesterly line without passing through the Public Land Strip. Unless that strip was, for the purposes of that act, regarded as a part of the Indian Territory, then the route to El Paso would not pass through the Indian Territory at all. 3. By the treaty of May 6, 1828, with the Cherokee Indians the United States, besides setting apart for the use of that tribe 7,000,000 acres within the limits of the Indian Territory, guaranteed to that nation "a perpetual outlet west, and free and unmolested use of all the country lying west of the western boundary" of the limits given," and as far west as the sovereignty of the United States and their right of soil extend." In an official communication from the commissioner of the land office to the Secretary of the Interior, under date of January 29, 1886, embodied in a report made on the 11th of February, 1886, by the Judiciary Committee of the House of Representatives, upon a proposed bill extending the laws of the United States over certain "unorganized territory south of Kansas," it was said: "It appears that the Cherokees claimed the Public Land Strip, now so called, as the outlet above mentioned, and the official maps down to 1869, or later, designated said strip as *part of the Indian Territory*. I have not found in the records of this office any expressed reason why this strip was so designated on the maps, nor why that designation was changed upon the maps published after 1869." The commissioner recommended the passage of the proposed bill, because it would take this "unorganized territory out of its anomalous condition to a certain extent and open the lands to entry."

These circumstances are referred to not as conclusive, nor as in themselves, persuasive, but only to show that the Public Land Strip was regarded, at different times, by public officers to be part of the Indian Territory, as commonly designated, or as having such connection with the lands east of the 100th meridian, where various tribes of Indians had been located by the United States, as made it natural that it should be placed, together with the lands between that meridian and the States of Missouri and Arkansas, not occupied by the civilized Indian tribes, under the jurisdiction of the court established by the act of 1889, or of some other court of the United States. Congress, it must be presumed, was not unaware of the fact that the words "Indian Territory" had been used by some to exclude, and by others to include, the Public Land Strip, and, to avoid misapprehension as to whether that strip was annexed to some judicial district, and, perhaps, for the purpose of meeting the recommendation of the Secretary of the Treasury in his letter of May 1, 1888, it speaks, in the act of 1889, of the Indian Territory, not generally, but *as therein defined*. That description, we have seen, necessarily included the Public Land Strip, because it was the only part of the public domain in that part of the United States that was bounded on the north by Kansas, as well as on the west by the Territory of New Mexico, and which immediately adjoined the Indian Territory lying east of the 100th meridian.

Much was said at the bar about the unreasonableness of the supposition that Congress intended to subject the people in the Public Land Strip to the jurisdiction of a court sitting at so great a distance as Paris, Texas, rather than to one at Graham, in the Northern District of Texas, or one at Wichita, in Kansas. Judging by the map, the distance from the Public Land Strip to Paris is not much greater than to Graham. Indeed, the facilities for reaching Paris may be quite as good as those for reaching Graham. While the court of the United States nearest to the Public Land Strip, other than the one at Muscogee, seems to be the District Court of Kansas, this fact cannot control, as against the natural meaning of the words of the act.

Nor do we think that the interpretation of the act of 1889 can or ought to be affected by that of 1890, providing a temporary government for the Territory of Oklahoma, and enlarging the jurisdiction of the United States court in the Indian Territory. Oklahoma, by that act, is made to include "all that portion of the United States *now known as the Indian Territory*, except . . . and except the unoccupied part of the Cherokee outlet, together with that portion of the United States known as the Public Land Strip." The boundary of the country "now known as the Indian Territory" and included in said Territory of Oklahoma is given, and the Public Land Strip is, separately, bounded "east by the 100th meridian, south by Texas, west by New Mexico, and north by Colorado and Kansas." This may be regarded at most as simply a declaration by Congress that the country then "known as the Indian Territory" did not include the Public Land Strip, and, therefore, that each should be separately described by its boundaries. But that does not prove that Congress did not intend, in 1889 to include the Public Land Strip in the "Indian Territory," *as defined by the act of that year*. On the contrary, the Oklahoma act, when it bounds that Strip on the "west by New Mexico," tends to show that substantially similar words used in describing the Indian Territory mentioned in the act of 1889, had reference to the Public Land Strip.

Looking at this question in every light in which it may be considered, we repeat the expression of our opinion that the Public Land Strip west of the 100th meridian, bounded on the south by Texas, on the west by New Mexico, and on the north by Colorado and Kansas, was annexed by the act of 1889 to the Eastern District of Texas for such judicial purposes as by that act appertained to the court held at Paris in that District.

Was it competent for the court below to try the defendants for the offence of murder committed prior to the passage of the act of 1889? We do not doubt that Congress intended to confer upon that court jurisdiction to try such cases. By the express words of the act, the courts to be held at Paris, Texas, were given exclusive original jurisdiction of "all offences committed against the laws of the United States" within that part of the Indian Territory attached to the Eastern Judicial District of Texas, of which jurisdiction was not given, by the same act, to the court established for that Territory. The only exception made is in the proviso to the eighteenth section, declaring, among other things, that no prosecution commenced before the passage of the act should be in any way affected by its provisions. This, in connection with the previous part of the same section, defining the jurisdiction of the court below, necessarily imports that where no prosecution had been commenced, it should have authority to try all offenses, punishable by death or imprisonment at hard labor, committed, no matter when, within the new territory over which its jurisdiction was extended. No other interpretation can be reasonably given to the act. If the Public Land Strip was placed by the act of 1883 in the Northern District of Texas, or if the defendants, having been apprehended in Kansas, were amenable, prior to the act of 1889, to the District Court in that State, the jurisdiction of the United States court of neither of these districts had attached by the commencement of a prosecution, before that strip was annexed to the Eastern District of Texas. In so interpreting the act of Congress we do not infringe the settled rule that courts uniformly refuse to give to statutes a retrospective operation, where rights previously vested are injuriously affected, unless compelled to do so by language so clear and positive as to leave no room to doubt that such was the intention of the legislature. *United States* v. *Heth*, 3 Cranch, 399, 413; *Chew Heong* v. *United States*, 112 U.S. 536, 559. The saving of only pending prosecutions shows that Congress did not except any offence against the United States of which the court below was given jurisdiction.

It is contended that the act, so construed, is in violation of section two, article three, of the Constitution, supplemented by the Sixth Amendment. The former provides that "the trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." The latter provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law." In respect to that clause of the Sixth Amendment declaring that the "district shall have been previously ascertained by law," it need only be said that if those words import immunity from prosecution where the district is not ascertained by law before the commission of the offence, or that the accused can only be tried in the district in which the offence was committed, (such district having been established before the offence was committed,) that amendment has reference only to offences against the United States committed within a State. *United States* v. *Dawson*, 15 How. 467, 487, 488; *Jones* v. *United States*, 137 U.S. 202, 211, 212. The second section of article three had provided, in respect to crimes committed in the States, that the trial by jury should be had within the State where the crime was committed. The Sixth Amendment added the further guaranty, in respect to the place of trial, that the district should have been previously ascertained by law, leaving the trial of offences not committed within any State, to be controlled by the second section of article three. The re-

quirement in the latter section is that the trial "shall be at such place or places as the Congress may by law have directed." "As crimes," said Mr. Justice Story, commenting upon this section, "may be committed on the high seas and elsewhere, out of the territorial jurisdiction of a State, it was indispensable that in such cases Congress should be enabled to provide the place of trial." 2 Story's Const. § 1781. It was consequently provided in the act of April 30, 1790, 1 Stat. 114, c. 9, § 8, that "the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular State, shall be in the district where the offender is apprehended, or into which he may first be brought." And such was the law when the crime with which the defendants are charged was committed. Rev. Stat. §§ 730, 5339. But for the passage of the act of 1889, and if the Public Land Strip was not attached by the act of 1883 to the Northern District of Texas, the defendants could have been indicted and tried in the District of Kansas, where they were apprehended. *Jones* v. *United States*, above cited. So that the contention of the defendants is, in effect, that in respect to crimes committed outside of the States, in some place within the exclusive jurisdiction of the United States, Congress is forbidden by the second section of article three of the Constitution from providing a place of trial different from the one in which the accused might have been tried at the time the offence was committed.

We do not so interpret that section. The words, "the trial shall be at such place or places as the Congress may by law have directed," impose no restriction as to the place of trial, except that the trial cannot occur until Congress designates the place, and may occur at any place which shall have been designated by Congress previous to the trial. This was evidently the construction placed upon this section in *United States* v. *Dawson*, above cited, where the court, speaking by Mr. Justice Nelson, said: "A crime, therefore, committed against the laws of the United States, out of the limits of a State, is not local, but may be tried at such place as Congress shall designate by law. This furnishes an answer to the argument against the jurisdiction of the court, as it respects venue, trial in the county, and jury from the vicinage, as well as in respect to the necessity of particular or fixed districts before the offence," p. 488. So, in *United States* v. *Jackalow*, 1 Black, 484, 486: "Crimes committed against the laws of the United States, out of the limits of a State, are not local, but may be tried at such place as Congress shall designate by law; but are local if committed within the State. They must then be tried in the district in which the offence was committed." If Congress—as it did in the act of 1790, which may be regarded as a contemporaneous construction of the Constitution—may provide for the trial of offences committed outside of the States, in whatever district the accused is apprehended, or into which he may first be brought, it is difficult to perceive why, such crimes not being local, it may not provide a place of trial where none was provided when the offence was committed, or change the place of trial after the commission of the offence.

It is said that the construction we place upon the second section of article three makes it obnoxious to the *ex post facto* clause of the Constitution. In support of this position reference is made to *Kring* v. *Missouri*, 107 U.S. 221, where it was declared that any statute passed after the commission of an offence which, "in relation to that offence or its consequences, alters the situation of a party to his disadvantage," is an *ex post facto* law. This principle has no application to the present case. The act of 1889 does not touch the offence nor change the punishment therefor. It only includes the place of the commission of the alleged offence within a particular judicial district, and subjects the accused to trial in that district rather than in the court of some other judicial district established by the government against whose laws the offence was committed. This does not alter the situation of the defendants in respect to their offence or its consequences. "An *ex post facto* law," this court said in *Gut* v. *The State*, 9 Wall. 35, 38, 'does not involve, in *any* of its definitions, a change of the place of trial of an alleged offence after its commission."

Another contention of the defendants is that the indictment is fatally defective, in that it fails to sufficiently show when Cross—the person alleged to have been murdered—died, or that he died within a year and a day from the infliction upon him of the alleged mortal wounds, or from the effect of such wounds, or within the territory in the jurisdiction of the court in which they were tried. As the Attorney General and the Solicitor General submit this question without argument, and without any suggestion in support of the indictment, and as the judgment must, for reasons to be presently stated, be reversed, leaving the government at liberty to find a new indictment, if its officers shall be so advised, we will not extend this opinion by an examination of the authorities cited by the defendants to show the present indictment to be defective.

At the trial below, one of the defendants' counsel, who had been attorney general of Kansas, and who, in that capacity, made to the governor of that State a report touching the death of Cross immediately after it occurred, was called, in rebuttal, as a witness for the prosecution. That report contained various statements purporting to have been made by the defendants, and which connected them with the killing of Cross. Although the witness stated that the report was based upon hearsay evidence merely, was thrown together hastily by a stenographer, and was incorrect, and that the defendants had not made the statements therein attributed to them, certain parts of it were admitted in evidence to the jury, against the objection of the defendants. The record shows that this report was read in evidence to show that the witness had made different statements at another time and place. And the court, in its charge said to the jury: "The instructions given above are limited, so far as the evidence is concerned, by the following instructions: The portions of Attorney General Bradford's report were admitted in evidence to be considered by you as to whether or not the statements therein contained were made by the parties to said Bradford, said Bradford now being attorney for the defendants, and denying the truth of the statements therein contained; and as to whether or not these statements were ever made to said Bradford, is a question of fact to be considered by you from all the evidence upon that subject; and if you believe the statements were not so made to said Bradford, you are to disregard the same. But if you believe from the evidence that they were so made to said Bradford, then you are instructed to consider them as evidence, but only as to such parties by whom they were made."

The jury were thus informed that this report, although merely hearsay, was substantive evidence upon the issue as to whether the defendants were present at, and participated in, the killing. The representatives of the government, in this court, frankly concede, as it was their duty to do, that this action of the court below was so erroneous as to entitle the defendants to a reversal. Numerous other errors are said to have been committed at the trial to the prejudice of the defendants, but as such alleged errors may not be committed at the next trial, it is not necessary now to consider them.

For the error above mentioned the judgment is reversed, and the cause remanded with directions to grant a new trial.

By Mr. NELSON (for himself, Mr. MONDALE, and Mr. CRANSTON):

S. 1746. A bill to amend the Public Health Service Act to extend for 1 year the student loan and scholarship provisions of titles VII and VIII of such act. Referred to the Committee on Labor and Public Welfare.

Mr. NELSON. Mr. President, we are introducing today a bill to insure continued support of Federal loans and scholarships for first-year students in the health professions fields.

The bill is designed to stave off what medical and nursing schools say is a potential crisis—disruption of admissions for students who need financial aid. The schools cannot now assure newly enrolling students of financial aid for the fall term, because of the uncertainty that Federal student aid will not be approved by Congress in time to plan for next fall's enrollment. The present law expires June 30, 1971.

In light of the critical need for more health manpower in the Nation, we believe this is an important measure.

The leadtime required by schools in planning their student assistance programs means that the rosters for freshmen students are being completed right now.

The Association of American Medical Colleges estimates that the number of first-year students in the 1971–72 academic year will be about 11,800, of which some 9,130 freshmen students need financial assistance. Without prompt action by Congress, many students will not be able to enter classes this fall, since the schools rely heavily on Federal student aid programs. Such aid is the source of approximately 50 percent of the scholarship funds available to medical students, and 52 percent of the loan assistance.

Students of medicine, nursing, dentistry, osteopathy, pharmacy, podiatry, optometry, and veterinary medicine are affected.

The situation is particularly critical for low-income and minority students.

President Nixon, in his health message to Congress, emphasized the need to increase Federal-support programs, so that more low-income and minority groups could enter the health profession.

We recognize that this bill is a stopgap measure, and will be superseded at such time when the Health Professions Assistance Act and the Nurse Training Act are renewed by Congress. Authorizations for both acts expire June 30, 1971. After that date, there is no authority to appropriate funds for loans or scholarships to new students or to those not previously assisted under the loan program.

The problem can be eliminated by congressional action on the health manpower legislation before the June 30 expiration date, and it is my hope that the broader legislation will be enacted and presented to the President before that deadline.

Any delay in action on the broader, complex legislation, however, could result in sharp curtailment of financial aid programs that would disrupt medical and nursing schools' admissions decisions.

Because the present uncertainty is jeopardizing the plans of students and medical schools, I am introducing this bill to extend the loan and scholarship provisions of the Public Health Service Act for 1 year, at the same fiscal level authorized for 1971. Congress appropriated $40 million for health professions students assistance programs in fiscal 1971; loans amounted to about $25 million, and scholarships about $15.5 million.

I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 1746

A bill to amend the Public Health Service Act to extend for one year the student loan and scholarship provisions of titles VII and VIII of such Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

STUDENT LOAN PROGRAM UNDER TITLE VII OF THE PUBLIC HEALTH SERVICE ACT

SECTION 1. (a)(1) The first sentence of section 742(a) of the Public Health Service Act (42 U.S.C. 294b) is amended by striking out "the next fiscal year" and inserting in lieu thereof "the next two fiscal years".

(2) The third sentence of such section is amended by (A) striking out "1972" and inserting in lieu thereof "1973", and (B) by striking out "1971" and inserting in lieu thereof "1972".

(b) Section 743 of such Act (42 U.S.C. 294c) is amended by striking out "1974" each place it occurs and inserting in lieu thereof "1975".

(c) The first sentence of section 744 (a)(1) of such Act (42 U.S.C. 294d) is amended by striking out "next three fiscal years" and inserting in lieu thereof "next four fiscal years".

SCHOLARSHIP PROGRAM UNDER TITLE VII OF THE PUBLIC HEALTH SERVICE ACT

SEC. 2. (a) Section 780b of the Public Health Service Act is amended (1) by striking out "the next two fiscal years" in the first sentence and inserting in lieu thereof "the next three fiscal years", (2) by striking out "1972" in the last sentence and inserting in lieu thereof "1973", and (3) by striking out "1971" in such sentence and inserting in lieu thereof "1972".

(b)(1) Section 780(c)(1)(9)(D) of such Act is amended by striking out "the next two fiscal years" and inserting in lieu thereof "the next three fiscal years".

(2) Section 780(c)(1)(E) of such Act is amended (A) by strking out "1971" and inserting in lieu thereof "1972", and (B) by striking out "1972" and inserting in lieu thereof "1973".

STUDENT LOAN PROGRAM UNDER TITLE VIII OF THE PUBLIC HEALTH SERVICE ACT

SEC. 3. (a) Section 824 of the Public Health Service Act (42 U.S.C. 297c) is amended (1) by striking out "for the fiscal year ending June 30, 1971" and inserting in lieu thereof "each for the fiscal year ending June 30, 1971, and the next fiscal year", (2) by striking out "1972" and inserting in lieu thereof "1973", and (3) by striking out "July 1, 1971" and inserting in lieu thereof "July 1, 1972".

(b) Section 826 of such Act (42 U.S.C. 297e) is amended by striking out "1974" each place it occurs and inserting in lieu thereof "1975".

(c) The first sentence of section 827(a)(1) of such Act (42 U.S.C. 297f) is amended by striking out "next three fiscal years" and inserting in lieu thereof "next four fiscal years".

SCHOLARSHIP PROGRAM UNDER TITLE VIII OF THE PUBLIC HEALTH SERVICE ACT

SEC. 4. (a) Section 860(b) of the Public Health Service Act is amended (1) by striking out "the next fiscal year" and inserting in lieu thereof "the next two fiscal years", (2) by striking out "1972" in the last sentence and inserting in lieu thereof "1973", and (3) by striking out "1971" in such sentence and inserting in lieu thereof "1972".

(b)(1) Section 860(c)(1)(A) of such Act is amended by striking out "the next fiscal year" and inserting in lieu thereof "the next two fiscal years".

(2) Section 860(c)(1)(B) of such Act is amended (A) by striking out "1971" and inserting in lieu thereof "1972", and (B) by striking out "1972" and inserting in lieu thereof "1973".

TRAINEESHIPS FOR ADVANCED TRAINING OF PROFESSIONAL NURSES

SEC. 5. Section 821(a) of the Public Health Service Act is amended by striking out "for the fiscal year ending June 30, 1971" and inserting in lieu thereof "each for the fiscal year ending June 30, 1971 and the next fiscal year".

By Mr. KENNEDY:

S. 1747. A bill to amend title VIII of the Public Health Service Act to extend, expand, and improve the various programs thereunder relating to nurse training, and for other purposes. Referred to the Committee on Labor and Public Welfare.

NURSE TRAINING AMENDMENTS OF 1971

Mr. KENNEDY. Mr. President, I send to the desk for appropriate reference the Nurse Training Amendments of 1971.

The bill I am introducing contains major provisions to encourage the recruitment and training of nurses, including grants for construction of facilities, loan guarantees and interest subsidy payments for construction, special project grants, a 3-year $1 billion program of capitation grants, financial distress grants, traineeships for advanced training of professional nurses, student loans and scholarships, and a special provision to support needy nursing students.

Of all the various aspects of the health crisis now facing the Nation, there is perhaps none that is more serious than the crisis in health manpower. We know that we have a profound shortage of doctors, dentists, nurses, and other health professionals. We also know that, if we are ever to bring good health care to the American people, we must eliminate this shortage and end the serious maldistribution of health personnel that now exists in many parts of the country.

In recent weeks, I have already introduced legislation—S. 934—to extend and amend the Health Professions Education Assistance Act, the basic Federal health manpower program. Hearings began this morning on this legislation and other proposals before our Senate Health Subcommittee, and I am hopeful that we can expedite these measures to the Senate floor in the very near future.

In addition to the HPEA legislation, however, another area of extremely vital concern is the recruitment and training of nurses. The nurse training provisions of the Public Health Service Act contain some of the most important health manpower provisions in Federal legislation. They represent one of our most valuable bulwarks in meeting the health manpower crisis, and they deserve special emphasis by Congress in the current debate on the extension of the Federal health manpower legislation.

The existing shortage of nurses is acute. We need 150,000 more nurses than we have today, and the gap will grow even wider in the coming years unless we act now to meet the mushrooming demand. In fact, it is estimated that if we go on as we are now, blindly ignoring the problem, the shortage of nurses will exceed 200,000 by 1980. We simply cannot afford to neglect this crucial aspect of the health manpower problem.

Already, significant legislation has been introduced in the Senate to deal with the issue. Senator WILLIAMS, whose longstanding dedication and commitment to every aspect of health manpower is well known, has introduced the Nurse Manpower Training Act of 1971, with the strong support of the American Nurses Association and other professional groups.

Similarly, Senator JAVITS has recently introduced the Nursing Education Act of 1971, which continues his own deep commitment to alleviating the crisis in nurse manpower.

The goal of both of these bills, and the bill I am introducing today, is to insure that America gives the highest priority to the development of nursing personnel as a key element in our overall strategy to end the health crisis. Our Health Subcommittee intends to expedite these measures concurrently with the extension of the Health Professions Education Assistance Act, and I am hopeful that major nurse manpower and training legislation will clear Congress promptly.

Mr. President, I ask unanimous consent that the bill may be printed in the RECORD at this point.

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

S. 1747

A bill to amend title VIII of the Public Health Service Act to extend, expand, and improve the various programs thereunder relating to nurse training, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Nurse Training Amendments of 1971".

TITLE I—AMENDMENTS TO TITLE VIII OF THE PUBLIC HEALTH SERVICE ACT

GRANTS FOR CONSTRUCTION OF SCHOOLS OF NURSING

SEC. 101. (a) The heading to part A of title VIII of the Public Health Service Act is amended to read as follows:

"PART A—GRANTS, LOANS, AND INTEREST SUBSIDY PAYMENTS FOR SCHOOLS OF NURSING

"Subpart I—Construction Grants to Schools of Nursing"

(b) Section 801 (a) of such Act is amended (A) by striking out "and" after "1970", and (B) by inserting immediately before the period at the end thereof the following: ", $40,000,000 for the fiscal year ending June 30, 1972, $45,000,000 for the fiscal year end-

ing June 30, 1973, and $50,000,000 for the fiscal year ending June 30, 1974".

(c)(1) Section 802(a) of such Act is amended—

(A) by striking out "Surgeon General" and inserting in lieu thereof "Secretary"; and

(B) by striking out "1970" and inserting in lieu thereof "1973".

(2) Subsections (b) and (c) of section 802 of such Act are each amended by striking out "Surgeon General" wherever it appears therein and inserting in lieu thereof "Secretary".

(3) Section 802 of such Act is further amended by striking out "this part" wherever it appears therein and inserting in lieu thereof "this subpart".

(d) Subsection (a) of section 803 of such Act is amended by striking out "66⅔ per centum" wherever it appears therein and inserting in lieu thereof "75 per centum".

(e) Sections 803 and 804 of such Act are each amended—

(1) by striking out "this part" wherever it appears therein and inserting in lieu thereof "this subpart"; and

(2) by striking out "Surgeon General" wherever it appears therein and inserting in lieu thereof "Secretary".

CONSTRUCTION LOAN GUARANTEES AND INTEREST SUBSIDY PAYMENTS

SEC. 102. Part A of title VIII of such Act is further amended by inserting immediately after section 804 the following:

"Subpart II—Construction Loan Guarantees and Interest Subsidy Payments

"SEC. 805. (a)(1) In order to assist public and nonprofit private schools of nursing to carry out needed projects for the modernization or construction of facilities for such schools, the Secretary, during the period commencing July 1, 1971, and ending June 30, 1974, may, in accordance with the provisions of this subpart, guarantee to non-Federal lenders making loans to such schools for such projects, payment of principal of and interest on loans, made by such lenders, which are approved under this subpart.

"(b) No loan guarantee under this subpart, with respect to any modernization or construction project may apply to so much of the principal amount thereof as, when added to the amount of any grant under subpart I with respect to such project, exceeds 90 per centum of the cost of such project.

"(c) The Secretary, with the consent of the Secretary of Housing and Urban Development, shall obtain from the Department of Housing and Urban Development such assistance with respect to the administration of this subpart as will promote efficiency and economy thereof.

"SEC. 806. (a) For each project for which a guarantee of a loan to a public or nonprofit private school of nursing is sought under this subpart, there shall be submitted to the Secretary an application by such school. Such application shall (1) set forth all of the data and information and contain or be supported by all the assurances required under section 802 with respect to applications for grants under subpart I of this part, and (2) contain such other information as the Secretary may require to carry out the purposes of this subpart.

"(b) The Secretary may approve such application only if—

"(1) he makes the findings which are required by clauses (1) through (5) of section 802(b) for the approval of projects under subpart I of this part;

"(2) he obtains assurances that the applicant will keep such records, and afford such access thereto, and make such reports, in such form and containing such information, as the Secretary may reasonably require; and

"(3) he also determines that the terms, conditions, maturity, security (if any), and schedule and amounts of repayments with respect to the loan for which a guarantee is sought are sufficient to protect the financial interests of the United States and are otherwise reasonable and in accord with regulations, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States.

"(c) Amendment of an approved application shall be subject to approval in the same manner as an original application.

"(d) (1) In the case of any loan to a school of nursing under this subpart, the United States shall be entitled to recover from the applicant the amount of any payments made pursuant to any guarantee of such loan under this subpart, unless the Secretary for good cause waives its right of recovery, and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

"(2) Guarantees of loans to schools of nursing under this subpart shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this subpart will be achieved, and, to the extent permitted by subsection (e), any of such terms and conditions may be modified by the Secretary to the extent determined by him to be necessary or proper for the protection of the financial interests of the United States.

"(e) Any guarantee of a loan to a school of nursing made by the Secretary pursuant to this subpart shall be incontestable in the hands of the applicant on whose behalf such guarantee is made, and as to any person who makes or contracts to make a loan to such applicant in reliance thereon, except for fraud or misrepresentation on the part of such applicant or such other person.

"PAYMENT OF INTEREST ON GUARANTEED LOANS

"SEC. 807. (a) Subject to the provisions of subsection (b), in the case of a guarantee of any loan to a school of nursing under this subpart with respect to any project, the Secretary shall pay, to the holder of such loan and for and on behalf of such school, amounts sufficient to reduce by 3 per centum per annum the net effective interest rate otherwise payable on such loan. Each holder of a loan, to a school of nursing, which is guaranteed under this subpart, shall have a contractual right to receive from the United States interest payments required by the preceding sentence.

"(b) Contracts to make the payments provided for in this section shall not carry an aggregate amount greater than such amount as may be provided in appropriation Acts.

"LIMITATION ON AMOUNT OF LOANS GUARANTEED

"SEC. 808. The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued under this part may not exceed such limitations as may be specified in appropriation Acts.

"LOAN GUARANTEE FUND

"SEC. 809. (a) There is hereby established in the Treasury a loan guarantee fund (hereinafter in this section referred to as the 'fund') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, (i) to enable him to discharge his responsibilities under guarantees issued by him under this subpart, and (ii) for payment of interest on loans which are guaranteed under this subpart. There are authorized to be appropriated to the fund from time to time such amounts as may be necessary to provide capital required for the fund. To the extent authorized from time to time in appropriation Acts, there shall be deposited in the fund amounts received by the Secretary any moneys, property, or assets derived by him from his operations under this subpart, including any moneys derived from the sale of assets.

"(b) If at any time the moneys in the fund are insufficient to enable the Secretary to discharge his responsibilities under this subpart—

"(i) to make payments of interest on loans to schools of nursing which he has guaranteed under this subpart; and

"(ii) otherwise to comply with guarantees issued by him under this subpart;

he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, but only in such amounts as may be specified from time to time in Appropriation Acts. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable marketable securities during the month preceding the month of the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this subsection shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from such fund".

SPECIAL PROJECT GRANTS

SEC. 103. (a) Part A of title VIII of the Public Health Service Act is further amended—

(1) by striking out section 805 of such Act;

(2) by adding after section 809 of such Act (as added by section 102 of this Act) the following:

"Subpart III—Special Project Grants; Institutional Grants; and Financial Distress Grants

"SPECIAL PROJECT GRANTS

"SEC. 810. Grants may be made from sums available therefor from appropriations under subsection (e), to assist schools of nursing or other nonprofit agencies, organizations, and institutions in meeting the cost of special projects to plan, develop, or establish new programs or modifications of existing programs of nursing education or to effect significant improvements in curriculums of any such schools or for research in the various fields related to nursing education, or to develop training for new levels or types of nursing personnel, or to assist such schools of nursing which have special need for financial assistance to meet accreditation requirements, or to assist any such schools to meet the costs of planning experimental teaching facilities or experimental design thereof, or to increase educational opportunities for disadvantaged students, or to provide continuing education for nurses, or to provide appropriate retraining opportunities

for nurses who (after periods of professional inactivity) desire again actively to engage in the nursing profession, or which will otherwise strengthen, improve or expand programs to train nursing personnel or help to increase the supply or improve the distribution by geographic area or by specialty group of adequately trained nursing personnel needed to meet the health needs of the Nation, including the need to increase the availability of personal health services and the need to promote preventive health care. In determining eligibility of any such school to receive a grant under this section and the amount of such grant, the Secretary shall consider the individual needs of such school, the nature and scope of the Nation's health manpower needs and the relative capability of alternative programs for helping to fill these needs.

"(b) The Secretary may from time to time set dates (not earlier than in the fiscal year preceding the year for which a grant is sought) by which applications for grants under this section for any fiscal year must be filed.

"(c) A grant under this section may be made only if the application therefor—

"(1) is from a public or nonprofit private school of nursing, or a public or nonprofit private agency, organization, or institution;

"(2) in the case such application is for a grant to a school of nursing, contains or is supported by assurances satisfactory to the Secretary that the applicant will expend in carrying out its functions as a school of nursing during the fiscal year for which such grant is sought, an amount of funds (other than funds for construction as determined by the Secretary) from non-Federal sources which are at least as great as the average amount of funds expended by such applicant for such purpose (excluding expenditures of a nonrecurring nature) in the three fiscal years immediately preceding the fiscal year for which such grant is sought;

"(3) contains such additional information as the Secretary may require to make the determination required of him under this section and such assurances as he may find necessary to carry out the purposes of this section; and

"(4) provides for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may reasonably require to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section.

"(d) There are authorized to be appropriated, for special project grants under this section, $20,000,000 for the fiscal year ending June 30, 1972, $25,000,000 for the fiscal year ending June 30, 1973, and $30,000,000 for the fiscal year ending June 30, 1974."

(b) The amendments made by subsection (a) of this section shall be effective with respect to grants from appropriations for fiscal years ending after June 30, 1971.

CAPITATION GRANTS

SEC. 104(a) Part A of title VIII of the Public Health Service Act is further amended—

(1) by striking out sections 806, 807, and 808;

(2) by adding after section 810 (as added by section 103 of this Act) the following:

"INSTITUTIONAL GRANTS

"SEC. 811. (a) The sums appropriated under subsection ( ) for any fiscal year shall be distributed to schools with approved applications as follows: Each school shall receive $20,000 plus $2,000 for each full-time student enrolled in such school in the school year beginning in such fiscal year.

"(b)(1) For the purposes of this section regulations of the Secretary shall include provisions relating to determination of the number of students enrolled in a school, or in a particular school year, or in a particular year-class in a school, or the number of graduates particular year-class in a school, or the number of graduates from a school, as the case may be, on the basis of estimates, or on the basis of the number of students who were enrolled in a school, or in a particular school year, or in a particular year-class in a school, or were graduates from a school in earlier years, as the case may be, or on such basis as he deems appropriate for making such determination, and shall include methods of making such determination when a school or a year-class was not in existence in an earlier year at a school.

"(2) For purposes of this section, and part D, the term 'full-time students' (whether such term is used by itself or in connection with a particular year-class) means students pursuing a full-time course of study in an accredited program in a school of nursing.

"(c)(1) The Secretary may from time to time set dates (not earlier than in the fiscal year preceding the year for which a grant is sought) by which applications under this section for any fiscal year must be filed.

"(2) The Secretary shall not approve or disapprove any application for a grant under this section except after consultation with the National Advisory Council on Nurse Training.

"(3) A grant under this section may be made only if the application therefor—

"(A) is from a public or nonprofit private school of nursing;

"(B) contains or is supported by assurances satisfactory to the Secretary that the applicant will expend in carrying out its functions as a school of nursing, during the fiscal year for which such grant is sought, an amount of funds (other than funds for construction as determined by the Secretary) from non-Federal sources which are at least as great as the average amount of funds expended by such applicant for such purpose (excluding expenditures of a nonrecurring nature) in the three fiscal years immediately preceding the fiscal year for which such grant is sought;

"(C) contains such additional information as the Secretary may require to make the determinations required of him under this section and such assurances as he may find necessary to carry out the purposes of this section; and

"(D) provides for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may reasonably require to assure the proper disbursement of and accounting for Federal funds paid to the applicant under this section.

"(e) There are authorized to be appropriated, for grants under this section, $300,000,000 for the fiscal year ending June 30, 1972, $365,000,000 for the fiscal year ending June 30, 1973, and $415,000,000 for the fiscal year ending June 30, 1974."

(b) The amendments made by subsection (a) of this section shall be effective with respect to grants from appropriations for fiscal years ending after June 30, 1971.

FINANCIAL DISTRESS GRANTS

SEC. 105. Part A of title VIII of the Public Health Service Act (as amended by the preceding sections of this Act) is further amended by adding after section 811 (as added by section 104 of this Act) the following new section:

"FINANCIAL DISTRESS GRANTS

"SEC. 812. (a) There are authorized to be appropriated such sums as may be necessary for grants under this section to assist any schools of nursing which are in serious financial straits to meet their costs of operation.

"(b) Any such grant may be made upon such terms and conditions as the Secretary determines to be reasonable and necessary, including requirements that the school agree (1) to disclose any financial information or data deemed by the Secretary to be necessary to determine the sources of causes of that school's financial distress and to conduct a comprehensive cost analysis study in cooperation with the Department of Health, Education, and Welfare, and (2) to implement such operational and financial reforms as are recommended by the Secretary on the basis of information obtained in the course of the comprehensive cost analysis study or other relevant information."

TRAINEESHIPS FOR ADVANCED TRAINING OF PROFESSIONAL NURSES

SEC. 106. (a) Section 821(a) of the Public Health Service Act is amended (1) by striking out "and" after "1970,", and (2) by inserting after "1971," the following: "$20,000,000 for the fiscal year ending June 30, 1972, $22,000,000 for the fiscal year ending June 30, 1973, and $24,000,000 for the fiscal year ending June 30, 1974".

(b) Subsections (b) and (c) or section 821 of the Public Health Service Act are amended by striking out the words "Surgeon General" wherever they appear and inserting in lieu thereof the word "Secretary".

NURSING STUDENT LOANS

SEC. 107. (a) (1) Effective with respect to academic years (or their equivalent as determined under regulations of the Secretary of Health, Education, and Welfare under section 823 of the Public Health Service Act) beginning after the date of enactment of this Act, subsection (a) of such section is amended by striking out "$1,500" and inserting in lieu thereof "$2,500".

(2) Section 823(a) of such Act is amended by striking out "$6,000" and inserting in lieu thereof "$10,000".

(b) Effective with respect to any year of service ending after the date of the enactment of this Act for which cancellation of all or part of a loan made under part B of title VIII of the Public Health Service Act is authorized under section 823(b)(3) of such Act, such section is amended to read as follows:

"(3) an amount up to 100 per centum of any such loan (plus interest thereon) shall be canceled for full-time employment as a professional nurse (including teaching in any of the fields or nurse training and service as an administrator, supervisor, or consultant in any of the fields of nursing) by any public or nonprofit private agency, institution, or organization, at the rate of 20 per centum of the amount of such loan (plus interest) unpaid on the first day of such service, for each complete year of such service, except that the rate shall be 33⅓ per centum for each complete year of service for any person who engages in the practice of nursing or any specialized aspect thereof in an area in a State determined, in accordance with regulations of the Secretary prescribing criteria for such determinations by such agency or organization as the Secretary may designate, to have a shortage of and need for the practice in which he engages and such designated agency or organization certifies in such manner and at such time or times as the Secretary may prescribe that such practice helps to meet the shortage of and need for such practice in the area where the practice occurs.

(c) Section 824 of such Act is amended (1) by striking out "and" immediately after "1970", (2) by striking out "and" immediately after "1971" and inserting in lieu thereof "$25,000,000 for the fiscal year ending June 30, 1972, $30,000,000 for the fiscal year ending June 30, 1973, and $35,000,000 for the fiscal year ending June 30, 1974, and such sums for the fiscal year ending June 30, 1975," and (3) by striking out "before July 1, 1971" and inserting in lieu thereof "before July 1, 1974".

(d) Section 826 of such Act is amended by striking out "1974" each place it occurs and inserting in lieu thereof "1977".

(e) The first sentence of section 827(a)(1) of such Act is amended by striking out "next

three fiscal years" and inserting in lieu thereof "next six fiscal years".

NURSING SCHOLARSHIP GRANTS

SEC. 108. (a) Effective with respect to scholarship grants made under subsection (a) of section 860 of the Public Health Service Act for fiscal years beginning after June 30, 1971, subsection (b) of such section is amended to read as follows:

"(b) The amount of the grant under subsection (a) for the fiscal year ending June 30, 1972, and for each of the next two fiscal years to each such school shall be equal to $3,000 multiplied by one-tenth of the number of full-time students of such school. For the fiscal year ending June 30, 1975, and for each of the two succeeding fisca. years, the grant under subsection (a) shall be such amount as may be necessary to enable such school to continue making payments under scholarship awards to students who initially received such awards out of grants made to the school for fiscal years ending before July 1, 1974."

(b) Effective with respect to scholarship grants made under subsection (a) of section 869 of the Public Health Service Act for fiscal years beginning after June 30, 1971, subsection (c)(1) of such section is amended (A) by striking out "1970, and the next fiscal year" in clause (A) and inserting in lieu thereof "1972 and the next two fiscal years", (B) by striking out "1971" in clause (B) and inserting in lieu thereof "1974", and (C) by striking out "1972; and each of the three" in such clause and inserting in lieu thereof "1975, and each of the two."

FEDERAL ASSUMPTION OF REPAYMENT OF OBLIGATIONS OF NURSING STUDENTS IN EXCEPTIONAL NEED WHO ARE UNABLE TO COMPLETE THEIR STUDIES

SEC. 109. Part B of title VIII of the Public Health Service Act is further amended by adding after section 829 thereof the following new section:

"REPAYMENT BY SECRETARY OF LOANS BY NURSING STUDENTS IN EXCEPTIONAL NEED WHO ARE UNABLE TO COMPLETE THEIR STUDIES

"SEC. 830. (a) Upon application by any person who received, and is under an obligation to repay, any loan made by a school of nursing from loan funds established pursuant to this part, the Secretary shall undertake to repay (without liability to the applicant) all or any part of such loan, and any interest or portion thereof outstanding thereon, upon his determination, pursuant to regulations prescribed by him establishing criteria therefor, that the applicant—

"(1) failed to complete the nursing studies with respect to which such loan was made;

"(2) is in exceptionally needy circumstances;

"(3) is from a low-income or disadvantaged family as those terms are defined by regulations of the Secretary; and

"(4) has not resumed, or cannot reasonably be expected to resume, such nursing studies within two years following the date upon which the applicant terminated the nursing studies with respect to which such loan was made.

"(b) There are hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1972, such funds as may be necessary to carry out the provisions of this section."

MISCELLANEOUS PROVISIONS

SEC. 110. Section 868 (a) of the Public Health Service Act is amended to read as follows:

"(a) To assist in achieving the purposes of this part the Secretary is authorized (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5)) to enter into contracts with State and local educational agencies and other public or nonprofit organizations and institutions for the purpose of—

"(1) identifying qualified youths (with emphasis given to identifying those youths of exceptional financial need) and encouraging them to complete secondary school and undertake post secondary educational training in the field of nursing, or

"(2) publicizing existing forms of financial aid for nursing students, including aid furnished under this section."

TITLE II—AMENDMENT TO THE HIGHER EDUCATION ACT OF 1965

LOANS TO NURSING STUDENTS

SEC. 201. Part B of title IV of the Higher Education Act of 1965 is amended by inserting at the end thereof the following new section:

"DIRECT LOANS TO CERTAIN STUDENTS IN NURSING SCHOOLS

"SEC. 438. The Commissioner may make a direct loan to any student in any public or other non-profit collegiate or associate degree school of nursing under this part if—

"(1) there is a fund established pursuant to an agreement under part B of title VIII of the Public Health Services Act in effect at such school, and

"(2) such student is eligible for but has been unable to obtain a loan from such fund.

"(b) Loans made under this section shall bear interest at the rate prescribed by the Secretary under section 427(a)(2)(D) for the area where the student resides, and shall be made on such other terms and conditions as the Commissioner shall prescribe, which shall conform as nearly as practicable to the terms and conditions of loans insured under this Act.

"(c) There is authorized to be appropriated for the fiscal year ending June 30, 1972, and for each of the next two fiscal years, such sums as may be necessary to carry out the provisions of this section.

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

S. 1749. A bill to amend section 7 of the Flood Control Act approved June 28, 1938 (52 Stat. 1215, 1225), as amended. Referred to the Committee on Public Works.

Mr. JACKSON. Mr. President, I introduce for appropriate reference, a bill to amend section 7 of the Flood Control Act of 1938 (52 Stat. 1215, 1225), as amended. The purpose of this bill is to increase authority for the expenditure of emergency flood control funds by the Secretary of Agriculture from $300,000 to $3,500,000 each fiscal year. These funds would be available for emergency measures whenever a fire, flood, or other natural disaster has created a sudden impairment of a watershed whether on private or public lands.

Mr. President, it is apparent that there is a great need for these additional funds, as was tragically demonstrated last year in California, Arizona, and in my own State of Washington.

In Washington, one of the most serious forest fire situations in years occurred from mid-July to early September 1970. Lightning started hundreds of fires which fed on extremely dry fuel, high temperatures, and strong winds. In all, at least 118,000 acres of watershed were seriously damaged. As a result, there existed an immediate flood threat to numerous individuals, communities, and property. The $300,000 available in fiscal year 1971 for such emergencies under the Flood Control Act was released, and work started, but due to the magnitude of the damage, these funds were soon exhausted. An additional $700,000 had to be provided by reprograming money appropriated for other purposes.

In California, fires later in the fall of 1970 swept through 591,000 acres, including 211,000 acres of national forest land. The Forest Service had to reprogram funds for work on Federal lands, and the Office of Emergency Planning provided $500,000 for reseeding on private lands. But these funds have been far from adequate.

The Forest Service estimated that $9,913,000 was needed in California for reseeding, channel clearing, debris removal, timber salvage and other work that must be carried out in the wake of the fires on both public and private lands.

In Arizona, several national forests were hit with a series of deluge-like rainstorms last year. On September 5, one location registered more than 7 inches of rain in 18 hours. Others reported storm intensities of 2 inches of rain in 15 minutes. The area was declared a disaster area under the Disaster Relief Act, but this excluded assistance for Federal lands. The Forest Service estimates that $525,000 is needed to complete debris removal, reopening of roads and trails, channel clearing, and other emergency projects. Only $400,000 could be made available for this work through reprograming of USDA funds.

Mr. President, we cannot afford to endanger the lives and property of our citizens by flooding and the loss of important natural resources by soil erosion. It is imperitive that sufficient funds be provided to counter the potentially ravaging aftereffects of fires, floods, and other natural elements or forces which badly deteriorate certain watersheds.

In the past we have dealt with forest fires rehabilitation and flood control measures on a piecemeal basis only. Two recent examples will serve to ilustrate my point. In 1969, approximately $4 million was provided through a supplemental appropriations act to finance needed emergency measures resulting from the 1969 California floods as well as other emergencies. Second, as a direct result of Hurricane Camile, Congress passed another supplemental appropriations of $3.7 million for emergency measures primarily in severely damaged areas of Virginia. These moneys were expended during fiscal year 1970.

What we have been doing is merely reacting to emergencies rather than providing sufficient funds through legislation to immediately rehabilitate areas when unforeseen disasters strike. In many instances the current procedure proves inadequate because certain disaster rehabilitation measures must be started immediately rather than wait for the passage of supplemental appropriations or irreparable damage could result. For example, if funds for grass seeding, stream channel clearing and stabilization, and other rehabilitation measures had not been provided for the fire-burned areas of my State before the fall rains began, flooding and severe soil erosion would have been imminent. I am pleased

that we received funding in time, but next time we may not be as fortunate unless sufficient funds are provided through legislation to meet these problems.

Mr. President, during the 91st Congress the Disaster Relief Acts of 1969—Public Law 91–79 and Public Law 91–606—became law. Both these laws contain provisions for grants and loans to any State to assist in the suppression of any fire on publicly or privately owned forest or grass lands which threatens such destruction as to constitute a major disaster. In many instances, however, the real disaster does not present itself until after the fire has been extinguished. Only where an area devastated by fire has been proclaimed a major disaster area would assistance be offered for reseeding, debris removal, and other flood control measures. As severe as the fires were in Washington State last year, the area was not deemed hurt enough to be classified as a major disaster area. In addition, the Disaster Relief Act is intended to provide relief for State and private lands only. The federally owned lands and property require equal protection.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD at this point.

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

S. 1749

A bill to amend section 7 of the Flood Control Act approved June 28, 1938 (52 Stat. 1215, 1225), as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved June 28, 1938 (52 Stat. 1215, 1225), as amended by section 216 of the Act of May 17, 1950 (64 Stat. 163, 184), is further amended by deleting *"Provided,* That not to exceed $300,000" and inserting in lieu thereof the following: *"Provided,* That not to exceed $3,500,000".

By Mr. PACKWOOD:

S. 1750. A bill to authorize abortions in the United States. Referred to the Committee on Labor and Public Welfare; and

S. 1751. A bill to authorize abortions in the District of Columbia. Referred to the Committee on the District of Columbia.

Mr. PACKWOOD. Mr. President, I rise today to introduce two bills designed to take government out of the business of enforcing compulsory pregnancy. The National Abortion Act would permit women nationwide to control their own fertility, by early termination of pregnancy if necessary, and the District of Columbia Abortion Act would do the same here in the District of Columbia. May I take a few minutes to explain why I believe Congress should deal with this controversial subject and why I think such legislation is both necessary and timely.

Certainly abortion is a controversial issue—and has been so for thousands of years. Through the centuries, the debate has been almost exclusively conducted by men. Claire Booth Luce, reviewing two recent books on abortion, points out that—

> Like so many of the books which learned men have written about "women's problems," this is really a book about the problem men are having with other men who refuse to see the "women's problem" as they do. The problem of the seven authors reviewed here is how to convince other moralists, lawyers and "separated brethren" that they should unite to prevent women (who else?) from getting abortions—legal or illegal.

The debate on abortion has also been centered almost entirely on theological discussions of when individual life—or personhood—begins. Churches and theologians have disagreed; most have changed their positions at some time; perhaps they will again. The question becomes even more complex as science moves into new areas of genetic engineering and cell reproduction. There seems no likelihood that moral aspects of the abortion question can ever be settled so as to be accorded unreserved acceptance by all.

Meanwhile, as the debate rages on, often obstruse, frequently shrill, the reality of what is happening in the world is almost lost sight of. Real women suffering. Real women are caught in tragic dilemmas—and the state has usually been in the position of trying to compel them to bear unwanted children.

The reality is that abortion takes place on a massive scale almost everywhere. It is estimated that some 30 to 35 million abortions take place each year around the world, millions of them in countries where the practice is absolutely forbidden. In the United States, estimates of induced abortions range from 200,000 to over 1 million a year. Mrs. Luce in the review cited above says that 500,000 to 600,000 may be a reasonable figure. But even if the low estimate were correct, it is sadly clear that the problem is enormous.

In the first 8 months of the repeal of the strict law against abortion in New York State, some 98,000 legal abortions were performed in New York City, a fact which horrified those opposed. But we must recognize that the law did not create a demand for abortion. The Reverend Howard Moody, one of the founders of the Clergy Consultation Service on Abortion, which counseled women with unwanted pregnancies, says that, at the time the new law went into effect, that organization alone was getting 100 calls a day asking for help. So the desire for abortion exists, regardless of what the law says. The question is not whether, but how society should best deal with it.

There are those who think we should step aside and hope the courts will decide the matter for us. On April 21, the Court issued a ruling on the District of Columbia's abortion statute, but the decision spoke only to the question of unconstitutional vagueness, and did not deal with the substantive issue involved, the right of a woman to control her own body and her own fertility, in accordance with her own ethical and religious convictions.

There are several cases coming before the Court which do deal with the substantive rights involved in abortion, but we cannot foresee whether the decisions rendered will be narrow or broad in scope, or in what direction they will move. It is an evasion of our responsibility as legislators to fail to act in the hope that someone else will.

I am submitting this national abortion law today because the present laws are such a hodgepodge that the current situation in this country is chaotic, inconsistent, discriminatory and full of injustice.

In a majority of States, abortion is permissible only when it is necessary to preserve the life of the mother, thus leaving doctors, hospitals or courts with the job of wrestling with just what that phrase means and when that condition prevails. At the opposite end of the spectrum are the laws of Alaska, Hawaii, Washington State, and New York which make the decision a matter between physician and patient. The other States have varying definitions of when abortion is permissible.

Furthermore, the situation is in a state of flux, with State legislatures moving in different directions—and strong countermovements underway to move them in the opposite direction. What is permissible this year may not be permissible next year; what is criminal today may be sanctioned tomorrow. How does this bring respect for law? What is a confused woman—or her husband—or her doctor to make of all of this?

What the present system means in practice is that a middle- or upper-class woman can usually get an abortion performed by a physician, no matter what the law says. She may have it in her own hospital with the procedure disguised under some other medical term or she can go to another State or another country where practice is more liberal. A national survey by Dr. Robert E. Hall* found that hospital abortions are performed four times as often in the private services as in the ward services.

Is a woman, deeply mired in poverty, frantic with concern over what another baby will mean in an already overburdened household, given no family planning assistance—is this woman less entitled to access to abortion than the equally frantic middle-aged woman of means who finds herself unexpectedly pregnant because of contraceptive failure at an age when she cannot think of coping with a baby?

A recent issue of a national news magazine carried a story about a new national computerized referral service, which will refer any woman applying for guidance to the nearest place she can go to have an abortion. With the confused legal situation, this is a logical development. But what of the woman who does not read national news magazines—and who would not have the money anyway to go where the service might refer her?

In States with supposedly liberalized laws, as well as in States with rigid ones, we require doctors' and hospitals' boards

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*Robert E. Hall, "Abortion in American Hospital," *American Journal of Public Health,* November 1967, in Callahan, p. 137.

to do a Solomon-like weighing of intangibles. Dr. Hall quoted earlier has written:

Abortion practices vary not only from hospital to hospital but also from service to service within the same hospital. They also vary widely from doctor to doctor on the same service of the same hospital. . . . The victim of all this confusion is, of course, the American female. Even if she has a legitimate reason for therapeutic abortion she must find Doctor X in hospital Y with policy Z in order to have it done.

One of the arguments used most often by those who oppose liberalizing their States abortion laws is the threat that such States will become "abortion mills." And of course as long as there is a wide variation in types of law, women will seek help in the more permissive States. Let me say again: The States with strict laws are not ending the practice of abortion; they are just forbidding legal abortions—at least for poor women. And they are forcing a few States to bear the responsibility of coping with the problem for all States. A national law would prevent this playing of one State against another.

In closing, may I list some of the benefits which I foresee from passage of these abortion bills.

First. It would clear the air by admitting that the practice of abortion exists and should be brought into the open where it can be dealt with according to safe medical procedures. Deaths and maiming from abortion could be virtually eliminated.

Second. It would command respect as an evenhanded law, enforceable, fair, nondiscriminatory, protecting and giving the same right to every woman, whatever her race or social class, wherever she may live. It would take the State out of the business of enforcing compulsory pregnancy on unwilling women.

Third. It would leave the moral, ethical, and religious issues to the individual conscience, guided by whatever counsellor is trusted, leaving the legislature to protect the civil rights of the individual. Churches and other organizations would be free to advocate their positions as fervently as they wish. While the numbers of abortions might rise with such a law, at least first, there is also the possibility that when women could seek assistance and counseling more openly, without fear, some abortions would be averted as other support and alternatives were offered. We might hope that the decision to deal with this problem on a national scale, thereby for the first time really revealing the scope of the problem would serve as a challenge to greater effort for those who say better social conditions are the solution to the problem of abortion.

Fourth. It would leave doctors free to practice medicine, and hospitals to furnish facilities for such medical practice without foisting on them the burden of trying to interpret the will of society and of making decisions the rest of us do not want to face up to.

Fifth. It would insure that virtually all abortions would be done at an early stage of pregnancy. One of the emotional issues raised whenever changing abortion laws is discussed, is the specter of viable fetuses being delivered and allowed to die. Because of the genuine concern of many, I have incorporated in this bill a very conservative time limit—20 weeks—within which an abortion would be allowed. This would make absolutely certain that there would be no abortion of a viable fetus.

In the past, one basic reason for late induced abortions has been the difficulty in obtaining an abortion. A woman may spend precious time seeking out psychiatrists as required by law, appearing before a hospital board, awaiting the decision of the board—and then perhaps bing rejected. More time then is consumed in seeking approval at another hospital or finding a more compassionate doctor or locating an out-of-State clinic.

A national policy assures each woman the right to make a decision together with her doctor, based on her own beliefs and her own circumstances. If the decision is affirmative, the abortion can be done very soon thereafter. The only indication for a late abortion then would be a condition which endangered the mother's life or health and which did not develop or was not recognized until after 20-week limit, and that would be a decision made on strictly medical grounds.

Daniel Callahan, former editor of Common Weal and a Catholic generally opposed to abortion on moral grounds, made an exhaustive study of the subject last year and published the results in his book, "Abortion: Law Choice and Morality." He concluded that, in our pluralistic society, a permissive abortion law is the best solution to a problem that has no perfect answer.

He says:

I do not believe that any solution to the legal problem but that of abortion on request is either possible or desirable in our society. It is not possible because thousands of women believe they have a right to abortion, and they are supported by important professional, legal and medical groups. Restrictive laws cannot and will not be enforced. Many will believe themselves gravely injured by such laws—and in terms of their moral convictions they will be. Moderate laws offer few if any advantages over restrictive laws; they simply do not work, offering neither any greater expansion of individual choice nor any more just a resolution of conflicts. (The Ecumenist, May–June 1970.)

When there is a perfect contraceptive; when there is universal availability of counseling, sex education programs and family planning services; when there is no more poverty or crime; when there are no more diseases or drugs to deform the growing embryo—when that day comes, there may indeed be an end to abortion. The end will not come because of strict laws against it, nor by threatening nor damning suffering women. For this imperfect world in which we must live and make decisions, I submit these National and District of Columbia Abortion Acts, which I firmly believe will save lives and families, and strengthen society and its precious fabric of law.

I ask unanimous consent to have the bills printed at this point in the RECORD, along with a partial listing of religious, medical, and other organizations which have endorsed by resolution the concept of legalized abortion. I also ask unanimous consent to have printed in the RECORD three very thoughtful articles on abortion, one by former Supreme Court Justice Tom Clark, another by Rabbi Israel R. Margolies, and a third by former Boston College of Law Dean, and now Congressman ROBERT F. DRINAN.

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

S. 1750

A bill to authorize abortions in the United States

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 "National Abortion Act".

SEC. 2. As used in this Act, the term—

(1) "physician" means any person licensed under the laws of any State to practice medicine, or any person who practices medicine in the employment of the Government of the United States or of any State; and

(2) "State" means any of the several States of the United States, the District of Columbia, any area within any of the several States over which the United States has exclusive or concurrent jurisdiction, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SEC. 3. (a) Subject to the provisions of subsection (b), any physician is authorized to perform, by such means as he deems appropriate, an abortion on any female person who requests that action. No abortion shall be performed by any physician on any female person under the authority of this Act unless performed within the first one hundred and forty days of such person's pregnancy, except in any case where, in the judgement of the physician performing such abortion, a failure to perform such abortion is likely to endanger the life or health of such female person.

(b) A physician other than a physician who practices medicine in the employment of the Government of the United States or any State, is authorized to perform an abortion in accordance with this Act only in a State in which he is licensed under the laws thereof to practice medicine.

SEC. 4. The laws of any State or political subdivision thereof inconsistent with any provision of this Act are, to the extent of that inconsistency, hereby superseded.

S. 1751

A bill to authorize abortions in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any physician is authorized to perform, in the District of Columbia, by such means as he deems appropriate, an abortion on any female person who requests that action. No abortion shall be performed by any physician on any female person under the authority of this Act unless performed within the first one hundred and forty days of such person's pregnancy, except in any case where, in the judgment of the physician performing such abortion, a failure to perform such abortion is likely to endanger the life or health of such female person.

SEC. 2. As used in this Act, the term "physician" means any person licensed under the laws of the District of Columbia to practice medicine, or a person who practices medicine in the employment of the Government of the United States or of the District of Columbia.

RELIGION, MORTALITY, AND ABORTION: A CONSTITUTIONAL APPRAISAL

(By Mr. Justice Tom C. Clark)

Thought without action is an abortion; action without thought is folly.[1]

Our society is currently in the midst of a

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sexual revolution which has cast the problem of abortion into the forefront of religious, medical, and legal thought. In my day at the bar all discussion of abortion was taboo. For more than sixty years the American Medical Association had a negative policy respecting abortion. The A.M.A. often sought the prosecution of any doctor who engaged in the practice of abortion, regardless of the merits of the individual situation. Society's general attitude toward abortion was such that the patient was ostracised and the doctor was disgraced. As in so many other facets of its moral code, however, society was hypocritical in its behavior. Despite the public pronouncements against its practice, abortions increased, especially among married women, and judicial action against the participants decreased in proportion.[2]

Some social commentators argue that Freud prepared the way for the Kinsey Report, which in turn set the stage for the sexual permissiveness that Reinhold Niebuhr called "moral anarchism." [3] This permeating permissiveness engendered a need for more efficient birth control methods, such as "the pill," and precipitated the doom of the old hypocrisy.

The law, lagging behind as usual, began to emerge from its quagmire and rid itself of the archaic restraints on abortion. In 1962 the American Law Institute proposed an affirmative policy declaring that the termination of pregnancy is justified whenever (1) its continuance would gravely impair the physical or mental health of the mother, (2) the child would be born with grave physical or mental defects, or (3) the pregnancy was the result of rape, incest, or other felonious intercourse.[4]

Within five years of this proposal, the A.M.A. reversed its negative policy and adopted the A.L.I. proposal with only a few nuances.[5] During the next two years, five states liberalized their abortion laws and adopted the A.L.I. proposal.[6]

A further liberalization occurred in Great Britain with the adoption of the 1967 Abortion Act, which permits doctors to consider the mother's "actual or foreseeable environment" in deciding whether an abortion is necessary.[7] The American College of Obstetricians and Gynecologists (A.C.O.G.) recently advocated enactment of similar legislation in this country.[8] While the permissiveness of the legislation would contradict existing laws in all states, the A.C.O.G. made it clear that it does not counsel disobedience to the law. It merely recommended liberalization and repeal of inconsistent laws. It did not, however, advocate the legalization of abortion for any unwanted pregnancy or as a population control device.

Various religious, medical, psychological, and legal organizations have been striving to reach some level of accord on the issues involved in promulgating a realistic and acceptable policy toward abortion. Emphasis on this topic is the result of many factors, including the chaotic state of thinking that prevails among the professions and the public, and the medical, emotional, and legal consequences which aborticide has on today's society.

The Christian Medical Society's symposium on controlling human reproduction provides a recent illustration of the disagreement that exists among professionals concerning abortion. Distinguished clerics, psychologists, doctors, and lawyers sought to determine what course of action should be followed. They were unable to answer many important questions, such as: Is the control of human reproduction against the will and spirit of God? At what stage of the gestation period does the fetus acquire human status? What are the constitutional limitations upon the State in prohibiting or limiting the control of reproduction? I ask myself, "Heaven knows; who can tell? Who shall decide when experts disagree?" These and many other questions must be answered if we are to attain our goal of an aborticide policy that is responsive to modern society's needs and desires.[9]

In a recent conference the Association for the Study of Abortion experienced far greater success in agreeing on an aborticide policy. Dr. Robert Hall, president of the Association, said that the conference was designed to "relate what we know about abortion, and to determine what, if any, extent our attitude toward abortion should change with changing times. . . ." [10] The Conference reviewed numerous reports dealing with present abortion laws. One of these reports concerned the effect of California's recently liberalized abortion law. It was noted that while the number of therapeutic abortions performed in California hospitals this year will rise from six hundred to about four thousand, there will continue to be some one hundred thousand illegal abortions performed in that state, because doctors are concerned about risking a prison sentence for an incorrect interpretation of ambiguous provisions of the liberalized law.[11] The conference was also informed that psychiatrists and physicians in various states were referring patients to doctors in states which have more liberal abortion laws. This practice renders the availability of legal abortion dependent upon the woman's ability to reach such states.[12] Many doctors admitted privately that they and most of their non-Catholic colleagues perform several illegal abortions each month. Kenneth R. Whittemere reported that his recent interviews revealed that in one small Southern city, women had a choice between "a chiropractor, an antique dealer, a midwife, a mechanic and a doctor dissatisfied with his profession to perform the operation." [13]

The Association reached an almost unanimous conclusion that all abortion laws should be abolished and that the right of childbirth should be left to each woman acting on the advice of her doctor. This would have the effect of removing the issue from the hands of the legislatures and the courts, which are virtually helpless to decide an ethical question as controversial and far-reaching as abortion.[14] Whether or not we agree with the Association's recommendations, it is readily apparent at this point that a uniform scheme concerning abortion is highly desirous.

Throughout history religious belief has wielded a vital influence on society's attitude regarding abortion. The religious issues involved are perhaps the most frequently debated aspects of abortion. At the center of the ecclesiastical debate is the concept of "ensoulment" or "personhood," *i.e.*, the time at which the fetus becomes a human organism. The Reverend Joseph F. Donseel of Fordham University admitted that no one can determine with certainty the exact moment at which "ensoulment" occurs, but we must deal with the moral problems of aborting a fetus even if it has not taken place.[15] Many Roman Catholics believe that the soul is a gift of God given at conception. This leads to the conclusion that aborting a pregnancy at any time amounts to the taking of a human life and is therefore against the will of God. Others, including some Catholics, believe that abortion should be legal until the baby is viable, *i.e.*, able to support itself outside the womb. In balancing the evils, the latter conclude that the evil of destroying the fetus is outweighed by the social evils accompanying forced pregnancy and childbirth.[16]

Many civilizations of antiquity prohibited the practice of abortion. Ancient Judaism prohibited birth control except in times of famine.[17] Assyrian law imposed the death penalty upon any person participating in an abortion, including the procurer.[18] Even pagan writers described abortion as an evil act prohibited by law.[19]

The New Testament is devoid of pronouncements bearing directly on the issue of birth control or abortion. The Old Testament, however, does not condemn abortion as a capital offense since the fetus was not regarded as possessing a soul within the Sixth Commandment proscription.[20] It does declare, however, that conception is a gift of God which can be withdrawn at His will.[21] Many theologians today argue that man must not destroy what God has created and that aborting a pregnancy destroys the gift of human life.[22]

The medical profession is far from agreeing on the time at which the fetus becomes a human life. Some physicians argue that abortion should be permitted with impunity at any time up to the sixth months of pregnancy since prior to that time the fetus is no more than a growing plant.[23] On the other hand, many eminent physicians believe that the fertilized ovum has human life from the time of conception.[24] In support of this argument they refer to the International Code of Medical Ethics, which states that a physician will maintain the utmost respect for human life, from the time of its conception. A third view is that the decision to terminate a pregnancy must be made according to the circumstances of the particular case. Among the factors to be considered are the duration of the pregnancy, the physical and mental health of the mother, and the risk of serious fetal abnormality. This places the burden of decision upon the doctor and renders the selection of the physician a governing factor in securing permission to perform a therapeutic abortion.[25]

Sociologists have found themselves in a similar quandry over the issue. Some of these social philosophers argue that man is not merely a chemical machine and that he possesses a soul from the earliest stages of fetal development. Therefore the fetus cannot be destroyed with impunity. The control of human reproduction, according to this view, should concentrate on the prevention of conception rather than on abortion.[26] Other sociologists believe that there is no conclusive evidence or persuasive argument that the fetus is human.[27] Indeed, it cannot interact with other human beings. Therefore, there is no proof of life in the sense that the law contemplates proof of fact.

The moving spirit of the times also raises moral issues that divide the desciplines within themselves. A group of one hundred psychiatrists were questioned on the morality of abortion.[28] Twenty-four agreed that abortion should be available upon demand at an appropriate stage of pregnancy. Fifty-six, however, would require consideration of all of the medical and social factors involved in each case before deciding whether to terminate the pregnancy. Sixteen of those questioned would abort only when actual or threatened maternal disaster was present. Only four expresed other views. While this indicates a vast departure from the Christian concept, it does reveal residuals of morality affecting the opinions of over two-thirds of the group. In other words, over two-thirds of the group would not abort a pregnancy solely on demand.

Despite the fact that religious belief continues to permeate our attitude toward abortion, most people today agree with Justice Holmes that "moral predilections must not be allowed to influence our minds in setting legal distinctions." [29] This is illustrated by the fact that the present change in attitude toward abortion has developed while the need for abortion has diminished as a technique to save the life or health of the mother or to prevent fetal deformities. Despite the medical developments, the demand for abortions has increased astronomically.[30] This indicates a definite change in social mores, which is undoubtedly the result of increased knowl-

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edge and use of abortion. This attitude of permissiveness is replacing the hypocrisy that prevailed in the last generation.

A major contributing factor to this change in attitude has been the growing antagonism toward the double standard which permits those with social status and financial ability to obtain abortions, while those in the lower social and economic classes are denied this opportunity. We are in the midst of a worldwide movement to make "the pill" and abortion available in the slums as well as on Fifth Avenue. The statistics illustrate the disparity between the affluent and the nonaffluent. Three counties surrounding San Francisco are relatively affluent. These counties account for sixteen per cent of the live births and fifty per cent of the abortions in California. The less affluent Los Angeles County with its widespread slum areas accounts for sixty per cent of the live births and twenty-three per cent of the abortions in California.[31] These facts demonstrate quite clearly that the affluent areas account for a number of abortions disproportionate to their population density.

The increasing number of abortions subjects physicians to increased dangers of liability for incorrectly interpreting a statute. It appears that doctors face an uncertain fate when performing an abortion. This uncertainty will continue unless the legislatures or courts provide relief from liability. Very few states, if any, will repeal all abortion laws as the Association for the Study of Abortion has recommended. Some states, however, may liberalize their laws in accordance with the A.L.I. suggestion, but we have already seen that in states such as California this is an inadequate remedy in many respects. If the medical profession is to be accorded complete protection, it will have to come through the judicial system.

The Supreme Court of the United States has gone far—some critics contend too far—in permitting individual action in the areas of the Bill of Rights. It has not, however, dealt directly with the problem under discussion, nor do the decided cases cast much light on its solution. The best that we can do is examine related areas and draw some analogies.

In 1922 the Court held that the right "to marry, establish a home and bring up children" was an essential liberty within the guarantees of the Fourteenth Amendment.[32] In 1925 a public school statute requiring attendance exclusively at state schools was declared unconstitutional on the ground that it unreasonably interfered "with the liberty of parents and guardians to direct the upbringing and education of children under their control."[33] This concept was later extended to include "the private realm of family life which the state cannot enter."[34] And in 1960 the Court declared, in very broad language, that where State action significantly encroached upon personal liberty, its action would be invalid unless the State had a compelling subordinating interest in the particular activity.[35] Finally, in *Griswold v. Connecticut*[36] the Court struck down the state's statute prohibiting the use of contraceptives. The statute was found to operate upon "an intimate relation of husband and wife" which came within the zone of privacy created by several fundamental constitutional guarantees, the penumbras of which gave protection to the sanctity of a man's home and the privacies of his life. The Court determined that the statute was aimed at use rather than regulation and therefore violated the principle that legislation must not be unnecessarily broad. This does not mean that judges are given a free rein to strike down state regulatory statutes. They must look to the collective conscience of our society in determining which rights are fundamental and therefore protected by the Constitution.

The result of these decisions is the evolution of the concept that there is a certain zone of individual privacy which is protected by the Constitution. Unless the State has a compelling subordinating interest that outweighs the individual rights of human beings, it may not interfere with a person's marriage, home, children, and day-to-day living habits. This is one of the most fundamental concepts that the Founding Fathers had in mind when they drafted the Constitution. No one will deny that a State has a valid interest in regulating the well-being of its inhabitants, especially when it is dealing with children, who are more susceptible to undesirable influences. We have also seen that a State may not unreasonably interfere with the intimate relations of its inhabitants. When deciding on the constitutional restraints imposed on a State's interference with individual rights, the vital question becomes one of balancing. It must be determined at what point the State is interfering with individuals and at what point it is exercising valid authority by regulating the well-being of children.

In his concurrence in *Griswold*, my brother Goldberg asked whether a decree requiring all husbands and wives to be sterilized after the birth of ten children would be valid. He answered the question in the negative.[37] But suppose that the husband and wife voluntarily submitted to sterilization. Would it then violate the Constitution? I think no. Does it therefore know that voluntary destruction of the fetus is also protected from interference by the State? Perhaps—unless life is present so that the State's compelling subordinating interest in the life of one of its people predominates. However, I submit that until the time that life is present, the State could not interfere with the interruption of pregnancy through abortion performed in a hospital or under appropriate clinical conditions. I say this because State interference is permissible only if reasonably necessary to the effectuation of a legitimate and compelling State interest.[38] Prior to the time that life is present in the fetus, what interest does the State have? Procreation is certainly no longer a legitimate or compelling State interest in these days of burgeoning populations. Moreover, abortion falls within that sensitive area of privacy—the marital relation. One of the basic values of this privacy is birth control, as evidenced by the *Griswold* decision. Griswold's act was to prevent formation of the fetus. This, the Court found, was constitutionally protected. If an individual may prevent conception, why can he not nullify that conception when prevention has failed?

The common law courts uniformly held that an infant could not be the subject of a homicide until its complete expulsion from the body of the mother and the establishment of an independent existence.[39] The distinction between fetal life and independent life is that the latter has an independent circulatory system.[40] Hence, where the evidence showed that an infant was killed before its birth was complete or was killed by means used to assist in its delivery, it was not deemed a homicide.[41] Therefore, under the common law, abortion could not be murder. These concepts and distinctions have been somewhat eroded in recent years. At present the courts do not agree on the time when life begins. The courts, however, have held an *accoucheur* responsible for prenatal damage to an infant in a viable state.[42] In this line of cases, the courts have found that the unborn infant was a separate biological entity and hence a legal one in contemplation of law, indicating a departure from the requirement of an independent existence. From this reasoning the courts may well take the unborn child into their protective custody. Indications of such a trend are illustrated by the abolition of the viability rule in some jurisdictions[43] and the repudiation of the "live birth" doctrine by fourteen states.[44]

To say that life is present at conception is to give recognition to the potential, rather than the actual. The unfertilized egg has life, and if fertilized, it takes on human proportions. But the law deals in reality, not obscurity—the known rather than the unknown. When sperm meets egg life may eventually form, but quite often it does not. The law does not deal in speculation. The phenomenon of life takes time to develop, and until it is actually present, it cannot be destroyed. Its interruption prior to formation would hardly be homicide, and as we have seen, society does not regard it as such. The rites of Baptism are not performed and death certificates are not required when a miscarriage occurs.[45] No prosecutor has ever returned a murder indictment charging the taking of the life of a fetus. This would not be the case if the fetus constituted human life.

It has been urged that the courts are the proper forum to determine when life begins. I submit, however, that the professionals are better able to determine when life begins than are the courts. Tort cases might cast some light on the issue,[46] but I would prefer that the courts yield to the expert testimony of doctors. This testimony would vary greatly, but that is nothing new to our judicial system.

This is not a question that will be easily resolved. Few questions that reach the Supreme Court are. As was stated at the Christian Medical Society's Symposium, "professionals . . . do not wish to play God with human lives, whether in being or inchoate with life. But we can inform our judgment . . . by a widest interchange, airing and consensus. Humility is a large part of every professional's code."[47] It must be remembered that many imponderables are a part of Supreme Court adjudications.

Accommodation of conflicting doctrine is more difficult to achieve in the judicial than in the legislative process. Courts cannot reach out to reform our society. A problem comes to the Court in the form of a justiciable issue and is narrowly drawn, rendering the Court's ruling contracted and finespun. Legislatures, on the other hand, have such facilities for investigation as hearings and may address themselves to the necessities of broad social needs and the correction of evils, both probable and existing. As Mr. Justice Cardozo said, "Legislation can eradicate a cancer, right some hoary wrong, correct some definitely established evil, which defines the feebler remedies, the distinctions and the fictions familiar to the judicial process."[48]

The courts work on a case-by-case system which deals with the past rather than the future. Society would not have the benefit of the sweeping effect of a statute, nor would the doctor have the protection that he is entitled to receive. The case method would be slow, expensive, and possibly disastrous. It is for the legislature to determine the proper balance, *i.e.*, that point between prevention of conception and viability of the fetus which would give the State the compelling subordinating interest so that it may regulate or prohibit abortion without violating the individual's constitutionally protected rights.

The present climate seems favorable for immediate legislative action. Five States have already led the way.[49] With appropriate action, many more will follow suit in liberalizing their abortion laws. But this process will take less talk and more action. As Nehru once said:

I am tired of people who merely talk about things. However wise you may be, you can never enter into the spirit of a thing if you only talk about it and do nothing. Even scientists have a tendency to let a wonderful

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experiment remain an experiment once it has been performed. The next stage somehow does not come. They may well say that the next stage is somebody else's job, but I think if the scientist had a sense of practical application, he would either try to do it himself, or get somebody else to do it. This association of thought with action is, I think, of utmost importance. Thought without action is an abortion; action without thought is folly.[50]

FOOTNOTES

* Associate Justice, Supreme Court of United States (Retired), 1949–67.

[1] *The Wisdom of Nehru*, 34 WISDOM 62 (The Wisdom of India ed. 1960).

[2] R. Thomlinson, POPULATION DYNAMICS 198–99 (1965).

[3] Niebuhr, *Kinsey and the Moral Problem of Man's Sexual Life*, in AN ANALYSIS OF THE KINSEY REPORTS ON SEXUAL BEHAVIOR IN THE HUMAN MALE AND FEMALE 62 (D. Geddes ed. 1954).

[4] MODEL PENAL CODE § 230.3(2) (Proposed Official Draft, 1962).

[5] Committee on Human Reproduction, *AMA Policy on Therapeutic Abortion*, 201 J.A.M.A. 544 (Aug., 1967).

[6] CAL. HEALTH & SAFETY CODE §§ 25950–54 (West Supp. 1967); COLO. REV. STATS. 40–2–50 (Perm. Cumm. Supp. 1968); GA. CODE ANN. § 26–1202 (effective July 1, 1969); LAWS OF MD. ch. 470 (Supp. 1968); N. C. GEN. STAT. § 14–45.1 (Supp. 1967).

[7] Abortion Act 1967, c. 87, at 2033.

[8] *Just How Great Are the Risks of The Pill?* MEDICAL WORLD NEWS, May 24, 1968, at 23.

[9] The theological and medical scholars did agree on *A Protestant Affirmation*. It did not undertake to answer any of the questions posed in the text. In substance, the consensus concluded that as to abortion "each case should be considered individually, taking into account the various factors involved and using Christian principles of ethics." It suggested that suitable cases for abortion would fall within the scope of the A.C.O.G. statement, but not including abortion for convenience only or on demand. *See* CHRISTIAN MED. SOC'Y J. (Nov.-Dec. 1968).

[10] Meeting of the Ass'n for the Study of Abortion, Hot Springs, Va., Nov. 18, 1968, reported in N.Y. Times, Nov. 24, 1968, at 77, col. 1.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] For studies in this area see L. Epstein, Marriage Laws in the Bible and the Talmud (1942); L. Epstein, Sex Laws and Customs in Judaism (1948).

[18] H. Sagg's The Greatness That Was Babylon 215 (1962).

[19] Pauly's Real-Encyclopädie der Classischen Altertumswissenschaft (Wissowa ed. 1962).

[20] *Exodus* 3:21.

[21] *Genesis* 1:28, 4:1, 11:30; *Ruth* 4:13.

[22] Montgomery, *How to Decide the Birth Control Question*, Christianity Today, March 4, 1966, at 10.

[23] Stern, *The Issue of Legalized Abortion*, 88 Can. Med. Ass'n J. 899 (1963); J. Fletcher, Morals and Medicine 152 (1967); address by E. Bidinton, Symposium of Christian Medical Society, Aug., 1968.

[24] *See generally* Philosophy and Ethics in Medicine (M. Gelfand ed. 1968).

[25] *See Therapeutic Abortion*, 98 Can. Med. Ass'n J. 512 (1968).

[26] R. Ettinger, The Prospect of Immorality 132 (1962). *But see* Hudeeczek *De Tempore Animatianis Foetus Humanis Secundum Embroyologian Hodiernam*, in XXIX Angelicum 162–81 (1952). *See also Cyronics and Orthodoxy*, XII Christianity Today 816 (1968).

[27] Address by John Scanzoni, Ph. D., Assoc. Prof. of Sociology, Indiana Univ., Nat'l Convention of Christian Medical Society, Aug., 1968.

[28] Howells, *Legalizing Abortion*, 1 Lancet 728 (1967).

[29] O. W. Holmes, The Common Law (1881).

[30] *The Cost of Life*, 60 Proceedings of Royal Soc'y of Medicine 1235 (1962); Cogan, *A Medical Social Worker Looks at the New Abortion Law*, 2 British Med. J. 235 (1968).

[31] N.Y. Times, Nov. 24, 1968, at 7, col. 1.

[32] Meyer v. Nebraska, 262 U.S. 390 (1923).

[33] Pierce v. Society of Sisters, 268 U.S. 510, 534–35 (1925).

[34] Prince v. Massachusetts, 321 U.S. 158 (1944).

[35] Bates v. Little Rock, 361 U.S. 516, 524 (1960).

[36] 381 U.S. 479 (1965).

[37] Id. at 482.

[38] Id. at 503 (concurring opinion).

[39] Morgan v. State, 148 Tenn. 417, 256 S.W. 433 (1923).

[40] State v. Prude, 76 Miss. 543, 24 So. 871 (1886).

[41] Evans v. State, 48 Tex. Cr. App. 589, 89 S.W. 974 (1905).

[42] Bonbrest v. Kotz, 65 F. Supp. 138 (D.D.C. 1946).

[43] See Prosser on Torts (3d. ed. 1964).

[44] Del Tufo, Recovery for Prenatal Torts: Actions for Wrongful Death, 15 Rutgers L. Rev. 61 (1960).

[45] Schwartz, Abortion and 19th Century Laws, Trial June-July, 1967 at 41.

[46] Kwaterski v. State Farm Mut. Ins. Co., 34 Wis., 28, 14, 148 N.W. 3d 167 (1887); Halata v. Markicwicz, 26 Conn. Supp. 358, 224 A.2d 466 (1966). Contra, Norman v. Murphy, 124 Cal. App. 2d 95, 268 P.2d 178 (1954); Marko v. Philadelphia Transp. Co., 420 Pa. 124, 216 A. 2d 502 (1966).

[47] Prof. Thomas Lambert, Jr., Editor-in-Chief, American Trial Lawyers Ass'n, former Prof. of Law, Boston Univ.

[48] B. Cardozo, Growth of the Law 234 (1924).

[49] Georgia, Maryland, North Carolina, California, and Colorado.

[50] Wisdom, supra note 1.

ABORTION AND RELIGION

(By Rabbi Israel R. Margolies)

The moral implications and desperate need for legalizing abortion were dramatically demonstrated a little over three years ago in the Finkbine case in Arizona. We were confronted and shamed as a nation by the spectacle of a decent, intelligent American woman vainly seeking court sanction for an abortion, in order to prevent the birth of a child who probably would be, as events later proved, actually was, horribly deformed. The medieval and barbarous cruelty of the abortion laws in the U.S. was clearly exposed when Mrs. Finkbine was compelled to seek the compassion and help abroad that were denied in her own country. This was the only alternative to the very real threat of bringing into the world a pitiful creature whose life would be darkened with such pain, sorrow, and frustration as no one could possibly calculate, and whose very existence would be a curse upon its parents.

Judaism considers man the active, responsible partner of God in the task or establishing the Kingdom of God—not in some far-off celestial sphere, or in some distant apocalyptic age under the leadership of a Messianic miracle man—but right here on earth. Indeed, Judaism suggests that having created the universe, God, while vitally concerned about all that occurs on this planet, has deliberately left the work of human history and creativity to man. I believe that the ideal world that all of us yearn to see, the world of universal justice and lasting peace, will not be bestowed by God upon man, but rather must be created by man to the greater glory of God.

Surely man, who was endowed by God with the intelligence to master nature, and the spiritual strength to bend that intelligence to the fulfillment of the Divine plan, was also intended to exercise his own free will in determining whether or not to bring the fruit of his seed into the world. If the sexual function of man was meant to be directed strictly to the purpose of procreation, then, like other members of the animal kingdom, he would have experienced the sexual urge solely on regular, set occasions, devised by nature for the perpetuation of the species.

However, the fact is that man alone has been granted the boon of an unrestricted sexual appetite as an intimate expression of love that is unlimited by time or season. How he exercises this privilege is undeniably of some moral and legal concern to the community—but, as long as a man and woman find it appropriate to fulfill their love for and joy in each other through sexual intercourse, there is no law of nature or of God that requires that such love and joy must perforce lead to conception and birth. It is a man and a woman who must decide whether or not they wish their union to lead to the birth of a child, not the church or the synagogue, and certainly not the state.

Until a child is actually born into the world, it does not belong to society, nor has it been accepted into any faith. Its existence is purely and entirely the business and concern of its parents, whether they are married or not. They and they alone have the right to determine whether the unborn foetus shall live, or be abortioned in its pre-natal state. I have heard, as all of you have heard, ad infinitum and ad nauseum the hackneyed argument that such abortions would serve to encourage immorality in pre- and extramarital adventures. To this time-worn contention I would say in the first place that those who choose to indulge in such casual relationships are usually sufficiently adept in the use of contraceptives that abortions are rarely sought. The ones who are most frequently caught, so to speak, are either the very young and inexperienced, or the very poor and ignorant, and it is precisely in these situations that reluctant and embittered parenthood should be avoided. In the second place, I would soberly and respectfully suggest that such excesses, even if they did indeed result in part from the legalizing of abortion, would be infinitely preferable to the endless, careless, and purposeless ushering of millions of unwanted and unloved children into an already teeming and highly competitive society. In the January 31st edition of the magazine section of the *New York Times*, Julius Horwitz, in an article entitled, "The Arithmetic of Delinquency," quotes women who want no more children, but who, on bringing a new baby home from the hospital, "hate him for being alive." These are the rejected and neglected children who make up the vast majority of our delinquents, and then proliferate and repeat the vicious cycle further.

According to traditional Jewish law, and I quote from the Talmudic tractate Oholos 7: 6: "If a woman has great difficulty in giving birth to her child, it is permitted to destroy the child to save her life." The law continues to say that if the child puts forth its head or most of its body, it may no longer be destroyed to save its mother, since, as the Talmud puts it, "we do not push aside one life for another." From this statement, we may conclude that abortion during the foetal or pre-natal period is permissible even in cases where the mother's survival is not the prime purpose. Only when a child is about to be born, and has actually begun to emerge, is it termed "nefesh," a living soul; and only then may we not "push aside one life for another." Prior to actual birth, the unborn infant is not deemed truly

to be a living soul, a human being. If it should die during birth, or even during the first 30 days of infancy, no funeral service is held, no Kaddish, or memorial prayer for the dead need be recited, because this tot is not considered to have lived at all.

Rabbi Jacob Emden, the most brilliant Talmudic scholar of the 18th century, was asked whether a pregnant adultress may have an abortion. This great authority, who revered Jewish tradition, answered boldly in the affirmative, and went on in his explanation to suggest that we may destroy the foetus, not only to save the mother's life, but even to save her excessive torture in childbirth. The most liberal statement on the general subject of abortion was given by the late Sephardic Chief Rabbi Ben Zion Uziel. He concluded, after a broad analysis of the subject, that an unborn foetus is not a "nefesh"—a soul—at all, and has no independent life. It is part of its mother, and just as a person may choose to sacrifice a limb of his body in order to be cured of a worse malady, so may the foetus be destroyed for the sake of its mother.

While there are, to be sure, differences of opinion among some other Jewish scholars with regard to abortion, the position of the men whom I have cited is, in my carefully considered judgment, the most enlightened and accurate interpretation of Jewish law. It is all too easy to dismiss the entire subject of legalized abortion, as so many holier-than-thou religious leaders do, under the ominous heading of "sin." I believe that such spineless and irrational subservience to the dogmatism of theologians who speculate with fine detachment upon such matters in their cloistered ivory towers, is unbecoming the rational and largely moral society of a great nation. In truth, the civilized mind would be hard put to devise a greater sin than to condemn a helpless infant to the twilight world of the slum or the orphanage—which is where most of the unwanted and illegitimate children end up—or to sentence two parents to a life term of caring for, yes, and loving an unwelcome child who is the bitter, unsought fruit of careless rapture, a living symbol of shame, frustration, or even an enforced marriage. If there is to be any talk of sin, then by Heaven, here is where it may be found.

We live in an age when scientists who are quite properly more concerned about sustaining life on this planet than in the conquest of outer space are profoundly disturbed about the economic and social consequences of the fantastic population explosion. At the present rate of increase, our global population will double by the year 2000, and reach the staggering dimensions of four times that number 70 years thereafter. In the most impoverished areas of the world, the help that we are extending to raise the standards of living is more than offset by the incredible rise in the number of mouths that have to be fed. Considering the fact that hunger and bloody revolution are historic allies, it is becoming crystal clear that the undisciplined multiplication of the world's population represents a danger to humanity second only to the uncontrolled spread of nuclear weapons.

At a time such as this, when all thinking citizens recognize that human reproduction must be checked if the earth is to be kept safe for humanity, and that it must be done voluntarily, or it will surely be done by famine, revolution, and war—at such a time, we are confronted right here in our own country with the ironic spectacle of a continuing battle against the legalization of abortion and an enlightened program of public education and aid in the use of contraceptive methods whose sole purpose is to reduce illegitimacy and the tragedy of rejected children—and all in the name of religion and morality. I say to you, dear friends, that there is no agency, religious or political, that is wise enough, or has the right to point a self-righteous finger at some poor woman and order her to bring an unwanted life into this crowded, difficult, and dangerous world.

It is high time indeed that we began to ask certain very vital questions of ourselves and the leaders of our state and federal governments. By what right did the state legislature enact laws infringing upon the privilege of the citizens in a free society to secure surgical help for abortion and contraceptive counsel when such aid is needed? Why do fearful politicians still continue to steer clear of this sacred cow, in the face of the mounting tragedy of unwanted, unloved and even abnormal children? Is it not time that we matured sufficiently as a people to assert once and for all that the sexual relations of human beings and their reproductive consequences are not the business of the state, but rather free decisions to be made by free people?

Let us, of the Association for the Study of Abortion, raise these and other related questions that have been swept under the rug for such a long time. Let us demand straight answers, and resolve that the crying needs of the millions who agonize over such pressing, personal problems, will soon be met by the leaders and legislators of our land who have been motivated by an aroused citizenry.

In my humble opinion, religion, in the highest sense, calls upon each of us to disavow the old taboos that suggest that abortion and planned parenthood are sinful, and assert honestly and proudly that, as creative partners of God, we reserve the right to create families purposefully and joyfully, not accidentally and reluctantly.

Let us help to build a world in which no human being enters life unwanted and unloved; where poverty and hunger have disappeared; where disease is rare, and death seldom premature; where there is adventure for the young and security for the old; where the entire human family, abandoning the evil habit of mutual suspicion and slaughter, has become one cooperative race of man, achieving through unity conquests over both nature and the darker side of human passions, rejoicing in the exercise and fruit of man's creative genius!

THE STATE OF THE ABORTION QUESTION

(By Mr. ROBERT F. DRINAN)

On March 11, 1970 the State of Hawaii became the first government in the English-speaking world to eliminate all criminal sanctions from its laws for any abortion done by licensed physicians. The 30 percent of Hawaii's population who are Roman Catholic constituted the only organized resistance to the change in the abortion laws. Although several legislators who are Catholic voted for the repeal of the abortion law, the Hawaii *Catholic Herald* newspaper in its February 27 issue editorialized that "a veto is the only course of action open to the Governor which would remove this cloud of shame hanging over Hawaii."

At least one Catholic legislator who voted for the change in the law expressed his disapproval of the campaign of Catholic spokesmen. Governor John A. Burns, a devout Catholic, allowed the bill to become law without his signature and with the simple statement that abortion is "a matter of individual conscience."

The example of Hawaii will no doubt accelerate the demands for a "non-law" on abortion now being made in virtually all of the states. New York is moving in that direction as this is written. Indeed it seems fair to say that after Hawaii the dilemma confronting Catholics and others opposed to abortion on moral grounds is no longer whether Catholics can denounce abortion, control the votes and thereby seek to prevent any change in existing abortion laws. The real dilemma for opponents of abortion seems to come to this: Is it better to allow the state to establish by law a limited number of reasons which would justify an abortion or would it be better if the law were silent about abortion and thus left this matter to the good conscience of parents and physicians?

This observer feels that the laws enacted in some twelve states over the past three years authorizing abortions where the pregnancy results from rape or incest, where it may injure the physical or mental health of the mother or where the fetus is predictively defective will not solve the problem of abortion. These laws will, in addition, give to the state for the first time in the history of Anglo-American jurisprudence the right to decide which unhealthy or inconvenient unborn persons may be extinguished before birth. Empirical data, moreover, from the several states which have adopted a "liberalized" law on abortion do not give one the feeling that these laws are a happy accommodation between groups which are opposed to all abortions as immoral and those individuals who feel that a certain limited number of social, medical or psychiatric indications should justify an abortion.

Persons opposed to abortion on moral grounds can, of course, still hope for the enactment of a law which predictively would minimize the number of fetal deaths. But should this hope or desire be the sole determinant in judging the wisdom or effectiveness of an abortion law? A further question, moreover, must be asked: Even if the "liberalized" law now enacted in some twelve states does in fact result in fewer abortions than the "non-law" of Hawaii, how can one measure that result against the fact that the government now possesses the right to establish standards as to who may live and who may die?

No one pretends, of course, that it is an easy thing for Catholics and others who believe in the inviolability of fetal life to acquiesce in the withdrawal of criminal penalties against those who would destory this fetal life. But the question is no longer the possibility of a total prohibition of abortion but rather the question of weighing the long-range evil effects of permitting the government to establish standards as to who will live and who will die rather than simply having the government withdraw from the area of protecting the first twelve to twenty weeks of non-viable fetal life.

If the state of the abortion question after Hawaii poses much more clearly the only two options left for opponents of abortion, it also should bring about a clarification of the credibility of official Catholic spokesmen who in every state of the union have denounced any change in the abortion laws. No one, of course, disputes the right of a Catholic prelate to speak out about the morality of any question. But one wonders whether Catholic clerical spokesmen at the highest level will continue to intervene in the political order and state dogmatically that no change whatsoever in the abortion laws can be morally permissible. One wonders whether Catholic episcopal spokesmen will continue to assume that they can make up the mind of Catholic legislators on the abortion question just as the bishops of Massachusetts in 1948 "told" Catholic legislators not to repeal the anti-birth control law or Catholic officials in New York State directed Catholic legislators until the very recent past not to permit divorce for the ordinary reasons for which divorce was obtainable in every other state of the union.

Perhaps it is time that all of us recall the words of Vatican II's declaration on religious freedom which urged that "in spreading religious faith and in introducing religious practices, everyone ought at all times to refrain from any manner of coercion which might

seem to carry a hint of coercion or of a kind of persuasion that would be dishonorable or unworthy. . . ." On the assumption that belief in the inviolability of non-viable fetal life is *de facto* a religious belief, can Catholic spokesmen be open to the accusation that they are acting in the abortion controversy in a way which clearly "might seem to carry a hint of coercion"?

The limited jurisprudential options now available to those who are opposed on moral grounds to abortion offer at best a Hobson's choice. A request by a healthy mother for the abortion of a healthy fetus is all too often, in Princeton theological Professor Paul Ramsey's phrase, "fetal euthanasia."

The consequences to morality, however, of a change in the abortion laws should not blind Catholic spokesmen to the other unfortunate results of their intervention in the political order.

In June 1968 this author in an address to the Catholic Theological Society of America, made a recommendation as follows:

It is submitted that episcopal statements going beyond the morality of abortion and entering into the question of jurisprudence or the best legal arrangement are inappropriate intrusions in a pluralistic society by an ecclesiastical official who wrongly assumes that he can pronounce a moral and uniform position for his church on a legal-political question.

This recommendation is now more relevant and more urgent after the action by the Hawaii Legislature to repeal all criminal sanctions against abortions done by licensed physicians.

ABORTION RESOLUTIONS

RELIGIOUS

Unitarian Universalist Association (May 1968).
American Baptist Convention (June 1968).
United Methodist Church (April 1970).
United Presbyterian Church (August 1970).
Lutheran Church in America (June 1970).
American Friends Service Committee (October 1969).
United Church Board for Homeland Ministries of the United Church of Christ (April 1970).

MEDICAL

American Public Health Association (December 1968).
American Medical Women's Association (November 1969).
American Psychiatric Association (December 1969).
New York Academy of Medicine (December 1969).
American Protestant Hospital Association (March 1970).
American Medical Association (June 1970).
National Council of Obstetricians & Gynecologists (June 1970).
American Psychoanalytic Association (May 1970).
Medical Committee for Human Rights (1967).
Student American Medical Association (1970).

OTHER

Citizens Advisory Council on Status of Women (April 1968).
Planned Parenthood Association (November 1968).
American Ethical Union (January 1969).
American Psychological Association (1969).
National Council of Women of the United States (October 1969).
YWCA (April 1970).
Chicago Child Care Society (1970).
The Izaak Walton League of America (July 1970).
American Society of Mammalogists (June 1970).
American Civil Liberties Union (March 1968).

By Mr. MOSS:

S. 1753. A bill to establish a National Institute of Advertising, Marketing, and Society. Referred to the Committee on Commerce.

NATIONAL INSTITUTE OF ADVERTISING, MARKETING, AND SOCIETY

Mr. MOSS. Mr. President, I introduce for appropriate reference a bill to establish a National Institute of Advertising, Marketing, and Society.

During the last Congress, three distinct initiatives undertaken by the Senate Subcommittee for Consumers—cigarette advertising, advertising and nutritional illiteracy, and advertising and drug abuse—led along separate paths to a suspect role for advertising and marketing. In varying degrees, each initiative was frustrated by a lack of a basic scientific literature accurately describing the psychosocial impact of advertising.

Competent data-based testimony on the role which cigarette advertising played in initiating and sustaining the smoking habit could not be obtained. We could not measure the extent to which the "hardsell" promotion of cereals and snack foods with relatively low nutritional value contributed to nutritionally damaging attitudes among young people. And no probative data exists relating the aggressive promotion of over-the-counter drugs and other products to teenage attitudes predisposing millions of young Americans toward the use of illicit drugs.

Put in another way, we are approaching the end of the 20th century knee-deep in a marketing economy and a consumer culture which we barely comprehend. To the child growing up in America, marketing messages are as pervasive as the air he breathes.

For more than 50 years, through the Federal Trade Commission, we have sought to regulate marketing practices but we have never thought of developing a systematic accounting of the social costs of marketing and advertising. Yet we are beset with profound and unsettling questions concerning the social role of advertising:

The repetitive pattern in much advertising promises instant gratification through the swallowing, tasting, touching, hearing, and even the smelling of an extraordinary variety of material goods. The incessant hammering of these themes has led critics to lay at advertising's door blame for the erosion of our traditional value system based upon the intrinsic rewards of effort, discipline, and responsibility.

It is marketing that teaches, in FCC Commissioner Nicholas Johnson's words:

That troubles are dissolved by the "fast, fast, fast, relief" which comes from pills (vitamins, headache and sleeping pills, stomach pills, tranquilizers, pep pills or "the pill") and not from medication, training or discipline; that personal satisfaction comes from passivity of possession and consumption, conspicuous whenever possible of cars, appliances, and toys, cigarettes, soft drinks, and beer, and not from the activity of commitment.

Of course, there exists a substantial body of knowledge concerning the behavior of individuals subjected to advertising. Market research in this country is a refined art if not a science. There has been some behavioral research on the impact of advertising performed in the Universities. However, much of the work is being done in isolation and a great proportion of the work is funded by business naturally interested in a fairly narrow range of information. Of course, the significance of much of the corpus of knowledge which does exist, is obsured by the economic self-interest of the sponsors of the research.

What is clearly needed is an institution, above all independent of the distortions of economic self-interest, with adequate resources to draw upon the full range of disciplines and competencies in the social and mass communications, social historians, anthropologists—all of those necessary to bring us to the point where we can begin to make rational judgments on the need for limiting, curtailing or rechanneling marketing activities away from socially destructive paths.

The National Institute of Marketing and Society, would be housed in the Federal Trade Commission.

The institute would be given a broad mandate to consider the social impact of the consumer culture. It would be encouraged to engage in the analysis of specific marketing themes and techniques and behavioral problems, such as drug abuse, as well as broad studies illuminating fundamental conflicts between the consumer culture and national goals and ideals.

Mr. President, the institute might undertake a series of studies to evaluate the behavioral costs related to the marketing of different lines of products, such as over-the-counter drugs or automobiles. It would be encouraged to undertake cross-cultural studies comparing the impact of advertising on different cultures. Certainly much could be learned from a study of social problems in countries such as those of Eastern Europe and the Soviet Union which suppress marketing as idiologically abhorrent.

The institute would make creative use of the vast store of data generated by private market research in the universities to develop an overall picture of the role of advertising and marketing in our society. Additionally, the enabling legislation contains a congressional mandate for three specific studies; these are:

First. A study of the relationship between the themes and techniques of advertising and drug abuse;

Second. A study of the relationship between marketing techniques and advertising and alienation of young persons from society; and

Third. A study of the relationship between advertising and the knowledge, attitudes and perception of children.

In the end, the institute will provide the important long range insight necessary to maintain advertising on a socially constructive path rather than deviating from this route as may currently be the case in some instances. In doing so, the institute would provide the public for the very first time an adequate, competent, objective understanding of marketing.

Mr. President, I ask unanimous con-

sent that following my remarks the text of the bill and additional material be printed in the RECORD.

There being no objection, the 6, 11 and material were ordered to be printed in the RECORD, as follows:

S. 1753

A bill to establish a National Institute of Advertising, Marketing, and Society

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 "National Institute of Advertising, Marketing, and Society Act."

POLICY AND PURPOSE

SEC. 2. (a) The Congress hereby finds that—

(1) there is increasing concern in the United States and in other industrialized countries over the partially hidden, imperfectly understood psychological and social costs of mass marketing and advertising techniques;

(2) local, State, and Federal governments do not have the capacity to integrate and evaluate the psychological and social effects of advertising and marketing;

(3) marketing and advertising utilize highly refined techniques about which little information of significance is available to the public and to governmental agencies;

(4) there is no existing governmental or nongovernmental institution capable of adequately studying and comprehending the psychological and social aspects of the consumer culture in an objective and comprehensive manner or of integrating such knowledge as does exist;

(5) the public interest requires the widest possible range of social and scientific insights applied by an institution independent of economic and political pressures; and

(6) there is a need for a focused, scientifically sound program of behavioral research on the psychological and social impact of marketing and advertising to be conducted by an appropriate independent institution.

(b) It is the purpose of this Act, therefore, to establish the National Institute of Advertising, Marketing, and Society.

ESTABLISHMENT

SEC. 3. (a) There is hereby established within the Federal Trade Commission an agency to be known as the National Institute of Advertising, Marketing, and Society.

(b) The Institute shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 6 years. Under the general supervision of the Chairman of the Federal Trade Commission, the Director of the Institute shall be responsible for carrying out the functions of the Institute and shall have authority and control over all personnel and activities of the Institute.

(c) A Deputy Director of the Institute shall be appointed by the President, by and with the advice and consent of the Senate for a term of 6 years. The Deputy Director shall perform such duties and exercise such powers as the Director may prescribe, shall act for, and exercise the powers of, the Director during his absence or disability.

FUNCTIONS OF THE INSTITUTE

SEC. 4. (a) In order to carry out the objectives of this Act, the Institute shall—

(1) undertake, on its own initiative, research projects concerning the impact of advertising and marketing upon society, particularly the psychological, and social effects of advertising and marketing techniques upon the consumer; and

(2) undertake, at the request of any agency represented on the Advisory Council, research projects concerning the impact of advertising and marketing upon society;

(3) intervene on its own initiative or upon the request of any Federal executive agency with respect to any issue affecting the impact of advertising and marketing upon society when in the opinion of the Director such representation would contribute to carrying out the purposes of this Act;

(4) conduct a study of the relationship between the themes and techniques of advertising and drug abuses;

(5) conduct a study of the relationship between marketing techniques and advertising and the alienation of young persons from society;

(6) conduct a study of the relationship between advertising and the knowledge, attitudes and perception of children;

(7) collect, analyze and disseminate to the public, relevant information on behavior research relating to advertising and marketing practices; and

(8) prepare at least annually, and at such other times as the Director may deem appropriate a report concerning its activities together with such recommendations, including recommendations for additional legislation, as the Director deems advisable.

(b) In carrying out the functions of the Institute under this section, the Director may establish such laboratories and facilities as it deems necessary to be operated by the personnel of the Institute. With a view to obtaining additional scientific and intellectual resources available, the Director shall, whenever feasible, enter into contracts with public or private educational or research institutions for the purpose of undertaking any particular study or research project authorized by this Act.

ADMINISTRATIVE PROVISIONS

SEC. 5. (a) In addition to any authority vested in it by other provisions of this Act, the Institute, in carrying out its functions, is authorized to—

(1) prescribe such regulations as it deems necessary governing the manner in which its functions shall be carried out;

(2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Institute; and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(3) in the discretion of the Institute, receive (and use, sell, or otherwise dispose of, in accordance with paragraph (2)) money and other property donated, bequeathed, or devised to the Institute with a condition or restriction, including a condition that the Institute use other funds of the Institute for the purposes of the gift;

(4) appoint one or more advisory committees composed of such private citizens including representations of concerned consumer organizations and officials of Federal, State, and local governments as he deems desirable to advise the Institute with respect to its functions under this Act;

(5) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this Act without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no more than three individuals so appointed shall receive compensation in excess of the rate prescribed for GS–18 in the General Schedule under section 5332 of title 5, United States Code;

(6) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, at rates for individuals not to exceed the rate prescribed for GS–18 in the General Schedule under section 5332 of title 5, United States Code;

(7) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;

(8) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this Act, and such contracts or modifications thereof may, with the concurrence of two-thirds of the members of the Board, be entered into without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(9) provide for the making of such reports (including fund accounting reports) and the filing of such applications in such form and containing such information as the Director may reasonably require;

(10) make advances, progress, and other payments which the Director deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(11) make other necessary expenditures.

(b) Each member of a committee appointed pursuant to paragraph (4) of subsection (a) of this section who is not an officer or employee of the Federal Government shall receive an amount equal to the maximum daily rate prescribed for GS–18 under section 5332 of title 5, United States Code, for each day he is engaged in the actual performance of his duties (including travel time) as a member of a committee. All members shall be reimbursed for travel, subsistence and necessary expenses incurred in the performance of their duties.

ADVISORY COUNCIL ON ADVERTISING, MARKETING, AND SOCIETY

SEC. 6. (a) There is hereby established in the Institute a National Advisory Council on Advertising, Marketing, and Society to be composed of—

(1) the Secretary of Health, Education, and Welfare;

(2) the Chairman of the Council on Environmental Quality;

(3) the Administrator of the Environmental Protection Agency;

(4) the Director of the National Science Foundation;

(5) the Chairman of the Federal Trade Commission, who shall be Chairman of the Council;

(6) the Chairman of the Federal Communications Commission;

(7) the Director of the Consumer Protection Agency.

In the event of the unavoidable absence of any member of the Council, that member may designate an officer of the agency concerned to represent him.

(b) The Council shall advise the Director of the Institute with respect to appropriate research projects within the jurisdiction of each agency represented on the Council to be conducted by the Institute and to establish criteria for the priority of such projects.

COMPENSATION OF DIRECTOR AND DEPUTY DIRECTOR

SEC. 7. (a) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(95) Director, the National Institute of Advertising, Marketing, and Society.".

(b) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(130) Deputy Director, National Institute of Advertising, Marketing, and Society.".

DEFINITIONS

SEC. 8. As used in this Act the term—

(1) "Council" means the National Advisory Council on Advertising, Marketing, and Society;

(2) "Director" means the Director of the National Institute of Advertising, Marketing, and Society;

(3) "Federal executive agency" means any department, agency, or independent establishment in the executive branch of the Gov-

ernment, including any agency described in section 551 of title 5, United States Code, and any wholly owned Government corporation.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. There are authorized to be appropriated such sums. not to exceed $5 million in any fiscal year as may be necessary to carry out the provisions of this Act.

ADS AND ADDICTION: TELEVISION COMMERCIALS, DRUGS AND SOCIETY

(By Arthur Asa Berger, Social Science Department, San Francisco State College)

"Many people mistakenly overestimate the role of willpower and think that nothing can happen to their minds that they do not decide and intend. But we must learn carefully to discriminate between intentional and unintentional contents of the mind."—CARL G. JUNG, *Man and His Symbols.*

"Whatever your attitude toward modern psychology or psycho-analysis, it has been proved beyond any doubt that many of our daily decisions are governed by motivations over which we have no control and of which we are often quite unaware."—ERNEST DICHTER, *The Strategy of Desire.*

"In contemporary America, children must be trained to *insatiable* consumption of *impulsive* choice and *infinite variety*. These attributes, once instilled, are converted into cash by advertising directed at children. It works on the assumption that the claim that gets into the child's brain box first is most likely to stay there, and that since in contemporary America, children manage parents, the former's brain box is the antechamber to the brain box of the latter."—JULES HENRY, *Culture Against Man.*

"What would you do if you found yourself in possession of an effective science of behavior? Suppose you suddenly found it possible to control the behavior of men as you wished? . . . I take it as a fact . . . If a man is free then a technology of behavior is impossible. But I'm asking you to consider the other case."—B. F. SKINNER, *Walden Two.*

"But the most important effects of this powerful institution are not upon the economics of our distributive system; they are upon the values of our society. If the economic effect is to make the purchaser like what he buys, the social effect is, in a parallel but broader sense, to make the individual like what he gets—to enforce already existing attitudes, to diminish the range and variety of choices, and in terms of abundance, to exalt the materialistic virtues of consumption."—DAVID POTTER, *People of Plenty.*

ADS AND ADDICTION: TELEVISION COMMERCIALS, DRUG CULTURE, AND SOCIETY

I. TELEVISION, ADVERTISING, AND DRUGS

In the past few years, drugs have become a national problem. Drug addiction has spread to the middle classes, and the use of "hard" drugs such as heroin has grown greatly, so we believe. Statistics on marijuana use show that large numbers of people smoke it and there is a "great debate" on as to whether it should be "legalized," so that it will not lead to a loss of respect of laws and increased social disorganization. Also, it is hoped that if marijuana is legalized, in some manner, criminal elements will be deprived of revenues made from it.

With all of this for background, an interesting question arises: Is there any kind of a relationship between television and drug use? Is the drug problem, which, in its present proportions, is of recent vintage, related in any way to the recent and phenomenal growth of television? In a recent column (August 27, 1970) Terrence O'Flaherty, the television critic of the *San Francisco Chronicle,* discussed an NBC "White Paper" on youth and drugs and wrote:

"If we are indeed a Nation of youthful dope addicts, and if NBC wants to be of real service, then why doesn't it make a strong documentary of the subject? No network has yet had the courage to take its cameras into the morgues and the asylums and show—specifically—what narcotics addiction can lead to. Perhaps that's where television has 'somewhat failed . . .' Instead, it has been talky and repetitious and evasive.

"No network, to my knowledge, has even done a TV special on how the television industry itself makes the world of narcotics look mighty alluring, or how its comedians make jokes about marijuana when it is the first step into the jungle."

Mr. O'Flaherty draws attention to that fact that we are vitally interested in drugs, and there have been many television programs on the problem. Yet, at the same time, it is possible that glamorizing drugs on television is actually contributing to the problem.

I would like to focus here upon one aspect of the general problem—television advertising and its influence on our society as far as addiction is concerned. If television programs inadvertantly glamorize hard drugs from time to time, television advertisements "glamorize" soft drugs almost all the time.

The fact of the matter is that a remarkably large proportion of television ads are used to sell "drugs" of one sort of another: alcohol, nicotin, aspirin, cold remedies, stomach remedies *ad nauseam.* American culture, in general, is a drug culture—and many Americans are "junkies," even though they would be outraged if you were to tell them so. That is because they are legal drug junkies who pop "pep" pills, sleeping pills, headache pills, weight reducing pills, breast enlarging pills, and almost any other kind of pill that can be conceived of. Sociologists have pointed out that being an addict to a large degree is a matter of *self-definition* (in the same way that you have to learn that you are enjoying a "high" when you smoke marijuana).

The "message" of these various "harmless" drugs is, in essence, the same as the "rewards" offered by hard drugs—escape or easy and quick solutions (via chemistry) to problems. Except that instead of reaching for an Anacin or Alka Seltzer you reach for the hypodermic needle, and "escape from the ordinary." I believe that the logical structure of these ads, which show painted, unhappy, troubled people in the "before" part and happy, satisfied, joyful people in the "after" part is an implicit inducement to the drug culture. It is just one step beyond from aspirin to heroin, so to speak; the principle is the same one: immediate relief and gratification, instant solutions to all problems.[1]

Another interesting aspect of television commercials is the way some of them utilize broken continuity and multiple images to stimulate a psychedelic experience and one which is not far removed from a drug experience. I have dealt with some of these ads elsewhere—in "Commercials Ad Nauseam," which appeared in *The Review of General Semantics* (December, 1969). The basic thrust of these ads, I suggested, was to use sensory stimulation to overwhelm our rationality, and in terms of the subject under discussion, once the rationality is subdued, it is not hard to sell the person something—in our case, drugs. The forces of the "id," our drives and desires, overwhelm the "ego" which is analogous to our intelligence, and it can no longer mediate between the *"id"* and the *"superego"* which is loosely speaking conscience. The chart below, a modification of the one I used in the article, makes all this explicit:

Freudian analysis	Consumption behavior	Drug taking
Id	Buying	Need for a fix.
Ego	Pocketbook	Reason.
Superego	Sales resistance	Conscience, the law.

What happens, I suggest, is that the need for drugs overwhelms our fear of the law, conscience and any other force which might restrain us. That this is reinforced and facilitated by advertisements which offer a model of how to "Cope" and which tend to overwhelm or evade the ego is a hypothesis I make. I believe it explains the connection between the structure of advertisement and consumption—of goods in general as well as drugs in particular.

All of these considerations add up to the following picture. I have suggested, first, that America is a drug culture in general, though most people do not recognize it as such. Second, once the principle of taking drug is established, it is not too difficult a jump from legal drugs to illegal ones. Third, the "model" offered by many of the advertisements for solving our problems is very much like the model implicit in the drug culture—a better life through chemistry. We believe in magic, so to speak. Say the right word (to your druggist) and take the right potion, and any problem or difficulty can be solved. For those who have lower "lows" and want higher "highs," aspirin is inadequate and the next step is quite logical. Fourth, the make-up of advertisements is a kind of drug experience itself. There is distortion, images flash out at us in rapid succession and we have a *visceral* reaction which tends to confuse us, weaken the power of our reasoning processes and make us more susceptible to suggestion.

The amount of money spent on advertising drugs on television is enormous. (If you add newspaper and magazine advertising, you discover that we are continually bombarded by "Drugs and Remedies" advertising—enough so to give us headaches and other problems which they claim they can cure.) In 1968, for example, "drugs and remedies" ads amounted to $76 million for spots and $182 million for national network ads on television. Some other figures follow in the chart below:

[In millions of dollars]

	Year	
	1964	1968
Spots	70	76
Network	136	182
Total	206	258

The growth has been phenomenal. But these figures do not tell the whole story for they omit items that should be considered drugs—liquor and tobacco.

If we add these items we find the following (for 1964):

[In millions of dollars]

	Year	
	1964 network	1964 spot
Drugs and remedies	136	70
Beer, wine, and liquor	15	[1] 78
Smoking	146	[2] 50
Total	297	198

[1] Ale, beer, wine.
[2] Tobacco, etc.
Source: "Statistical Abstracts of the United States," 1965–70

[1] For an analysis of soft drinks and drugs, see my article "Soft Drinks and Hard Icons" in *American Icons.* Bowling Green University Press. Another article, "The Politics of Wrestling" shows how television offers people a model of society and suggests a method (violence) of solving social problems. It is in a collection of my articles entitled, *The Evangelical Hamburger.*

These figures become more impressive when we see how large a proportion they are of total figures for television advertising. In 1964, the $206 million spent on spots and network advertising for "Drugs and Remedies" accounted for about a ninth of all television advertising, which totalled about $2.1 billion. But if you add smoking and liquors, you find the following:

Drugs, tobacco, liquor

	Amount
Network	$297,000,000
Spot	198,000,000
Total	495,000,000
Total network advertising	1,100,000,000
Total spot advertising	1,000,000,000
Total	2,100,000,000

What these figures show, then, *is that if you define drug advertisements broadly, to cover nicotine and alcohol, we spend about a half a billion dollars a year for these ads out of a total of $2.1 billion spent on all television advertising for 1964. Approximately one ad out of four, then, is a "drug" ad.*

If you accept the notion that we are at times motivated by matters which we are not conscious of and cannot control, the significance of all this advertising becomes apparent. We are becoming "conditioned" or perhaps even "programmed," though we are unaware of it all, which makes things even worse. Because we have the illusion of freedom, we are the more easily manipulated.

And if all of these ads with all the phenomena associated with them (as described above) occur at a time when there is widespread anxiety about our involvement in Viet Nam, many great crises at home and a government which some feel is not doing enough to solve our social problems and restore the currently distressed social fabric, then government and law, in general, become devalued. Thus we find a society which takes drugs in prodigious quantities (but which tells some people not to) asking people not to drop out or seek to "escape" from life in society when the society itself does not seem able (or willing, perhaps) to solve its own problems.

The devaluation of law and the continued social chaos both nourish the drug culture. In a certain sense our drug addicts are casualties of our society, who have become desperate and have lost hope in politics and have retreated into themselves, trying, with drugs, to "fix" themselves as best they can. There is something ironic to the term *fix*; for the addict problems cannot be solved, so he tries to escape from them.

The noted semanticist, S. I. Hayakawa, wrote a perceptive article on television entitled "Who's Bringing Up Your Children?" which makes the following points:

1. "The Child who watches television for four hours daily between the ages of three and eighteen spends something like 22,000 hours in passive contemplation of the screen—hours stolen from the time needed to learn to relate to siblings, playmates, parents, grandparents or strangers."

2. "All happiness, all significance, all values that human beings might strive for are translated by advertising into purchasable commodities."

3. "Even as they reject the culture as they understand it through television, they miss the pleasant fantasies they enjoyed as children when they turned on the set. So they "turn on" in other ways. Having scornfully rejected the notion that they can achieve instant beauty and radiance with Clairol, they espouse the alternative view that they can achieve instant spiritual insight and salvation with LSD. The kinship of the LSD and other drug experiences with television is glaringly obvious: both depend upon "turning on" and passively waiting for something beautiful to happen."

What has happened, and it is understandable although quite regrettable, is that we have not seriously considered the psychological impact and social consequences of advertising, an industry that is now in the $20 billion class.

Many of the people who make the advertisements are probably unaware of the ultimate impact of what they are doing just as the people who watch these advertisements do not realize how they are being affected.

In one respect television and drugs are similar: *once you are hooked on them, it is difficult to get off them.* Withdrawal from drugs or of television creates panic, and figures show, for example, that the average household replaces or repairs a broken television set within three days.

II. CONJECTURES ON CLASS CULTURE AND DRUG CULTURE

Since television is so ubiquitous and all-pervading, it is giving American society a certain communality of experience. The very rich and the very poor, leading extremely different life styles, with different "life chances," perspectives, experiences, etc. share a good deal now thanks to television. If television functions as a kind of narcotic, this kind of addiction has spread widely.

All of this makes me wonder whether there aren't cultural drifts, some of which are related to television and television advertising, which might affect drug abuse. I offer here some conjectures which may have suggestive value, even though I cannot at this moment, prove them.

Is it not possible that getting "high" is a kind of moral equivalent to being a "success" and rising in the world? For those who cannot make it in the real world, and cannot buy all those things advertised on television, there is the innovation of drug use and getting "high" in another sense of the word.

And is not drug use a kind of ironic reversal of our whole consumer culture and conspicuous consumption? Drug taking (and I'm talking now about the really hard drugs) is just the opposite *inconspicuous* consumption, though the same are at work—a desire for high quality merchandise, "refined" taste, etc. Since the soft drug ads posit a world of dullness and pain, why bother? There is, in fact, a kind of parallelism between taking soft drugs as a kind of relief from ordinary life's pains and trauma and taking hard drugs as a relief from withdrawal symptoms

For those who find life dull, getting involved in the drug culture gives life, so they believe, a kind of glamour—underworld associations, avoiding the police, a "community" of drug takers, pushers, informers, etc. The drug scene becomes the organizing factor in their lives in the same way that cannibalism was the organizing factor in the lives of many pre-literate tribes. There has also been a mythology about drugs build up, which is one of the things that O'Flaherty alluded to in his review. That most addicts lead desperate lives full of terror and despair is seldom or inadequately publicized. Most of the claims for "higher knowledge" under drugs have been shown to be spurious but every "out" group maintains that it has higher truths as a defense mechanism or rationalization.

The mystic sensibility, which emphasizes the self rather than society, has always been with us and, I would argue, has always been dangerous, since it leads man away from his obligations to others. It may be that for some people there are no more frontiers and there is no place to go but *inside*, so to speak. But this kind of thing is the result, I imagine, of a series of defeats which leads to this variation of autistic behavior.

There is one last question that interests me. The basic motivations behind people in the drug culture seem to be what we might call "lower class" ones. Many students of class culture argue that one of the basic themes in lower-class culture are immediate gratification and in particular, early sex; it is a kind of vulgar hedonism, perhaps. The lowest classes, for one reason or another, often have time on their hands and little to do. Thus we find a culture of "leisure and love," so to speak, though surveys show that lower-class women do not particularly enjoy sexual relations and I imagine that lower class men do not really enjoy their free time. Often they are unemployed and perhaps unemployable.

Could it be that the lower-class culture of "leisure and love" as well as drugs is slowly working its way upward, and that it has been seized by a number of groups who have rejected our "consumer culture" and are seizing upon various different life-styles? That might explain why drug culture has moved from the lower classes to the middle and upper classes. It may be that television is creating some kind of a unitized culture, despite the continuing social class differences, and that our life-styles are merging

The drug problem admits to no easy solutions. That would be, in a sense, a drug culture answer: if you have a problem take . . . and what is recommended is something that is equivalent to a drug, such as harsher *punishment* (i.e. bad-tasting medicine). I believe we have to redefine drug abuse as a medical problem and take it away from the police, who have a vested interest now in drugs. I also believe that it is useless to multiply anti-drug messages as long as the society behind the messages subverts everything.

I would, however, like to see something done about all the "drug" commercials I've been discussing; it would be best if they were prohibited or, if that is not possible, drug companies were prevented from the kind of ads they do. What has happened is that advertising has changed from being a medium of information, announcing the existence of various products, to a medium of education and persuasion, though it works in very subtle and often pernicious ways.

If we wish to do something about the drug problem, we have to be willing to make some rather fundamental changes in society. There may be a certain amount of economic dislocation in the television industry from prohibiting drug advertisements but television stations make great profits, so I understand and also they would be the first to admit, I imagine, that the public welfare is more important than revenue loss from these advertisements. There is too much advertising in general on television, and getting rid of a number of annoying and socially harmful advertisements would be a good thing for our peace of mind.

At the very least, we should certainly have some alternatives to the commercial stations, and we need a greater sense of social responsibility on the part of the stations themselves. Perhaps we also need a better regulatory system, which has real power to prevent misleading advertising from being aired and to consider the social and psychological consequences of ads.

Once we realize the drug abuse is a social problem, and not just a matter of this young person or that adult who happened to get hooked, we can do something—for social problems are solved by social action. We can develop institutions to help prevent the problems from developing, we can develop strategies to attack the problem, we can use our ingenuity and imagination. It seems to me that we will have to make some big changes and take some drastic remedies; you do not get rid of cancer by taking aspirins, and you do not get rid of the drug problem by putting out a few scare commercials.

I believe that we can solve the drug problem and will, for we cannot tolerate, for much longer, the destruction of individual lives and the social chaos caused by the flourishing of this pernicious sickness. We need to have some money for research into

the relationship that exists between advertising and drugs, and advertising and other aspects of our society. We also need new channels of communication that do not have commercials and we need to do some social engineering in our society in a number of different ways, so that people will not lose hope in themselves and society in general, and take the mainline to lotus land.

SOCIAL AND POLITICAL ASPECTS OF DRUG USE *

(By George R. Edison, M.D.†, the University of Utah)

Those of you concerned about drug use and abuse know that young people turn on for many reasons: pleasure seeking, relief of boredom, tension or depression, self-destruction, rebellion, peer group pressure, and the search for self, among others.

Valid though these may be, they leave a lot unexplained. They do not really tell us *why* large numbers of young people are repeatedly flaunting the law, jeopardizing their futures and exposing themselves to substantial risks, or why there has been such a startling increase in drug abuse in the last five years.

Figure 1 shows the year in which illegal drugs were first used by the individuals in our study. This curve could just as easily represent drug arrests or hospitalizations for drug-induced psychoses. Curves like this are open to question, both methodologic and substantive. Drug use is certainly not a recent phenomenon. But, despite the fact that society is more sensitive to the drug issue, the police more active, and the reporting of drug use more reliable, I think most of us regard this increase as a real one, and wonder why.

Looking at the problem epidemiologically, we get interested in three factors: the agent, the host and the environment. The agent really has not changed much over the years. Amphetamines and LSD are youngsters in their thirties, but most of the others have been around for several thousand years. Human body and brain chemistry is about the same as it was centuries ago, so the host seems to remain fairly constant.

What we most need to study in the epidemiology of drug use is the environment, and those things about the environment which promote psychological disturbance in large numbers of young people, and which allow them to feel that the use of drugs has more advantages than disadvantages.

What is this environment? I see it as the total social and political structure of the country. Out of this environment we could select many areas which might theoretically influence drug use in young people, from poverty and minority group oppression to the exploitation of our natural resources and pollution of our waterways and atmosphere. (The imagery of this last example is especially evocative as we deal with the pollution of bodies by drugs.)

We have chosen in this study to focus on the war in Viet-Nam. The reason is clear from Figure 2 which depicts American troop commitment in Viet-Nam. Figure 3 simply superimposes the curves shown in Figures 1 and 2.

Side by side, then, two national crises have developed in scope and intensity over the same five-year period. Is there a relationship between them? If so, how do they influence each other? To study the problem we formulated a "Social Issues Survey," a questionnaire probing attitudes and knowledge about drugs, dealers, the war, the Viet-Cong, and the United States position in Viet-Nam (Appendix 1).

We submitted this survey in March and April of 1968 to 135 drug users and 302 nonusers, selected in a variety of ways. Bearing in mind that this is an unsophisticated pilot study, these are some of the results, many of which you have undoubtedly predicted.

Table I describes the study group. Males predominate, especially among users, who also tend to be slightly younger than nonusers.

TABLE 1.—AGE, SEX, AND DRUG USE HISTORY OF STUDY SUBJECTS

Total sample	437
Users	¹ 135
Nonusers	302
University students	347
Nonuniversity students	90

	Users (percent)	Nonusers (percent)
Male	67	56
Female	31	40
Age:		
14–15	3	0
16–17	16	2
18–19	34	29
20–21	14	31
Over 22	33	39

¹ 25 no longer using drugs.

Table 2 compares the feelings of users and nonusers about the war. Users were strongly against the war and held dovish views of what we ought to do about it, while nonusers were more evenly divided.

Table 3 compares the views of users and nonusers toward both the United States position in Viet-Nam and the university's position toward drug use. These are not surprising results if you assume the United States and the university both represent authority and establishment. The drug user rebels against it, while the nonuser identifies with it.

Table 4 shows the converse, the views of each group about the most rebellious segment in each situation. As can be seen, users felt rather positively toward both. The surprise here is the rather accepting attitude toward the Viet-Cong on the part of even nonusers.

TABLE 2.—ATTITUDE TOWARD VIETNAM WAR

	Users (percent)	Nonusers (percent)
Opinion of war:		
Pro	7	45
Anti	78	37
Hawk—Dove		
Hawk	5	42
Dove	63	22

TABLE 3.—ATTITUDES TOWARD U.S. POSITION IN VIETNAM AND UNIVERSITY POSITION ON DRUGS

	Users (percent)	Nonusers (percent)
U.S. position in Vietnam:		
Pro	7	50
Anti	75	30
University position on drugs:		
Punitive	7	68
Permissive educational—		
University should take no position	83	31

TABLE 4.—ATTITUDES TOWARD DRUG DEALERS AND VIETCONG

	Users (percent)	Nonusers (percent)	Former users (percent)
Opinion of drug dealers:			
Negative	34	90	60
Positive	40	1	24
Neutral	22	4	8
Opinion of Vietcong:			
Negative	20	37	
Positive	50	43	
Communists primarily	15	37	
Nationalists primarily	57	42	
Do not admire them	32	47	56
Admire them	63	48	44

What do these results mean? I think they support the following notions.

The war in Viet-Nam has caused a crisis of national conscience, principles and goals. The consequent frustrations and debate are forcing our country to a major inward look and re-evaluation. They magnify the adolescent's normal sense of alienation. When grave questions are raised about our country's moral and legal position in a war, young people find it difficult to maintain confidence in our moral and legal codes in areas closer to home.

The war and the drug scene demonstrate a striking parallel in the disposition of the belligerent forces. Viet-Nam presents underdog rebels fighting a formidable military establishment, while caught in the middle are most ordinary Viet-Namese, apparently uncommitted. Back home in the drug war we find the same three elements—rebellious drug users clashing with conservative establishment forces, while neutral nonusers hold the middle ground and try to protect both their reputations and their civil liberties.

Undoubtedly there is a spiritual kinship among rebels everywhere. But these are no ordinary bonds that link the Viet-Cong rebels and the rebels of the drug scene. What we must understand, and what this discussion is really about, is that the entire Viet-Nam scene provides the drug user with an ideal model for unconscious identification. In his use of drugs he can share both the exhilaration and the agony of the Viet-Namese. He recreates their experience in microcosm.

At an age where rebellion, a sense of moral outrage, and the need to establish identity and independence are the norm, he becomes aware of the Viet-Namese peasant, a man of small stature and dark skin, living in a primitive agrarian culture, a little man who has been struggling for independence for centuries from a succession of giant foreign protectors. This Viet-Namese is almost a prototype underdog. His nonwhiteness reawakens all of the American student's concerns about the persecution of minority races. It becomes simple for him to transfer his cathexis from our civil rights struggle to the war in Southeast Asia.

Even the religion of the majority of Viet-Namese lends itself to unconscious identification. The spectacle of Buddhist Viet-Nam subjected to systematic destruction by industrialized wealth crystallizes many a young American's rejection of his country's less noble qualities, its materialism, its militarism, its self-righteousness and aggressiveness. Through drugs he can reflect, discard society's crass traits, and approach the kind of reconciliation with reality that Eastern religions teach. At the same time he can assuage guilt.

Observe also the communion between the two rebel groups in the identity crisis of the drug user *and* of the country of Viet-Nam (even now unsure whether it is one or two nations), in the evasive guerrilla game both drug user and Viet-Cong play, and in the risks that both take to achieve their goals. Educational programs designed to warn about the hazards of drug use are seriously compromised to whatever degree the individual's decision to use or not to use drugs is *not* based on rational thinking. If his behavior is significantly motivated by an unconscious identification with the Viet-Namese and the Viet-Cong, who are almost daily risking personal and national destruction, education can have only limited value.

Finally, a brief comment about the features common to the establishment response in both wars. We see a disconcerting similarity in war aims. The earliest one in each case is limited, innocuous, and totally acceptable to the public, purporting to help people victimized by ignorance and inexperience and based on the assumption of a vicious and aggressive enemy which cannot be resisted by its weak victim. Through a

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series of errors and miscalculations the aims and commitment gradually escalate. Goals become confused. We are not sure what we are fighting, or why. In our effort to help people we find ourselves destroying them.

Yet it may turn out that the most devastating effects of our massive intervention in Viet-Nam have been on our own society, torn apart as never before. We seem unable to win because we can hardly define the enemy, much less our goals. Likewise, in the drug war, we the establishment strike out with heavy artillery at all kinds of targets—dealers, heavy users, experimenters. The most obvious effect of this bombardment is on us. We have become very "uptight," while not really reducing drug abuse.

What tentative conclusions might we draw from this new dimension on drug abuse?

1. Social and political situations exert a powerful influence on drug use in young people.

2. A current situation of major importance is the Viet-Nam war.

3. The specific link between the war and drug use is the unconscious identification model which the Viet-Cong provide for drug users, and which the establishment position in Viet-Nam offers the establishment at home.

4. If we really want to curb drug abuse, we must deal with the relevant social issues and, as one example, we might heed the lessons learned in Viet-Nam.

APPENDIX 1

SOCIAL ISSUES SURVEY

This survey is being conducted by a group of physicians in order to learn more about attitudes toward drugs and possibly related issues. It is entirely anonymous and confidential. *Please do not sign your name.*

Please check applicable categories: —University student—High school student—Non-student—Live in Residence halls, Male—Female—Age—.

1. Do you use or have you used drugs such as LSD, Marijuana, Methedrine (Speed), Heroin or others? Yes, No (Circle one) If yes, which do you use? (please number them in the order first used). Year of first drug use——. How did you start?

2. Why do you use or not use drugs?

3. If you are not now using drugs, but have in the past, why did you stop?

4. Do you use drugs regularly? How often? (frequency per week or month)

5. Do you feel you are addicted?

6. Do you feel there are hazards in drug use? If so, what are they for:

Marijuana———, Methedrine———.

LSD———, Heroin———.

7. Why do you feel you (or users) take the risks involved?

8. Do you think you (or users) get pleasure out of taking these risks (as distinct from the effect of the drugs)?

9. Do you feel marijuana use ought to be legalized? 9a. With or without control? 9b. Should other drugs be legalized?

10. Are there *external* pressures on you to use or not use drugs? If so, what are they?

11. What is your estimate of the percentage of drug users among.

a. All University of Utah students?

b. University Residence Hall students?

c. Salt Lake City high school students?

12. What is your estimate of the percentage of drug users who get into *serious* psychiatric or medical difficulty because of: Marijuana ——LSD——Methedrine——Heroin——.

13. How do drugs affect academic performance?

14. What do you think about people who sell drugs?

15. What should the University's or high school's position be toward drugs and users?

16. Does the national or international political situation influence attitudes toward drugs?

17. What is your opinion about the Viet-Nam war?

18. What is your opinion of the Viet-Namese people?

19. What is your opinion of the Viet-Cong?

20. What is your opinion of the U.S. position in Viet-Nam?

21. Are the Viet-Cong communists first or nationalists first? (Circle one)

22. Do you admire the Viet-Cong for any reason?

HOW AD MEN WILL SELL GRASS

(By Jerry Della Femina)

It's going to happen in our lifetime. No matter how much you or I dislike the idea. That day will come when marijuana, pot, grass, maryjane, whatever you call it, will be legalized in the United States.

Look at it this way, 1992 is an election year. The man who wins the Presidency in that election will be about 40 years old. That means he is 18 years old right now. Do you know what most 18 year olds are smoking these days? And so our new President in 1992 will be an ex-pothead. And one of his first official acts will be to call together his cabinet (made up of a lot of other ex-potheads) and say:

"Men, it's time we legalized grass. It is my opinion as President of the United States that it can't hurt you. I've been smoking since 1968 and it didn't hurt me getting to the Presidency. Besides most of Congress is smoking these days. And I say it's time we got the stuff legalized before some of our more prominent statesmen get busted."

And so, it will be legal. And out of nowhere brands of marijuana will spring up. Packages will be designed, salesmen will go out selling two free with 10. Drug stores (what else) will be putting up giant displays and naturally when the competition gets tough, there will be advertising. Giant budgets will be spent to sell individual brands of marijuana. And, of course, ad agencies will produce television commercials. Did you ever wonder how certain advertising agencies would sell pot? I figure just about the way they sell everything else.

When Compton gets their first grass account they'll probably sell it with a slice of life commercial.

(*Scene opens in laundry room. Two housewives obviously stoned are talking.*)

SALLY. Now Jane, I'm your best friend so I can tell you I'm a bit worried about something I've noticed lately.

JANE. You mean my wash is not as white as it used to be?

SALLY. No silly, it's your pupils. They're just not as dilated as they used to be.

JANE. (*Sad*) I know, I know. It's the grass that Jim and I are using. It just doesn't seem to work as it used to.

SALLY. Oh, Bill and I don't use that old brand anymore. We use new Acapulco with gold power. (*Close-up of package of Acapulco*). It's got action starting power that gives us higher highs and the kind of big black pupils we can be proud of.

JANE. Acapulco, with gold power.

SALLY. (*Holds up a pack, takes a long drag.*) That's Acapulco with gold power.

Of course, there's Ted Bates. Did you ever wonder how Ted Bates would sell grass?

(*Cut away shot of human head showing smoke going through mouth and nose up to the head*)

V.O.: New Dreamo Marijuana. Gets into your head and bloodstream three times faster than any other pot. It turns you on three times faster.

Faster, faster, faster.

Faster than any grass you ever smoked.

Faster than fast.

New Dreamo.

That's Dreamo, Dreamo, Dreamo.

It works faster, faster, faster.

And then of course there's Ogilvy & Mather. How would they sell pot? With a full page long copy ad with a headline that says, "At 60 drags on Groove Pot the only sound you hear is your heart blasting through your head."

Subtitle: 273 reasons why Groove Pot will be the most unusual experience you will ever enjoy. Sheer bliss and nirvana. As peaceful as the rolling countryside in Chichester, England.

And last how would Needham, Harper & Steers sell grass? With a commercial that takes place in a baseball dressing room with a famous star player puffing his brand and talking to a young kid who is puffing on his brand.

FAMOUS STAR PLAYER. (*Takes drag*) Say boy, this "Vitel" is great grass. Hey kid, aren't those colors around us really great?

KID. I don't see them, sir.

FAMOUS STAR PLAYER. Isn't that music terrific?

KID. I don't hear it, sir.

FAMOUS STAR PLAYER. Hey kid, are you still using that grassy kid stuff?

Stop smiling—it's not funny.

PHARMACEUTICAL ADVERTISING AND YOUTH—A MONOGRAPH REPORTING UPON A QUANTITATIVE PILOT STUDY

(By Donald L. Kanter, Ph.D., Professor of Marketing, University of Southern California*)

ACKNOWLEDGEMENTS

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FOREWORD

Television in the United States is an extraordinary influential mass communications medium. Nicholas Johnson, Commissioner of the Federal Communications Commission, has stated:

". . . Recent polls indicate that 60% of the American people believe they get most of their information from television." (1) It has been associated with many cultural and behavioral phenomena in a deterministic sense. Among the associated influences of television are assertions that it is responsible in part for violence in today's society. In a news article printed in the *San Diego Evening Tribune*, entitled, "Youthful Exposure To Violence Probed," (2) the claim was made that an average child sees approximately 13,000 violent deaths before he reaches the age of 14. The article further states that the increased crime rate over the past two decades and the heavy viewing habits of television by children (". . . as much total time

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*With the collaboration of Richard Olsen, Gregory Wood, and Michael Rothschild for the Coronado Unified School District.

E.S.E.A. Title II Project—HEW "Innovative Solution to Teen and Subteenage Drug Abuse," Project No. 68-5380 Grant No. 9-8-005380-0064 (065), December 30, 1970.

watching television as he spends in school . . .") might, in some way, be related.

Another associated influence of television are assertions about the role of advertising as a powerful tool of persuasion. This purported influence, however, is one of degree, depending upon which group of people comprise the audience, and what is being treated in the specific advertisement, the alleged powers of advertising notwithstanding. (3)

It is in the area of advertising over the counter nonprescription pharmaceuticals, which both adults and children see, that advertising most recently has received its severest impassioned criticism.

Nicholas Johnson has posed the question: "Have you ever asked yourself who are your child's, as well as your contemporaries', teachers, or what they are teaching? Here is a partial answer: That conflicts are resolved by force, violence, or 'destroying the enemy' and not by listening, thinking or understanding; that troubles are dissolved by the 'fast, fast, fast relief' that comes from pills (vitamins, headache pills, sleeping pills, stomach pills, tranquilizers, pep pills or 'the pill'), and not from dedication, training or discipline; that personal satisfaction comes from the passivity of possession and consumption (conspicuous whenever possible) of cars, appliances and toys, cigarettes, soft drinks and beer, and not from the activity of commitment." (4)

Dr. Charles Winick, Director of the American Social Health Association's Program in Drug Dependence and Abuse, seemed to concur with this when he said . . .

"Anyone who listens to commercials or reads drug ads knows he can calm down, perk up, fall asleep, lose weight and ease any number of pains and discomforts by taking one or another pill." (5)

Dr. William Abruzzi, who has treated hundreds of youths for bad drug reactions at Woodstock, Powder Ridge and other summer rock festivals, blames advertising of pharmaceuticals for manufacturing an interest in the chemical solution to problems such as anxiety, tension and pain.

". . . I have the feeling Madison Avenue does not realize the deleterious sociological effects of some of its campaigns," (6) said the forty-four year-old college physician at State University, New Paltz, New York.

"Over-the-counter drug advertising must share the blame for the drug culture, along with music, movies and television," (7) opined Dr. Judianne Denson-Gerber, Executive Director of Odyssey House, New York-based, psychiatrically-oriented, therapeutic community for the treatment of narcotics addiction and substance abuse.

A particularly strong attack on adversting has been launched by Senator Frank E. Moss (D—Utah), who, as a member of the Senate Commerce Committee, is chairman of a hearing (convened September 22, 1970, in Salt Lake City), the drug advertising and drug abuse. (8) He states:

". . . The drug culture finds its fullest flowering in the portrait of American Society, which can be pieced together out of hundreds of thousands of advertisements and commercials. It is advertising which mounts so graphically the message that pills turn rain to sunshine, gloom to joy, depression to euphoria, solve problems and dispel doubt." (9)

Senator Moss, among others, has introduced the hypothesis that there is a connection between massive advertising for over-the-counter pharmaceuticals and the nation's rising drug abuse problem centered among its youth.

Several prominent spokesmen for the Advertising Industry, however, dispute the foregoing allegation involving proprietary drug advertising with drug usage among children.

Barton A. Cummings, Chairman of Compton Advertising and the Communications Committee for the White House Anti-Drug Abuse Campaign for the Advertising Council, noted that research by the committee of five groups—preteens, teens, parents, ghetto dwellers and the military—has not turned up evidence that "proprietary drug advertising has a tremendous influence on kids." (10)

Miles David, President, Radio Advertising Bureau, commented:

"Narcotics addiction relates more to the fantastic attention given to the drug lifestyle than it does to proprietary drug advertising.

"Advertising is falsely pinpointed as the source of interest in drugs." (11)

Stockton Helffrich, Director, National Association of Broadcasters' Code Authority:

"There is no clearly established cause and effect, but our feeling is that we want to respond to these anxieties which have been expressed." (12)

Andrew Kershaw, President of Ogilvy and Mather:

"I have seen no research that would suggest this relationship . . . I'd welcome some serious research on the advertising drug abuse." (13)

It would appear, then, that while there are differences of opinion as the effects of proprietary drug advertising on youth, almost everyone involved, including the advertisers themselves, is concerned about finding out what effects, if any, exist. The pilot study which follows addresses itself to some of the central issues in the controversy. The hope is to bring some objective information, no matter how tentative, to a debate, which is, at present, regrettably subjective.

OVERALL PURPOSE

The purpose of this pilot study is to attempt to determine what are some of the salient, *perceived* environmental influences which may affect drug usage among youth. It will pay special attention to the question of the role advertising may play in influencing drug usage.

These objectives were pursued through three studies:

Phase I, A Recall Study—Respondents were asked to recall the advertisements they remember in their daily television viewing and radio listening.

Phase II, A Survey Study—Respondents were asked their attitudes toward drugs and other hypothetically related factors.

Phase III, A Forced-Viewing Communications Research Study—Respondents were shown six advertisements, and their general receptivity to each was measured.

It was hoped that the subject could be best attacked from three directions, each one employing a widely-used Communications Research tool.

THE MAJOR FINDINGS*

1. There is no indication that pharmaceutical advertisements were easier to recall than other heavily advertised product categories.

2. Advertising had very low salience (was not talked about frequently) among the students when it was compared to other environmental influences.

3. Many students at all grade levels felt that *other* young people were potentially capable of being influenced by pharmaceutical advertising, as well as advertising for cigarettes, and to a lesser extent, beer. In addition, these students felt that elementary school children were more affected by television advertising in general than were students in any other age group.

4. In response to a question about what make young people try illegal drugs for the first time, the overwhelming majority of responses concerned "peer group influence" and "curiosity."

5. The family was generally seen by the students to have the greatest relative influence on their attitudes toward legal and illegal drugs. Other strong influences were school (peer group), police & courts, and medical subjects.

6. The students felt that advertising was a relatively strong *influence upon* their feelings toward medicines, but not on their feelings toward marijuana or illegal drugs.

7. Students, especially those in Grade 7, felt that advertisements for stimulants and depressants could lead to misuse of the product.

8. Grade 5 students ranked television programs as a relatively strong influence upon their general feelings and knowledge of marijuana and illegal drugs. This was not true for the older students.

9. In general, the 5th Grade students tended to react most positively and least negatively towards six advertisements for pharmaceuticals and cigarettes. They were more receptive to the advertisements than were the older students.

10. The 5th Grade students tended to find the six pharmaceutical and cigarette advertisements in general, and specifically the product claims within the advertisements more believable than did the older students (with the exception of the claims made in the cigarette advertisements).

11. The users of marijuana and/or pep pill seemed to be less negative toward and more receptive to the six advertisements than were the non-users. This was especially true of cigarette advertisements.

12. The users of pep pills tended to find the product claims in the six advertisements studied more believable than did the non-users.

13. One effect of advertising—in conjunction with other environmental influences—which may be inferred is that the anti-smoking campaigns seem to have helped to develop negative attitudes towards cigarettes among students.

IMPLICATIONS

1. At a conscious level there does not seem to be any greater preoccupation with drug advertisements than for other categories of heavily advertised products. This suggests that there is not a "mental readiness" set, or a predisposition to think about pharmaceutical advertisements or products, which is often found in people about to purchase a product. This "top-of-mind" awareness is one of the predictive criteria which the advertising industry uses to assess readiness to purchase.

Brand and product awareness does not appear to be greater for pharmaceuticals than for other product categories among the students; yet, there is an indication of some latent awareness of brand advertising because the students were able to recall pharmaceutical advertisements when specifically requested to do so.

2. By and large, advertising, per se, seems to have a relatively low level of general influence upon students, when compared to other environmental factors such as home (parents) and school (peer groups). This suggests that advertising is not, by itself, responsible for student behavior toward drugs and/or other products, substances or activities.

At the most, advertising operates within the context of the student's total environment and cannot be uniquely responsible for student values, attitudes and beliefs.

3. Even though advertising, per se, may not not be considered uniquely responsible for attitudes towards legal and illegal drugs, the students, nevertheless, feel that it is potentially an influencing agent, particularly on the youngest students.

Moreover, given the fact that many students feel that advertising for some pharm-

*The major findings and their implications are subject, of course, to the limitations of the data, based upon their sample and design, as specified elsewhere in this report.

aceuticals might lead to misuse of the product, it is a reasonable hypothesis that some pharmaceutical advertising functions as a reinforcing element in the entire complex of drug attitudes among the young. Further, the finding that users of illegal drugs tend to be more receptive to pharmaceutical advertisements than non-users also suggests that pharmaceutical advertising may be reducing cognitive dissonance (personal conflicts) by implying, symbolically, to the users that . . . "Everyone turns on in his own way." This might be an important rationalization for the furtive user.

The presence, then, of pharmaceutical advertising may be a reminder, so to speak, to its beholder that . . . "Everybody takes some kind of drug for something some of the time."

These frequent reminders in the mass media may well serve to reinforce attitudes derived from a multitude of environmental influences, such as family and peers, that drug-taking (not necessarily illegal) is commonplace and acceptable.

It may just be that pharmaceutical advertising is one more cultural prop in the maintenance of favorable attitudes toward drug usage among the young.

4. The trends in the study concerning the various age groups suggest forcefully that it is the elementary school children who tend to be most receptive and least critical of advertisements. It is in this younger group of students that the influences of pharmaceutical advertising—as a reinforcing agency—may be most pronounced.

This suggests that the industry codes for the content and timing of mass media campaigns be thoroughly reviewed with the understanding that pharmaceutical campaigns about the ingestion of over-the-counter drugs seem to have a potential influence on younger people by presenting a symbolic, cultural approval by their very presence in mass media.

5. It is entirely possible that the younger age group would be most receptive to an antidrug campaign, given their generally unskeptical attitude toward advertisements in general and the ostensible effects of the antismoking campaign. Whether these effects of the antismoking campaign derive from parental influence, and/or behavior, peer group word-of-mouth or the antismoking campaign itself cannot be determined: Nevertheless there is no reason to think that the antismoking campaign, using a number of diverse communications channels, has not had some effect. This raises the possibility that an antidrug campaign with appropriate strategy, might also have a salutory effect upon the younger students.

6. The limitations of the study, in both design and method preclude any cause and effect judgments concerning, pharmaceutical advertising and illegal drug usage. Given the trends developed in this study, however, it is fair to assume that a more sophisticated research design might produce data which is more specific in specifying the role which advertising plays—along with other environmental influences—in the development and reinforcement of attitude patterns which predispose students to adopt illegal drugs as a way of life.

7. In sum: if it is true that pharmaceutical advertising does, in fact, interact with other environmental influences to produce an overall cultural sanction which predisposes many youngsters to adopt illegal drug usage, then several steps might be considered in the short run:

A definitive study (in terms of sampling and design) might be mounted to determine more precisely how advertising interacts with family, school and peer group influences to predispose some students to become illegal drug users.

The mass media may well review their self-regulatory codes to determine if the time and place of exposure is appropriate.

The drug manufacturers, themselves, might examine their promotional programs to see if they are being completely responsible. They should see if they are promoting their products in ways, places and times where children may perceive them to be cultural sanctions for a drug-approving society.

The school administrators and educators might seek a place in their curricula to identify dispassionately, the role of advertising in enterprise and the ways advertisements try to assist the selling processes.

The advertising industry might review their attitudes and behavior towards children, with particular emphasis upon the relative credulity of the younger students vis-a-vis advertisements.

The Government regulatory bodies may wish to develop and maintain an ongoing set of social indicators especially geared to the receptivity of children toward certain kinds of promotional efforts which affect them, intentionally or not.

THE RESULTS—A PERSPECTIVE

Much will be made of the limitations of this study in the succeeding pages. These limitations should not be ignored. This study should be viewed as a first pass at a highly complicated issue, done in one atypical community in Southern California.

Nevertheless, the data to be presented represent findings which strike the investigators as provocative and informative. The implications of these findings should not be ignored, nor should further efforts using more sophisticated methods of determining cause and effect and multivariate interaction be abandoned. In sum, it is felt that the major findings of the study are useful and, up to a point, indicative.

[From the Washington Post, Apr. 14, 1971]

LOW-GRADE AILMENTS, PATENT MEDICINE—AND ADVERTISING

(By Nicholas von Hoffman)

One night's television watching should convince anybody that we, as a people, are suffering from a pandemic of low grade debilitations, insomnias, nervous stomachs, snuffly running colds, unspecified deficiencies, chronic coughs, dyspepsia, and most of all headaches. Lord, do we have headaches! We must have three headaches for every two heads in the country. The makers of Bufferin, St. Joseph's aspirin, Bayer aspirin, Anacin, Excedrin can hardly keep us supplied.

Why should we have so many headaches? A recent, unscientific survey shows that we have twice as many headaches as the English, eight times as many as the Italians, nine times as many as the Japanese and 17 times as many as the Russians. This same survey indicates a striking inverse correlation between the incidence of headaches and the absence of aspirin advertising. In the People's Republic of Albania where aspirin is regarded as we review heroin, the headache is unknown. They don't even have a word for it.

These data have caused a prominent pharmacologist at Rockefeller University to suggest that the primary cause of the American headache is aspirin advertising. If this is so, then David ("Two Excedrin worked better than twice as many aspirin tablets") Janssen may be a menace to public health.

Occasionally even people in the advertising business have misgivings about the patent medicine situation. Last December the Ries Cappielo Colwell agency got so upset that it bought a full page in *Advertising Age* to complain. Here is a partial text:

AN OPEN LETTER TO THE MAKERS OF ALKA-SELTZER

"Dear Mr. Miles (Miles Laboratories makes the stuff):

". . . According to sources that measure media, in 1969 you spent $22.8 million in newspapers, magazines and television. And these same sources say you're spending even more this year. Why? Why did you spend $23 million to promote a product that everyone knows about? Why did you spend $23 million to promote a product that is mostly sodium bicarbonate and aspirin? In this day and age, there seems to be something wrong with spending $23 million to sell some $60 million worth of product . . . We like your commercials. We think they are more entertaining than most of the programs. But we also think all that time and talent should be put to better use."

Miles Laboratories answered that Ries Cappiello Colwell was inaccurate, misinformed misguided and just plain wrong. Be that as it may, the latest figures show that Miles spent 17 per cent of its sales on advertising of its products, which include One-A-Day, Bactine, Flintstones and Flintstones Plus Iron for the kiddie trade. That's nothing compared to Plough, Inc., which makes the St. Joseph medicine line, Di-Gel, Solarcain, Mexsana Medicated Powder and lots more. Twenty-three per cent of its sales revenue was poured back into advertising.

The champs are J. B. Williams Co., that old tired blood gang who make, in addition to Geritol, FemIron, Vivarin, Proslim, Serutan, Nikoban and other things to keep you healthy and beautiful. Thirty-six per cent of what it took in from sales it paid out in advertising. On the other hand, Bristol-Myers (Bromo-Quinine, Bufferin, Congespirin, Excedrin, Pal, the animal-shaped vitamin for the wee ones, plus many other products) had a more modest ratio of advertising to sales, a mere 16 per cent.

In absolute figures that's impressive. It works out to $115 million which is more than the Ford Motor Co. spent, more than RCA, more than Standard Oil, more than DuPont, AT&T or any airline. It's more in actual dollars and more as a percentage of sales spent on advertising than all but five other corporations.

The automobile industry spends slightly more than 1 percent of its income on advertising. The food people only spend a bit more and that includes the soft drink industry which spends 6 per cent. The motion picture industry, which you'd think would have to spend like crazy on advertising, puts out about 3.5 per cent. The figure for the liquor people is about 4, while for beer it's 6, and for clothes it's under 2 per cent.

But for drugs of all kinds, it's about 10 per cent, way higher than every other type of product, commodity, goods or services. If these drugs are a necessity, if they are so good for us, why should they have to be advertised so? The people who provide us with the other necessities of life, and even the optional luxuries, don't need to spend such huge proportions of their revenues on advertising. It would seem that the best headache cure is to stop advertising the remedy.

[Institute of Business and Economic Research, University of California, Berkeley]

WORKING PAPER NO. 65—SOCIAL ISSUES IN ADVERTISING

(By John G. Myers)

ACKNOWLEDGEMENTS

This is a preliminary draft of the first chapter of a book tentatively titled *The Social Role of Advertising*. The author would like to acknowledge the inspiration and financial support of the Educational Foundation of the American Association of Advertising Agencies. The book was motivated, and many of the ideas it contains inspired, by a symposium on the social role of advertising sponsored by the A.A.A.A. Educational Foundation, Inc. held at the University of California, Berkeley, in May of 1969. Many participants at the Symposium have since followed up with useful suggestions, references, and ideas, and their contributions are

gratefully acknowledged. Special thanks are due Dr. Lawrence D. Reedy, vice president of the A.A.A.A., and Dean Richard H. Holton for their many words of encouragement and advice during the formative stages of the project. Thanks are also due Gert Assmus who conducted the literature search, and Virginia Douglas of the Institute of Business and Economic Research at Berkeley who typed the manuscript.

This chapter presents a review of what might be called classical and current social issues in advertising as they appear in a wide variety of literature sources. It begins with a discussion of the controversial nature of the subject of advertising which has existed since it first began to take some recognizable form and shape before the turn of the fifteenth century. The "causes" are briefly examined as questions of social visibility, symbolic value, fundamental characteristics of the activity in which advertising is primarily involved, and a lack of research. The broad scope of the social aspects of the subject is conveyed by recourse to an identification of the range of perspectives used to discuss its role in society. Specific attention is then given to contrasting a series of economic perspectives with those of "other" perspectives, largely as an exposition of proponent and opponent positions. This is followed by an examination of the issues in the context of domestic social conditions in America at the turn of the decade of the 1970's. The ultimate purpose is to identify what needs, if any, exist for additional study of the social role and effects of advertising and, if so, what form and directions such study should take.

A principal theme of this chapter is that present advertising research concentrates heavily, and perhaps too heavily, on an elaborated understanding of a narrow and short-run definition of "social effects." The chapter might therefore be seen as an appeal for the correction of this imbalance—the need to focus on a broader and long-run definition—and a proposal for how this might come about.

It is by no means clear what should be considered significant social issues in advertising, particularly from the viewpoint of identifying those which lend themselves to some form of objective scientific inquiry. The subject has been characteristically controversial throughout its history, and from the viewpoint of broader social concerns, the literature is filled much more with intellectual "opinion" than with scientific "fact." Individuals tend to be "for" or "against" it—to be "proponents" or "opponents." Advertising has been summarily lauded or accused of being either the chief saviour or the chief sinner of western democratic society. In perhaps the most far-reaching opinion ever offered, it has been considered the pillar on which the destiny of Western civilization will stand or fall [65].[1]

That advertising is a controversial subject should come as no surprise considering its pervasiveness, visibility, and symbolic value in the dispute between the ideological perspectives of capitalism and socialism. It is not so obvious, however, why its social impact on a society has not been subjected to more objective, scientific, and "dispassionate scrutiny" than the extremes of opinion evident in the literature would suggest. Another eminent historian, David Potter, attributes considerable power to advertising as an educational and socializing agency but observes, in the following passage, that social scientists have largely ignored it:

One might read fairly widely in the literature which treats of public opinion, popular culture, and the mass media in the United States without ever learning that advertising now compares with such long-standing institutions as the school and the church in the magnitude of its social influence. It dominates the media, it has vast powers in shaping popular standards, and is really one of the very limited group of institutions which exercise social control. Yet analysts of society have largely ignored it [50].

Although economists have been less prone to ignore the subject, there is in this literature also a marked tendency to engage in rhetorical argument, polemics, and espouse dogma than to subject questions to some form of objective inquiry. College students first introduced to the subject as treated in basic economics textbooks are very likely to come away with the opinion that society would be better off without it than with it. W. Allen Wallis, President of the University of Rochester, in reflecting on such literature has stated:

Passages on advertising in our college textbooks of economics present a rather appalling collection of disorganized chatter. Analysis is superficial. Crucial terms are undefined. "Facts" are mere conjectures. There is written conformity to current patterns of "group-think" [63:iii].[2]

CONTROVERSY IN ADVERTISING

In introducing his book on advertising, Taplin [63] has stated that "generally speaking, those who are positively interested in the subject fall into two groups—those who dislike advertising and those who have a commercial stake in it" [63:3]. Another point often made is that those who dislike advertising tend to be members of the intellectual or academic community whose basic condemnations relate to the "wastes" of advertising, the materialistic values with which it is primarily concerned, and the generally low level of "taste" such issues, often oriented to one point of view or the other. We first ask what characteristics, features, or conditions of the subject underlie such controversy?

Prerequisites of discontent in advertising

Frey [20] has noted that critics of advertising include teachers, preachers, legislators, writers, consumers, and businessmen, and that: "most people are more critical of it than they are of other business functions such as production, finance, accounting, and personal selling with which they are less familiar and with which they have had much less frequent contact" [20:513].[3] It is thus an important characteristic of advertising that it draws attention to itself. One might expect controversy and discontent to arise out of this feature alone, and to have important implications for the study of the subject. As aptly stated by Taplin:

Advertising, because it is ubiquitous and obstrusive, is a subject on which everyone tends to form strong opinions. This is an encouragement to the serious investigator of the nature of the phenomenon and at the same it is something of a barrier in his path. It means that everyone is interested in the subject, but nobody is quite disinterested. Investigation itself, the search for truth, soon begins to turn up ideas and facts, but these are at once seized upon by partisans who regard them as potential evidence to support their preconceived opinions [63].

The visibility of the institution of advertising in America is extremely high in at least two ways. First, the purely physical quantity of messages that wash over the population each hour, day, or minute is considerable. In a book published in 1967, Bogart reported:

Every day 4.2 billion advertising messages pour forth from 1,754 daily newspapers, millions of others from 8,151 weeklies, and 1.36 billion more each day from 4,147 magazines and periodicals. There are 3,895 AM and 1,136 FM radio stations broadcasting an average of 730,000 commercials a day; and 770 television stations broadcast 100,000 commercials a day. Every day millions of people are confronted with 330,000 outdoor billboards, with 2.5 million car cards and posters in buses, subways, and commuter trains, with 51.3 million direct mail pieces and leaflets, and with billions of display and promotion items [10:2].[4]

Second, in comparison with analogous sectors of the economy such as the political, religious, or educational, in which individuals are also being exposed to communication and influence processes (and, in this society, presumably have the right to choose which of them they will and will not accept), the intensity of the effort in commercial advertising is higher and more obvious. Compared to the advertising effort in support of a political candidate, for example, that supporting a brand of laundry detergent is likely to have both more funds devoted to it, and to be delivered on a highly repetitious and continuous, rather than an intermittent, basis. There are thousands of brand "candidates" being advertised which leads both to a high concentration of economic resources devoted to the activity as well as an increased opportunity for a wide range in the quality of the messages associated with it. Mass taste, for many reasons, is necessarily a large part of the whole.

People tend to form strong opinions about advertising also for what it represents—it has a high "symbolic" value. At one level, it is perhaps the most visible manifestation of a capitalistic system. It has been described as the natural evolutionary consequence of a free market system—a system in which, on the one hand, the seller is comparatively free to cajole, convince, or persuade the buyer to accept his wares, and, on the other, the buyer is free to accept or not accept them. Disagreement then stems from basic differences

[1] This viewpoint was expressed by the eminent British philosopher-historian, Arnold Toynbee, who has stated: "The destiny of our Western civilization turns on the issue of our struggle with all that Madison Avenue stands for more than it turns on the issue of our struggle with communism" [65].

[2] Wallis chooses excerpts from Kenneth E. Boulding, *Economic Analysis*, and Paul A. Samuelson, *Economics: An Introductory Analysis*, to illustrate his points, concluding that "The passage from these two authors reflect discreditably on economics as a science, by making haphazard use of unsubstantiated assumptions about facts, of innuendo, and of rhetorical questions to evoke impressions and attitudes. They come distressingly close to hidden persuasion, hucksterism, or propaganda" [63:xiv]. Concerning the relevancy of such literature for public policy issues, Holton has observed: "Despite the extensive literature on consumer demand which economics has produced, surprisingly little of it deals with those aspects of demand which are relevant to a better understanding of . . . current public policy issues" [27].

[3] He also notes that criticisms of advertising are often associated with periods in which the business system is generally under close scrutiny such as during depression years.

[4] In 1969, the total volume of advertising expenditures in the United States was estimated to be approximately $19 billion. The largest agency, The J. Walter Thompson Company, increased its billings by $100 million to a record total of $736 million. One company alone, Proctor & Gamble, spent over $128 million in just three advertising media [1]. The International Advertising Association has reported that over $6 of every $10 of the world's advertising expenditures are spent in the United States. In 1968, this averaged $89.56 for each U.S. citizen. Switzerland was second at $67.76 per person, and Nepal last with .05¢ per person.

in political attitude concerning how an economy should operate. Those who believe in laissez faire and free market principles tend to support advertising for the vital role it plays in a mass consumption society. Those whose leanings are more towards "command-type" or socialist economies, tend to reject advertising as concentrating too much power in one sector, misallocating national resources to the private sector at the expense of the public sector, and as fulfilling the goals of the seller at the expense of the buyer. Many disagreements on specific aspects of advertising can be related to more fundamental disagreements on political beliefs.

At another level, it might be said that people disagree on the basic worth of marketing and selling activities of all kinds. Buyers should need no persuasion in coming to a rational determination of what is good for them. In the extreme, they really should require no information other than what they gain from using the product. Thus for the production-minded classicist, be he manager or academic, marketing activities are often seen as an unnecesary "cost" of doing business. The counter argument, from the viewpoint of the supporters of marketing and advertising, is that it adds values to a product—in the economist's terminology, it adds "time, place, and possession utility." It is nevertheless interesting to observe that the discussion of the utility added by advertising in these terms has received no great concentrated intellectual attention.

A third prerequisite to the controversial nature of the subject lies in the nature of the activity itself. Although there is disagreement on the definition of advertising, a popular version is that it is "controlled, identifiable persuasion by means of mass communication media" [67:8]. The key word that distinguishes it from many classical economic definitions is "persuasion." Supporters of advertising argue that if it does not persuade or, in some way, communicate with the potential purchaser it is economically wasteful. Without some kind of behavioral effect on the buyer's part, the resources invested could be put to better use elsewhere. Being both ubiquitous and persuasive, advertising is thus purposively designed to "disturb" large sections of the population in whatever way seems appropriate. Apart from the legal boundaries on such activities (on which people also disagree), it should be emphasized that this is yet another possible source of discontent with advertising. Much psychological theory suggests that individuals prefer a stable, consistent, and predictable world rather than a dynamic, disturbing, and changing one, and advertising is much more associated with the latter than with the former.[5]

A fourth point which might be considered a necessary prerequisite to controversy on any subject is that there is either no factual evidence existing for much of what people disagree upon in advertising, and/or in many cases it is impossible to obtain. Without such evidence, individuals tend to believe what they want to believe. The concluding lines of a recent promotion textbook make the point. The authors, reflecting on the economic, social, and control areas of disagreement in advertising, state: "In each area of disagreement, the available factual evidence prohibits an objective preference for one point of view or another. Consequently, John Q. Public tends to believe what he finds it convenient to believe" [36: 355]. It is particularly true for those issues of advertising which are "social" rather than "economic" in nature. In an eloquent summary of the problems of determining the effects of a societal institution or its activities on the well-beings of its members, Bauer states: "For many of the important topics on which social critics blithely pass judgment, and on which policies are made, there are no yardsticks by which to know if things are getting better or worse [5: 20].

This point relates to the broader question of the tendency for protagonists to either praise or condemn the advertising industry itself. Advertising is treated as some coherent whole in which the profession, or those intelligent or stupid enough to be associated with it, are summarily supported or condemned. The reader might be reminded that any profession has its strengths and weaknesses—its "good" people and its "bad" people—and this is certainly true in the case of advertising. It is difficult to make a strong case that the activities associated with a profession in one aspect of a democratic system are necessarily any more reprehensible than those in another. Is it morally any more acceptable that a lawyer present to the best of his ability a defence for a "known murderer" than for an advertiser to attempt the "manipulation" of a group of consumers for the purpose of having them purchase his client's product? Questioning whether we can even talk about advertising as a meaningful category for analysis, Loevinger has stated:

> Suppose you ask the same set of questions regarding an equally broad category—mathematics. Is mathematics essential to our daily life? Yes. Will it raise our standard of living? I guess so. Does it result in better products? I certainly think it does. Does it present a true picture of the universe? Well, yes, sometimes, and sometimes not. Does it insult our intelligence? I wouldn't say that. Does it persuade? Yes it does . . . You could ask the same questions about the social impact of medicine or law.[6]

There are many other related conditions that might be cited as prerequisites to discontent in advertising, but these should suffice to highlight those on which much of the controversy rests. In the next section, some impression of the scope of social issues can be gained by observing the range of perspectives which have been brought to bear on the subject, and the literature which they have generated.

PERSPECTIVES ON THE ROLE OF ADVERTISING

It might be said that more literature exists on the subject of advertising and society in the form of speeches, magazines, trade journal opinion, and governmental documents than in formal academic textbooks or journals. This stream of commentary has come from a wide range of social, political, religious, and economics leaders and thinkers. Even presidents and prime ministers have taken positions or issued pronouncements of one kind or another on the subject.[7]

The literature on advertising that exists in textbook form can be arranged into "economic," "social" and "managerial" viewpoints. One might well extend this to include classic works by historians and religious leaders represented, for example, in:

Otis Pease, *The Responsibilities of American Advertising* (New Haven: Yale University Press, 1958).

David M. Potter, *People of Plenty* (Chicago: The Chicago University Press, 1954). See also *People of Plenty: Economic Abundance and the American Character*, 1965.

Rev. Francis X. Quinn, ed., *Ethics, Advertising, and Responsibility* (Westminster, Md.: Canterbury Press, 1963).

Economists have treated the subject either in the context of economic theory or as worthy of specific attention throughout the history of economics. Some early representative samplings from this literature are:

Frank P. Bishop, *The Economics of Advertising* (London: Robert Hale, 1944).

Neil H. Borden, *Advertising in Our Economy* (Homewood, Ill.; R. D. Irwin, 1945), and *The Economic Effects of Advertising* (Homewood, Ill.: R. D. Irwin, 1942).

Lewis Carr, *The Uneconomics of Advertising* (London: Wishart & Co., 1932).

Paul T. Cherington, *The Consumer Looks at Advertising* (N.Y.: Harper & Bros., 1928).

Frank H. Knight, *The Ethics of Competition* (London: G. Allen and Unwin, 1951).

Alfred Marshall, *Industry and Trade* (London: Macmillan & Co., Ltd., 1923).

Arthur Pigou, *The Economics of Welfare* (London: McMillan, 1924).

Joan Robinson, *The Economics of Imperfect Competition* (London: MacMillan, 1948).

Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (N.Y.: Harper & Row, 1943).

Roland S. Vaile, *Economics of Advertising* (N.Y.: The Ronald Press, 1927).

Floyd L. Vaughan, *Marketing and Advertising: An Economic Appraisal* (Princeton University Press, 1928).

Thorstein Veblen, *The Theory of Business Enterprise* (N. Y.: Charles Schribner's Sons, 1904).

There are a number of serious economic studies published in more recent years, many of which are based upon some systematic and rigorous analysis of economic data, and which collectively treat the broad question of the economic effects of advertising. The following sampling is representative of the group:

Jules Backman, *Advertising and Competition* (N.Y.: New York University Press, 1967).

James M. Ferguson, *The Advertising Rate Structure in the Daily Newspaper Industry* (Englewood Cliffs, N.J.: Prentice-Hall, 1963).

O. J. Firestone, *The Economic Implications Advertising* (London: Methuen & Co., Ltd., 1967).

John K. Galbraith, *American Capitalism* (Boston: Houghton-Mifflin, 1956). See also *The Affluent Society*, 1958, and *The New Industrial State*, 1967, by the same author.

Ralph Harris and Arthur Seldon, *Advertising in a Free Society* (London: Institute of Economic Affairs, 1959). See also *Advertising and the Public*, 1962, by the same authors.

Nicholas Kaldor and Rodney Silverman, *A Statistical Analysis of Advertising Expenditures and of the Press* (Cambridge: The University Press, 1948).

Edward A. Lever, *Advertising and Economic Theory* (London: Oxford University Press, 1947).

Alfred R. Oxenfeldt, *Economics for the Citizen* (N.Y.: Holt, Rinehart and Company, 1953).

Kristian Palda, *The Measurement of Cumulative Advertising Effects* (Englewood Cliffs, N.J.: Prentice-Hall, 1964).

George J. Stigler, *The Intellectual and the Market Place* (N.Y.: The Free Press of Glencoe, 1963).

Walter Taplin, *Advertising: A New Approach* (Boston: Little Brown, & Co., 1960).

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[5] Critics may nevertheless find it surprising that empirical studies done in the United States and Britain on how people feel about advertising generally show that they are neither very concerned about it, nor do they generally express negative opinions about it, or see it as "threatening." For a recent comprehensive treatment of this topic see Bauer and Greyser [6].

[6] A remark made at the Berkeley Symposium on the Social Role of Advertising, May 16–17, 1968. See also Lee Loevinger, "Mass versus Media—Who Controls." A speech delivered at the University of Wisconsin, February 1969 (available from the Hogan and Hartson Company, Washington, D.C.).

[7] In a recent advertising textbook, for example, the author presents views of Sir Winston Churchill, President Franklin Delano Roosevelt, Adlai S. Stevenson, David Potter, Aldous Huxley, David Reisman, John Kenneth Galbraith, Vance Packard, advertising agency executives Arthus E. Meyerhoff and David Ogilvy, and a Soviet cultural magazine [18:5–7].

In addition to these book-length treatments, economists have published numerous journal articles reporting empirical findings on research into the economic effects of advertising. The works of Telser [64]; Stigler [62]; Kaldor [32]; Comanor and Wilson [14]; and Preston [51] are particularly noteworthy.

Studies that deal with social aspects of advertising from a wide variety of other perspectives run the full range from popular novels to serious analytical treatments. The following are of historical interest:

George French, *Advertising; The Social and Economic Problem* (N.Y.: The Ronald Press, 1915).

Thomas S. Harding, *The Popular Practice of Fraud* (London: Longmans, Green & Co., 1935).

Edward S. Hole, *Advertising and Progress: A Defence by E. S. Hole and a Challenge by John Hart* (London: Review of Reviews, 1914).

Ralph M. Hower, *The History of an Advertising Agency* (Cambridge, Mass.: Harvard University Press, 1949).

Joseph Jastrow, *The Betrayal of Intelligence, A Preface to Debunking* (N.Y.: Greenberg, 1938).

Howard J. Kenner, *The Fight for Truth in Advertising* (N.Y.: Round Table Press, 1936).

Marguerite Lyon, *And So To Bedlam, A Worm's Eye View of The Advertising Business* (Indianapolis, N.Y.: Bobbs-Merrill, 1943).

Joseph B. Matthews, *Guinea Pigs No More* (N.Y.; Covici, Friede, 1936).

Alexander McQueen, *The Story of Advertising* (Chicago: Standard Rate and Data Service, 1944).

Clyde R. Miller, *The Process of Persuasion* (N.Y.: Crown Publishers, 1946).

Rachel L. Palmer and Isidore M. Alpher, *40,000,000 Guinea Pig Children* (N.Y.: The Vanguard Press, 1937).

Frank S. Presbrey, *The History and Development of Advertising* (N.Y.: Doubleday & Co., 1929).

Carl F. Taeusch, *Policy and Ethics in Business* (N.Y.: McGraw-Hill Book Co., Inc., 1931).

Denys Thompson, *Voice of Civilization; An Inquiry into Advertising* (London: F. Muller, 1944).

A representative sampling from the 1950's includes:

John K. Galbraith, *The Affluent Society* (Boston: Houghton, Mifflin, 1958).

John Gloag, *Advertising in Modern Life* (London: William Heinemann, 1959).

Walter Goodman, *The Clowns of Commerce* (N.Y.: Sagamore Press, 1957).

Frank R. Leavis and Denys Thompson, *Culture and Environment: The Training of Critical Awareness* (London: Chatto & Windas, 1950).

K. W. Kapp, *The Social Costs of Private Enterprise* (Cambridge, Mass.: Harvard University Press, 1950).

Fred Manchee, *The Huckster's Revenge: The Truth About Life on Madison Avenue* (N.Y.: Nelson, 1959).

J. A. M. Merloo, *The Rape of the Mind* (Cleveland, Ohio: The World Publishing Co., 1956).

E. J. Murphy, *The Movement West: Advertising Impact or the Building of the West and the Years Ahead* (Denver: Sage Books, 1958).

Martin Mayer, *Madison Avenue, U.S.A.* (N.Y.: Harper, 1958).

Paul Mazur, *The Standards We Raise* (N.Y.: Harper & Bros., 1953).

Vance Packard, *The Hidden Persuaders* (N.Y.: David McKay, 1957).

David Riesman, *The Lonely Crowd* (New Haven, Conn.: Yale University Press, 1950).

Ernest C. Sommerlad, *Mightier Than the Sword: A Handbook on Journalism, Broadcasting, Propaganda, Public Relations and Advertising* (Sidney: Angus & Robertson, 1950).

Poyntz Tyler, Ed., *Advertising in America* (N.Y.: H. W. Wilson, 1959).

James P. Wood, *The Story of Advertising* (N.Y.: Ronald Press, 1958).

and from the 1960's:

Raymond A. Bauer and Stephen A. Greyser, *Advertising in America: The Consumer View* (Cambridge: Graduate School of Business Administration, Harvard University, 1968).

Leo Bogart, *Strategy in Advertising* (N.Y.: Harcourt, Brace & World, 1967).

Steuart H. Britt, *The Spenders* (N.Y.: McGraw-Hill, 1960).

Joseph Bensman, *Dollars and Sense: Ideology, Ethics, and the Meaning of Work in Profit and Nonprofit Organizations* (N.Y.: Macmillan, 1967).

David Caplovitz, *The Poor Pay More* (Glencoe, Ill.: The Free Press, 1963).

Buzzi, Giancarlo, *Advertising: Its Cultural and Political Effects* (Minn.: University of Minnesota Press, 1968).

Thomas M. Garrett, *An Introduction to Some Ethical Problems of Modern American Advertising* (Rome: Gregorian University Press, 1961).

Curt Gentry, *The Vulnerable Americans* (Garden City, N.Y.: Doubleday, 1966).

Mack Hanan, *The Pacifiers: The Six Symbols We Live By* (Boston: Little, Brown, 1960).

Jules Henry, *Culture Against Man* (N.Y.: Random House, 1963).

John Jobson, *The Influence and Techniques of Modern Advertising: Three Cantor Lectures*, Reprinted by The American Association of Advertising Agencies, New York, 1964.

Richard L. Johannesen, ed., *Ethics and Persuasion* (N.Y.: Random House, 1967).

Warren G. Magnuson and Jean Carper, *The Dark Side of the Market Place: The Plight of the American Consumer* (Englewood Cliffs, N.J.: Prentice-Hall, 1968).

Sidney Margolius, *The Innocent Consumer vs. The Exploiters* (N.Y.: Trident Press, 1967).

Marshall McLuhan, *Understanding Media: The Extensions of Man* (N.Y.: McGraw-Hill, 1966).

Bernard D. Nossiter, *The Mythmakers: An Essay on Power and Wealth* (Boston: Houghton-Mifflin, The Riverside Press, 1964).

David Ogilvy, *Confessions of an Advertising Man* (N.Y.: Dell Publishing Co., 1963).

Vance Packard, *The Waste Makers* (N.Y.: David McKay, 1960).

Joseph J. Seldin, *The Golden Fleece: Selling the Good Life to Americans* (N.Y.: Macmillan, 1963).

Ralph L. Smith, *The Health Hucksters* (N.Y.: Crowell, 1960).

Jeremy Tunstall, *The Advertising Man in London Advertising Agencies* (London: Chapman & Hall, 1964).

Walter Weir, *Truth in Advertising and Other Heresies* (N.Y.: McGraw-Hill, 1963).

Alexander Wilson, ed., *Advertising and the Community* (N.Y.: Augustus M. Kelley, 1968).

There are also a number of studies in mass communications which treat the question of social responsibility and mass communications in general rather than advertising in particular. For example:

Kyle Haselden, *Morality and the Mass Media* (Nashville, Tenn.: Broadman Press, 1968).

Theodore Peterson, Jay W. Jensen and William L. Rivers, *The Mass Media and Modern Society* (N.Y.: Holt, Rinehart & Winston, 1965).

William L. Rivers, *The Opinionmakers* (Boston: Beacon Press, 1966).

William L. Rivers and Wilbur Schramm, *Responsibility in Mass Communication* (N.Y.: Harper & Row, 1969).

Harry J. Skornia, *Television and Society* (N.Y.: McGraw-Hill, 1965).

Karl E. Warneryd and Kjell Nowak, *Mass Communication and Advertising* (Stockholm: The Economic Research Institute, Stockholm School of Economics, 1967).

In glancing over this list, one cannot help but be impressed with the degree to which with a few exceptions, the literature on social issues of advertising has been largely written for a mass audience and popular appeal rather than pursued as a worthwhile area of inquiry within basic behavorial science disciplines. Potter's [50] observation that "analysts of society" have largely ignored the topic seems particularly true if one restricts his view to the works of scholars in basic behavioral disciplines.[8] There are, of course, many studies in psychology, sociology, and anthropology which are relevant to the questions of cultural values and attitudes associated with the social role of advertising, but make no explicit attempt at examining the connection between them. The works of Katona [33;34], Parsons and Smelser [49], Lazarsfeld and Merton [38], and Lipset [39] are notable in this regard, particularly as they relate to psychological or sociological discussions of the roles and functions of societal communication systems. One could also cite other examples from the mass communications and journalism literature which bear on the question of social issues in advertising [37; 42; 44; 56], and in particular a number of studies on the impact of television [7; 9; 22; 57; 60], but the focus in these studies is either journalism or television in general rather than commercials and advertising in particular. Also, apart from the absence of a well developed analytical or theoretical framework from which such questions might be viewed in a behavioral science perspective, there is, in contrast to the economic literature, a marked absence of empirical work.

Much of the theoretical and empirical work of behavioral scientists in advertising falls under the third category—that literature which is written from a "managerial" perspective, and is largely applied in orientation. In sharp contrast to the lack of empirical studies on advertising in basic disciplines, the volume and sophistication of behavioral work in exploring questions of advertisiing effects on managerial interests like brand awareness, attitude, and preference is considerable. Theoretical development, particularly in extending the understanding of the process of consumer decision making, in the past decade [28;48] is both sophisticated and extensive. There is nevertheless a comparatively small amount of this work that might be said to address itself directly to the subject of the "social" role or effects of advertising.

Basic textbooks on advertising do treat relevant social issues, usually as descrip-

[8] For example, in a comparatively recent text on social change [58], a series of fourteen essays are presented concerning population, economic growth, labor force and employment, knowledege and technology, politics, family structure, religion, consumption patterns, leisure, national health status, schooling, social stratification, and welfare. Advertising as a significant social force or an important unit for study is not considered. Concerning the lack of sociological contributions to the study of the consumer, Glock and Nicosia [23:359–390] point out that they have been impeded by: "(1) historical factors which have made psychology and economics more visible than sociology to the business community; (2 the prevailing perception in the business community of its needs for research on the consumer; (3) differences in how the three disciplines relate to these perceived needs; and (4) differences in prevailing attitudes among sociologists, economists, and psychologists about engaging in consumer research" [23:381].

tive reviews of the controversies that relate to "economic" and "social" questions.[9] The pattern of this treatment is highly consistent, usually one or two chapters of the text being devoted to the topic, and often a third chapter on the question of advertising control—whether by government or industry self-regulation. The nearest thing to book-length treatments is the growing collection of reading books on subjects such as the role of advertising [4;53;54;68], consumerism [15], social issues in marketing [52], and the environment of marketing [26].

The literature and research on managerial aspects of marketing and advertising in the United States is best described as "voluminous." There are thousands of studies, millions of dollars of academic and commercial research expenditure, and a vast quantity of published information. That some additional attention and effort might be profitably directed by those with a behavioral science orientation to some less immediately apparent managerial concerns is a theme pursued at greater length in a later section. We first consider the notion of "social issues" from the viewpoint of "economic" and "other" perspectives.

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TELEVISION ADVERTISING AND YOUTH: A BEHAVIORAL SCIENTIST'S PERSPECTIVE

(By Scott Ward)

The purpose of this symposium, as I understand it, is to give you the opportunity to explore a number of topics in communication, from a number of points of view. After hearing parts of Professor Rosenfield's paper, I can assure you that this purpose will be served.

Recalling my days as an undergraduate speech major at the University of Wisconsin, it seems that you're supposed to start speeches with a statement of your objectives—so here are mine. I have three objectives:

First, I want to tell you something about how a behavioral scientist—if I may boldly stereotype myself (for better or for worse)—approaches a specific mass communication problem. Second, I want to tell you about the planning, design, and execution of *research* to investigate that problem. And finally, I want to mention some of the problems of applying behavior research findings in public policy decisions.

The mass communication problem may be simply stated as follows: What are the effects of television advertising on young people?

Well, how does a behavioral scientist approach this problem? A first step is to "survey the environment," so to speak, in order to estimate the importance of the problem, to find out what's already known, and to estimate what benefit empirical research would have in clarifying—not necessarily solving—the problem.

In the case of television advertising and children, one doesn't need to survey the environment too far. In this era of "consumerism," lots of people are up in arms about the subject, picturing the "hidden persuaders" manipulating tots in front of the tube to go pester their folks to buy candy and cars and toys. The roots of this Machiavellian model of human behavior can be traced to concern by some people that television "causes" all sorts of social maladies. After all, the juvenile crime rate has steadily increased since the introduction of commercial television—and the reason might be all the violence on television. Actually, of course, it's hard to prove one way or the other. A lot of other things have changed also, since television was introduced; the population, social density, and population mobility, for example. These things might have a much stronger effect on producing juvenile delinquents than television.

The burden of communication research evidence over the past 20 years or so—as Klapper and Bauer point out—is that television is not an all-powerful force . . . a "necessary or sufficient cause of audience effects."

However, can we let television off as a "reinforcer of existing tendencies," as Klapper would have us believe? Advertisers are really in a bind. Whenever they reply to consumerist groups, such as Nader's Raiders, they fall back on this communications research point of view, which suggests that the media don't influence kids. However, when they turn around and talk to their stockholders, they must tell them that the media have *some* effects, or how could they justify spending $20 million annually in advertising to kids on Saturday mornings alone? Another factor which adds to the importance of the question of TV advertising's effects on children is the fact that kids see an awful lot of it. It might be hard to believe, but commercials are the number three content category, on TV, behind movies (32% of on-air time), and comedy-variety shows (17% of on-air time) but ahead of action and eight other categories of TV content.

Anyhow, in "surveying this environment," the behavioral scientist hears people say that advertising to kids is just awful, or at least immoral, and he hears advertisers say that it doesn't work anyhow, and besides, how would you run the networks without advertising? Rule number one for the behavioral scientist is to listen to the controversies surrounding a problem, but don't get involved. I do believe that real problems in objectivity in aproaching research, can arise from taking sides. You have to remain value free—maybe it can't be done, but you've got to try.

A second step the behavioral scientist takes in approaching a problem such as this one, is to narrow the problem. What kinds of effects are we talking about? Short-run effects? Long-run effects? Effects on attitudes, or behavior, or on Mom and Dad?

A third step in approaching the problem is to search for relevant theory, and previous research. The importance of this step is beyond the scope of this paper. Suffice it to say that the behavioral scientist seeks an abstract framework in which to conceptualize his specific research. It can help to guide his efforts, and hopefully, a vehicle for ultimate accumulation of our scientific knowledge of human behavior.

Let me say a couple more things about the behavioral scientist's point of view, and then I'll tell you what I did, and what I found.

First, the behavioral scientist is interested in understanding, and predicting human behavior. As such, he makes the implicit assumption that human behavior is not random—that is, within probabilistic limits, human behavior is lawful, in which the same way as natural laws in the physical environment.

Second, behavioral scientists apply scientific methods to their research. Again, I am straining the limits of the scope of this paper. But I want to make the point that this is just one of several alternative approaches to problems. A philosopher, with an allegedly great mind, could pontificate about the problem. A parent could watch her kids watching TV for years, in the absence of any scientific procedures, and publish the results. And the behavioral scientist uses hypotheses and surveys and experiments—and other allegedly valid and reliable tools—to approach problems. Perhaps no single approach is "best"—probably all are desirable in examining complex kinds of problems, like human behavior.

To this point, I have been discussing in general terms, the behavioral scientists approach to a communication problem. Now let me get specific about our particular approach to the particular communication problem of understanding how commercials affect young viewers.

Clearly, there are many different kinds of effects of commercials. One important effect—though it is viewed as important for different reasons by marketers and by governmental policy-makers—is the extent to which commercials make kids want things, or make them pester their parents for them, or make them run out and buy things they see advertised on television.

Now, the phrase "make them buy" implies that I am subscribing to the social critics view of mass communication media—as all-powerful forces, capable of at least triggering a kid to buy something he sort of wants to buy anyway; perhaps capable of persuading a kid to buy something he initially didn't have a desire to buy. Television advertising, is, after all, the business of stimulating human wants, without respect to age.

While this is the effect we might most like to understand, it is also the effect that is virtually impossible to understand very well. After all, television advertising is just one of a host of variables which may influence a young person to want something. He may want something because the package is appealing; or because his friends have the thing—in short, you just can't isolate the effect of television advertising from all the other stimuli which motivate kids to want things.

There is also the issue of defining "persuasive effects" of commercials. If I walked up to you, and asked you where the washroom was, and you told me, would you say that you had persuaded me? Probably not. Similarly, commercials can simply inform viewers about some product, and then they buy it. This is something quite different from the "hidden persuaders" notion of effects of television.

This was an initial step in our thinking. Since we can't isolate the effects of commercials on overt behavior—in this case, buying—and since we really can't separate out informational effects from persuasive effects—then what we should attempt to understand are the effects of commercials on what a child learns—about being a consumer, about relationships with people, about the social significance as well as the objective chars of material possessions, and so forth. (Rosenfield's comments.)

It is astonishing how little we know about what children *learn* from television, and I want to make an important point about this. The view expressed by Klapper, and by many mass communication researchers, is that the media are not very powerful—they rarely convert people's views in and of themselves. Behavioral scientists for years, have examined persuasive effects of television—they have measured attitude change, and have rarely found much, so they conclude that the mass media are not very powerful.

But television is not supposed to be persuasive, as Mr. Agnew has reminded us. Moreover, young people are in the process of attitude formation—they do not often have strong, fixed attitudes about things. Thus, to look for persuasion, or attitude change, as a criterion for TV's effectiveness is a mistake. Just because you don't find any does not mean that TV has no effect—you are just looking for the wrong effect. Rather, attention should be devoted to understanding attitude formation, and other effects of TV on learning. Probably the biggest single impetus to this sort of study in recent times has been the advent of the widely—acclaimed "Sesame Street" series, which was hatched after much research of what children learn from the tube.

We are taking several research approaches to understanding learning from commer-

[9] It is not unusual in these texts to present reference literature as a series of proponent and opponent views. For example, see Kernan et al. [36:348].

cials—mothers unobtrusively watching their kids watch TV, and coding their behavior and comments during commercials, clinical group interviews following Saturday morning watching—to mention two current projects.

The research I want to tell you about today is from a survey of 1,094 adolescents—7th–12th graders. The survey was done via self-administered questionnaires through randomly selected classrooms in the Prince Georges County, Maryland School District. While the data may not be generalized to the American population, Prince Georges County provides a fairly good representation of the demographic characteristics of the entire country.

The county ranges from fringe ghetto areas to Chevy Chase. Some of the questions were designed to gather information about descriptive attitudes of these teen-agers toward commercials. These attitudes are a form of learning—and one which influences other aspects of learning, and behavior. (Slide 1) We asked the teen-agers to describe the commercial which they thought was the best on television, and why they liked it, and the commercial they thought was the worst on television, and why they dislike it. As you can see, the questions are "open-end," so we didn't force our own criteria by means of some check-list. Typically, the students wrote down a brand name, such as Alka-Seltzer, or Dodge Dart and we coded the answer according to the product category. The results are as follows: (Slide 2)

The adolescents had a wide variety of "liked" television advertising. The number one classification was drug and patent medicine advertising, as you can see, followed by automobile and by soft drink advertising. (Slide 3) When we asked them why they liked the TV ads that they cited as "best," the adolescents indicated that they like those that are funny, and those that are straightforward. It seems these adolescents demand more than just being entertained. (Slide 4)

As to "worst" television advertising—the adolescents were more concentrated in their responses. Seventeen per cent of them singled out cigarette advertising, with drug and patent medicine advertising a distant second. It's interesting to note that drug and patent medicine advertising was also the most liked category—apparently adolescents either love it or hate it. (Slide 5)

Concerning the reasons adolescents dislike commercials, 22% of them said they disliked television advertising because it's stupid—it insults the intelligence. Other reasons, as you can see—TV advertising is seen as fake, and hypocritical. (Slide 6)

Now when we cross-tabulate the data, we can see why teenagers like and dislike TV commercials in product classifications that they specify. The two most important findings here are that the adolescents like drug and patent medicine advertising because they see it as funny. But on the more serious topic of the anti-smoking advertising, they like this advertising because they see it as straightforward. And not surprisingly, adolescents dislike cigarette advertising because it's seen as hypocritical, in bad taste, and so forth. The strength of the response to cigarette advertising suggests something very important, I think—adolescents aren't fooled by this advertising—they are rather unequivocal in their negative response. (Slide 7)

One other thing that is fairly interesting in these descriptive data: The criteria adolescents use for judging "worst" advertising seem to change with age. The younger adolescents dislike TV advertising in terms of rather substantive criteria—they use terms like stupidity, fake, hypocritical. The older adolescents, on the other hand, also employ these substantive criteria, but they have become "critics," too, also responding to stylistic characteristics of commercials—they comment on the acting, and on whether commercials are dull or not. (Out slide 7)

Now let me go beyond these descriptive data and dig a little deeper. Thus, far, we have simply described attitudes Now we wish to analyze relationships between an adolescent's attitudes toward television advertising and other aspects of his life. Through such analyses we may understand what factors influence the development of attitudes toward advertising,—a kind of learning—and the results of these attitudes on other aspects of learning. (Slide 8)

We first ask if attitudes toward advertising depend on an adolescent's social class. As you can see in this chart, as we go from lower to middle to upper social class, we find increasingly negative attitudes toward television advertising. We don't know as yet precisely why this relationship occurs. It may be that lower class adolescents *like* television commercials because they show products and life style these adolescents would like to strive for. Or it may be that upper class adolescents are most negative because their life environment includes most advertised things, and so television advertising is passé, or perhaps they feel that what is portrayed in advertising does not match their experience. (Slide 9)

Next we find a relationship between amount of television viewing and attitudes toward advertising. As you can see, the more the exposure, the more likely the adolescent will hold positive attitudes toward television advertising. I stated that as if high exposure leads to—or causes—the development of positive attitudes toward advertising. Actually, of course, we cannot be sure of the direction of causality. It may be that, because adolescents have negative attitudes, they watch less TV, or because they have positive attitudes, they watch more television. (Slide 10)

We also found an interesting relationship between intelligence and attitudes toward advertising. Adolescents high in intelligence like advertising more than less intelligent adolescents. Perhaps the more intelligent adolescents like the humor in television ads, or see them as "camp." (Out slide 10) For the statisticians among you, I can report that our data meet traditional confidence levels.

Now I have presented only a few main results, and I have omitted certain complexities of the data. But let me summarize to this point. (Slide 11) First, I would say that TV advertising is by no means a "Big thing" to teenagers. You can see this in the high number of adolescents who simply didn't respond to our questions about liked and disliked ads. When we asked some of them about it, they said they simply didn't have attitudes about television ads. This "low salience" finding parallels the finding for adult samples. Overall, however, when we asked about general attitudes toward television advertising, the adolescents were slightly negative.

When we sought to identify relationships between attitudes toward advertising and other aspects of the adolescent's life, we find positive attitudes related to amount of exposure, communication within the family about consumption matters, intelligence, and materialistic attitudes. Negative attitudes are associated with social class.

Now let me focus on this last finding for a moment. It's important, I think, to note that the teenagers do not respond to television advertising simply in terms of stylistic criteria. The fact that they use a variety of criteria to evaluate television advertising, above and beyond simply the criteria of humor, and so on, plus the fact that the adolescents are generally negative toward TV advertising, suggest that adolescents are not hapless victims of the tube. Rather, they are responsive audience members, with identifiable, and often substantive, likes and dislikes. (Out slide 11) So I would argue that the critics model of mass communications effects can be rejected. Television is not an all-powerful manipulator of adolescents. On the other hand, what we have seen so far indicates that there is certainly some learning going on. To this point, I have been discussing attitudes toward commercials as one kind of learning from television.

STOP FOR QUESTIONS

Now let me turn to other kinds of learning, which are somewhat more complex.

We examined four learning effects of television advertising (or "Dependent Variables") which are kinds of learning: recall of Commercial content, attitudes toward television advertising, materialistic attitudes, and effects on behavior—in this case, of course, buying behavior.

Operationally defined, these were measured in terms of various series of questions in different parts of our questionnaire. We measured recall via a series of 16 fill-in-the-blank identification items; our measure of attitudes in this case was a series of items, concerning overall liking or disliking, and attitudes about the truthfulness of advertising; "materialism" refers to a relative orientation of adolescents which emphasizes money and physical possessions as necessary for personal happiness and for social progress; and, finally, we asked adolescents to report if they felt that television advertising had influenced them to buy things (Out slide 12).

I won't go through the technical details of reducing and handling these data. Suffice it to say that we scaled the responses of adolescents on these four variables. Thus, we can talk about more or less recall, more or less materialistic attitudes, and so forth.

Now we ask, what factors might "cause" these learning effects? That is, what factors cause some adolescents to have positive attitudes toward advertising, others negative; for some adolescents to be highly materialistic and others anti-materialistic, and so forth. Previous research suggested three kinds of variables which might predict differences in these learning effects. These causal, or independent variables are: Demographic variables which, in effect, "locate" the adolescent in the social environment—that is, social class, available money, and intelligence. Second, communication variables—both amount of mass communication behavior—watching television—and interpersonal communication behavior—in this case, discussions within the family about consumption matters. Third, and most importantly, we examined the reasons or motivations of adolescents for watching television commercials. We were not content to know how long he sits in front of the tube—but we also want to know why he watches.

We previously asked students to write essays on why they watch or don't watch commercials. We culled these essays and found three central factors accounting for why adolescents watch commercials. We labeled these "social utility" reasons, "communication utility" reasons, and "vicarious consumption" reasons (slide 13). The social utility factor consists of items such as "I find out what kinds of people buy the things advertised," and so on, as you can see. Operationally, this factor refers to a motivation to watch commercials as a means of gathering information about life styles and behaviors associated with uses of consumer products. The second factor concerns watching commercials in order to provide a basis for later interpersonal communication—evidenced by items such as, "I watch commercials to give me something to talk about with my parents." Finally, the third factor was labelled "vicarious consumption." This refers to a motivation to watch commercials in order to identify with or vicariously experience attractive life styles, and/or

identify with attractive others shown in the commercials (slide 14).

Putting all of this together, the "model" we come up with looks like this. Essentially, we are interested in the effects of demographic and communication variables—"communication variables" including interpersonal communication within the family, and amount of television and print media use, and motivations for television commercial watching—the influence of these variables on four learning effects of television advertising—recall, attitudes, materialism, and effects on behavior.

Well, what did we find? First, we examine mean scores on our various scales. (Slide 16.) As you can see, junior high adolescents score higher on almost all of the independent, or causal variables that presumably influence learning. They watch more television, talk more in the family about consumption (they're around home more), and watch commercials for the various reasons more than the senior high adolescents. (Out slide 16.)

Now we dig a bit deeper with our data. (Slide 17.) For the survey technicians, we carried out a step-up regression analysis, after checking for linearity by examining Eta values. The data I will report are from analysis of Beta-weights, which are standardized partial regression coefficients. For the non-technicians, what I just said was essentially that, the data I'm reporting to you are the relationships between our independent (or causal) variables, one at a time, and our dependent variables. That is, we are isolating the most important variables in predicting differences in the dependent or learning variables—recall, attitudes, materialism, and effects on buying. By knowing these relationships, we can better understand the processes of learning from television advertising, how they interact with non-TV factors, and how they differ for younger and older adolescents.

Here's what we found. The processes were quite similar for younger and older adolescents in recall of television commercial content. The most important factors for both groups were intelligence, and exposure—to television and to print media. These factors are in order of importance, incidentally, so intelligence was more important than exposure in predicting differential recall of commercial content.

The processes are quite different for younger and older adolescents in forming attitudes about advertising, however. As you can see, watching commercials for social utility reasons was most important for junior high adolescents, along with TV exposure, while watching for vicarious consumption reasons, family communication, and social class, were important predictors of attitudes for older adolescents.

Social utility and vicarious consumption reasons were quite important in predicting materialistic attitudes. And, as you can see, family communication about consumption—an interpersonal communication event—and watching commercials for social utility reasons—a mass communications event—are important factors in predicting effects of commercials on buying behavior.

Well, what does it all mean? The most important findings, I think, are these. (Slide 18) First of all, if we simply examine the amount of exposure to television among adolescents we are not going to know very much. More important in this study, and I suspect generally, are the motivations for watching television. That is, we need to know about the *quality* of time spent in front of the tube, as well as the quantity. "Social utility" reasons are quite important, especially for younger adolescents.

They seem to be learning about connotative values of products and brands through advertising; about the kinds of people who use various products and brands; and, perhaps, about life-styles which are associated in advertising with using particular products and brands. And these "social utility" reasons for watching commercials are related to specific learning effects—especially attitudes toward television advertising, and materialistic attitudes.

Finally, I repeat: we find the "hidden persuaders in advertising is overstated; television advertising does not operate in stimulus-response fashion, magically inducing adolescents to buy things they see on television. Other factors, such as the family group mediate the impact of television advertising.

For the older adolescents, family communication about consumption plays an increasingly important role, particularly in buying behavior, and in determining attitudes toward advertising. While younger adolescents seem to talk more with parents about consumption, this intra-family communication is more important for older adolescents. Notice, too, that, by older adolescence, we find a negative relationship between intelligence and materialism—the more intelligent the adolescent, the less materialistic, and vice-versa.

In sum, we have found out some things about what adolescents learn from television commercials. One implication of this research project, and others in the field of television and social behavior, is to provide informational inputs to governmental policy-makers, such as the Federal Communications Commission. But one thing about behavioral research is the translation from research findings to social action is a difficult one indeed—this seems to be the point of the Moynihan article; a more specific case is offered by Moynihan in his book, Maximum Feasible Misunderstandings, in which he outlines the failure of Community Action Programs.

There are all sorts of politics intervening between research and action; and only rarely does specific research like this integrate the specific findings with the broader social context.

Research like this cannot dictate policy; at best, it can be like a roadmap, suggesting landmarks to guide you. Hopefully, the map and the landmarks will provide a more complete picture, as behavioral research accumulates, and our knowledge expands about mass communications problems.

Consumer Behavior, Market Imperfections, and Public Policy

(By Richard H. Holton)

Economists pursuing the study of consumer demand during the past decade or so have directed their attention primarily to those aspects of the subject which are significant in macro-economic models or in understanding the nature of the demand for particular categories of goods and services. Thus the savings behavior of consumers is of continuing interest because of the implications especially for short-range forecasting of economic conditions. Consumer expectations and buying plans are also studied with care. The characteristics of consumer demand for housing, for automobiles and for other specific commodities have been the subject of considerable analysis as well.

This substantial body of literature, however, has been of little assistance in the recent public policy discussions of one important set of problems in consumer markets. Since 1964 Congress has demonstrated particular interest in what is loosely referred to as "consumer legislation." Hearings, threats of hearings and actual legislation have drawn attention to "Truth-in-Lending," "Truth-in-Packaging," automobile safety, tire standards, insurance, pharmaceuticals and other topics bearing on the performance of consumer markets. Despite the extensive literature on consumer demand which economists have produced, surprisingly little of it deals with those aspects of demand which are relevant to a better understanding of these current public policy issues.

This situation exists because little attention has been directed to what I will call here, for lack of a better term, the quality of consumer demand. By "quality" I mean the nature and extent of the information base which the consumer brings to bear on a given purchasing decision. For certain consumers in certain purchasing situations the buyer may have internalized nearly perfect and complete information; such cases may be rare, but they are at least conceivable. The spectrum of cases can run from this ideal version to the opposite extreme, in which the individual faces a purchasing decision with limited and/or erroneous information in mind. If all markets for consumer goods and services were marked by identical supply conditions, i.e., by identical characteristics of market structure among sellers, differences in the quality of demand across these markets could nevertheless lead to quite different results in terms of market performance.

Studies of market structure and performance in consumer goods industries typically consider features of the supply side of the market rather more carefully and completely than the demand side of the market. The argument in this paper is that by considering the quality of consumer demand across markets, one can understand why certain markets are likely to yield results which approximate the competitive model more closely in some cases than in others.

The purpose of this paper is to explore the question of the quality of consumer demand across markets and to develop some tentative conclusions about the impact of the quality of demand on market performance. This exploration will, it is hoped, help explain why the fabricators of public policy are concerned more about the performance of some consumer markets than others. Finally, certain implications for the design of public policy are suggested. No doubt the arguments along the way call for more qualifications that will be found in the material which follows. Full documentation would require far more extensive research into the vast literature on consumer behavioral phenomena than I have attempted, and would lead to a paper far longer than is appropriate here. Nevertheless it is hoped that the discussion is suggestive of questions which might be pursued further.

I

The body of information which the consumer brings to bear on a given purchasing decision is built up from inputs from a variety of sources. The consumer's own experience is perhaps the most obvious of these. Word-of-mouth information from family, friends and acquaintances is often of great importance as well. Certainly advertising, defined broadly to include not only advertising through the usual media but also point-of-purchase advertising, is often of major consequence. In some situations, advice from the retail clerk figures in the purchasing decision. Finally, some consumers make use of various neutral source materials such as the consumer magazines and government reports.[1]

Each of these sources of information is clearly subject to certain weaknesses. One's own experience is likely to be limited, as is that of the people providing the word-of-mouth advice and counsel. The marketer-dominated information is intentionally biased. Even the neutral sources are often subject to question. The consumer rating services work with very small samples of the items tested; the weights they attach to different attributes of the product may differ from the weights the buyer might assign; design features subject to criticism might be altered by the manufacturer soon after the item is rated; and ratings often become ob-

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Footnotes at end of article.

solete as whole new product lines are developed.

A rough but useful distinction can be drawn between the nature and quality of the information which the consumer has assimilated from past experience as he considers a purchasing decision prior to additional search, and the nature and quality of the information which is likely to result from any additional search. At the time the specific purchasing decision is being made, the buyer consciously or unconsciously brings to bear on the decision a set of messages acquired in the past from the various sources of information influencing his decision. These can be drawn from the totality of his past experience and would include not only his experience with the brand being considered but also his impressions of that brand and its competitors gained from past exposure to advertising and the myriad other sources of information. With a memory less than perfect, the purchaser will not even be able to bring to bear the complete past experience, since forgetfulness will have screened out certain of the past information.[2]

If the consumer considers search worthwhile, he may engage in some shopping about before the specific purchase is made. The consumer in other words may, by incurring some costs, improve the state of the information at his disposal.

Let us consider first the quality of consumer demand if the state of information is limited to that in the mind of the consumer when the purchase is first considered, i.e., prior to any search. Under some circumstances this information can be quite complete. This would seem to be the case when four conditions are met, namely:

1. The item is bought frequently by the specific buyer in question;

2. The quality and performance characteristics of the product are known to the buyer prior to purchase or are quickly ascertained after the item is used;

3. The rate of technological change in the product is slow relative to the frequency of purchase, and

4. The offer terms of competing sellers are known and are stable over time.

Under these circumstances the learning process can take place rather quickly. The consumer can conduct his own experimentation with alternative brands and arrive at his own evaluation of which best serves his needs. A few supermarket items might meet, or come close to meeting, all three criteria. Scouring powder or razor blades might be a case in point. Various food products might at first glance appear to meet all four tests; however, such subtleties as vitamin content cannot be perceived through use, but only from the label. At the other end of the spectrum are a host of goods and services which fail to meet one or more of the tests. Automobile tires, automobiles themselves, appliances, appliance repair, casualty and life insurance, medical care, pharmaceuticals are only the more obvious cases.

Opponents of consumer legislation are wont to sing the praises of the quality of competition in consumer markets. "The consumer is no moron, she's your wife," is a favorite quotation. The housewife in the supermarket is depicted as a lightning calculator of values, and the seller who does not measure up will be eliminated from the market if he does not mend his ways, the argument runs. It is interesting to see how many times, however, the illustrations used to buttress the generalization are drawn from the supermarket context, where the learning process can take place at a faster pace than in most other markets. The market for supermarket items comes closer to meeting the four criteria mentioned above than do the markets for most other consumer goods and services.

Footnotes at end of article.

In general, we can conclude that markets characterized by rapid, accurate learning through experience by buyers in consumer markets may reasonably approximate the competitive ideal on the demand side.

II

The discussion above has been limited to what might be termed the "costless information" case, i.e., the case in which the consumer faced with a purchasing decision does not engage in additional search. Considering the case of search as separate from the costless information case is a bit strained, since the experience relied upon in the first instance is accumulated from a background of previous purchases, exposure to advertising and to other signals which can be defined in some broad sense as "search." Here search is rather narrowly defined as the explicit comparison of alternatives prior to purchase.

If search is carried out with sufficient care, the consumer's state of information about available alternatives can be developed to the same point that might be achieved through extensive experience in those instances where the four criteria listed above are met. But will the search be carried out, and if so, how thorough will it be?

Stigler has noted that the buyer will continue the search out to the point where the cost of search is equated to the expected marginal return to further searching effort.[3] He notes that the greater the dispersion of prices, the greater the expected savings from an additional unit of search.[4] One can add that in the case of differentiated products, the greater the dispersion of each of the quality characteristics the greater the expected gains from search.

Stigler also points out that "if the correlation of asking prices of dealers in successive time periods is perfect (and positive!), the initial search is the only one that need be undertaken."[5] In this case the present price asked by a dealer is a perfect predictor of his future asking price and search need not be repeated before future purchases. But he explicitly assumes that changes in quality or product characteristics over time are absent. If this assumption is abandoned in favor of the more realistic assumption that product features, real or contrived, do change over time, the life of the information acquired during search is limited. Innovations in product design or advertising message (broadly defined to include such features as package design and labelling) are of course common. Indeed, the marketing manager for a high frequency product is motivated to alter the marketing program for the product in order to attract new buyers, since the brand-loyal consumer presumably will not switch away from the product and new buyers might be attracted. This is saying that the new buyers engage in some search when they encounter the change in the advertising "pitch," in the objective features of the product, etc. Marketing techniques must surely work to make the consumer's information obsolete more quickly, thus increasing the probably marginal return to the search process and motivating the consumer to engage in more search than he would were product characteristics static.

A number of observations about the phenomenon of search can shed light on the relationship between search and the imperfections in the markets for consumer goods. First, the search problem may be worsening over time if the rate of technological change is increasing, and/or if the rate of change in marketing programs is increasing.

Second, the nature of technological change in many consumer products may now involve a growing number of product modifications which are below the threshold of consumer perception. Gasoline additives provide a case in point. Although it may be agreed that the additives increase the life of the automobile engine, it is doubtful that all but the most zealous automobile owner can determine for himself that this is the case. Thus the search must be based increasingly on information which the consumer cannot generate by his direct observation of performance, but which instead must come from advertisements and other information sources.

If we can assume that the higher one's income, the more valuable one's time, increases in income per capita may lead to less search. Simultaneously, perhaps one of the luxuries which well-to-do people can afford is the luxury of not shopping carefully. For them, the opportunity cost of a bad purchase is not as high as for a low income buyer. These two forces, if they are in fact at work, would seem to reduce the level of discipline to which sellers are subjected in the market place for consumer goods and services.

For low income people, the search process may be both costly and quite inefficient. The pattern of life of the metropolitan poor may make it difficult and expensive both in terms of time and money to cover alternative sources of goods and services outside the ghetto. Furthermore, the limited education of poor people presumably makes it difficult for them to assess satisfactorily the quality of the offerings of competing sellers. In short, they don't know "what to look for." This suggests that low income people are likely to favor major brands of consumer goods, since they would look on the brand name as a surrogate for information.

These possible attributes of consumers at both ends of the income scale, if in fact they do apply, work to reduce price competition in the market place. The impact of these buyers is no doubt offset at least in part by the corps of what we might call "professional shoppers" found across the whole spectrum of consumers. These are the consumers who consider shopping almost a hobby. Their sensitivity to offerings is such that every shopping trip is an information-gathering expedition which may yield impressions of prices and quality for goods which are not immediate prospects for purchase but which may be bought at a later time. For these people the search process is enjoyable in and of itself. They are likely to be sources of information for their friends who look to them for shopping advice. Thus in their individual capacities and as centers of networks of influence and information, they serve to increase competitive discipline among sellers.

The nature and extent of individual shopping behavior will depend in part on the buyer's perception of the risk involved in the individual purchase. The risk may be related not only to performance of the good being considered for purchase, but to the prospective psychological satisfaction as well. Thus the buyer may check (overtly or otherwise) with his or her social group to determine whether purchase of a particular version of an item would enhance his prestige or acceptability among his peers. The greater the risk of a bad decision, the greater the search for information prior to the purchase.[6]

The search process is becoming increasingly complicated by two phenomena in particular. The increasing importance of services in the consumer budget should lead to more time spent on the search process for services relative to goods. Yet services are not well standardized and the pricing is a matter of considerable uncertainty for the consumer. Automobile and appliance repair and home maintenance services are prime illustrations of the problem. The difficulty and imperfection of search in these markets no doubt help explain the continual grumbling about these markets. Medical services and insurance are two additional significant cases in point.

The increasing mobility of consumers also operates to complicate the search process, especially with respect to services. When the

buyer moves to a new neighborhood or city, the search for satisfactory services must start afresh. Thus the useful life of the information which the consumer has gathered about the sources of service is reduced.

Although for the many reasons cited above the search process may lead to a relative low (and perhaps declining) quality of demand, the consumers presumably are nevertheless in equilibrium in the sense that they are equating the marginal cost of search with the expected marginal return. It will be argued below, however, that this does not necessarily mean that public policy should be neutral in the matter.

III

An appreciation of the quality of demand in consumer markets can be enhanced by comparing the consumer as a buyer with the industrial purchasing agent as a buyer. The parallels and contrasts here can be especially interesting because in so many instances the actual purchaser for the household is playing the role of purchasing agent for other members of that household. In a classic article appearing in 1912, "The Backward Art of Spending Money," Wesley Claire Mitchell recognized the difficult role of the housewife as purchasing agent:

She must buy milk and shoes, furniture and meat, magazines and fuel, hats and underwear, bedding and disinfectants, medical services and toys, rugs and candy. Surely no one can be expected to possess expert knowledge of the qualities and prices of such varied wares. The ease with which defects of materials or workmanship can be concealed in finishing many of these articles forces the purchaser often to judge quality by price, or to depend upon the interested assurances of advertisers and shopkeepers. The small scale on which many purchases are made precludes the opportunity of testing before buying, and many articles must be bought hurriedly wherever they are found at whatever price is asked.[7]

Comparison of the features of the purchasing situation faced by the household purchasing agent, on the one hand, and the industrial purchasing agent on the other can illumunate the nature of competition in these two kinds of markets and the role of the quality of demand in the two cases.

Again, it is helpful to distinguish between the case involving only the accumulated information from past experience from the case involving further search. The industrial purchasing agent will be motivated to maintain files of information on the experience of the plant or company with competing brands of various input items. Since maintenance of such an information system is not costless, presumably he will have more complete information on items requiring large annual expenditures than on items of less consequence in the firm's total cost picture. An exception to this general rule would be the case of the less significant item for which performance information is easily and quickly collected. The purchasing agent must balance the cost of maintaining such an information system against the expected benefits in terms of improving purchasing.

The sheer magnitude of money at stake will lead the industrial purchasing agent to maintain a better informational feedback system than will the household purchasing agent. Thus the firm operating a fleet of care or trucks can "afford" to keep records on the performance of the tires purchased. The average motorist, by contrast, buying perhaps two tires a year, is likely to have little more than impressionistic evidence at hand when he ventures forth to buy a tire. Plant performance records (rejection rates, down time, etc.) can generate for the industrial purchasing agent firm evidence of the quality of inputs. The household purchasing agent, on the other hand, has only the crudest kind of feedback from members of the family.

When search is undertaken, the rational purchasing agent will push search out to the point where the expected marginal return from further search is equated to the marginal cost of the search. Thus major expenditures should be subject to more extensive and careful search than minor ones. Since the industrial purchasing agent will be dealing with at least some large purchases, the search will often be undertaken with great care. The contrast with the household case is clear. If 10,000 housewives sally forth one day to buy an item for which the expected price is around $5.00, and if each thinks she might possibly save five percent by comparison shopping, the expected saving of 25 cents will lead to a certain amount of search, varying from individual to individual. But if a single industrial purchasing agent is seeking 10,000 units of an item for which he expects to pay about $5.00 per unit, and if he thinks he might save five per cent by shopping, the $2,500 which might be saved should lead to more careful search than if the purchase is being made by 10,000 separate buyers. This feature of industrial markets clearly leads to greater competitive discipline.

The magnitude of the purchase in the industrial case is frequently so great that the buyer will engage in in-plant testing prior to purchase. This is simply an extension of the search process; the greater the purchase and the greater the expected variability in performance of competing seller's products, the greater the probability that such testing will be carried out prior to the purchase commitment.

The quality of demand therefore is likely to be considerably greater in industrial markets than in consumer markets. It should be added that competitive discipline in industrial markets is especially great if the buyer has the option of making the item for himself. He is then a present or potential competitor on the sellers' side of the market in that case. Furthermore he may be a buyer so large that he can engage in formal competitive bidding.

Stigler notes that—

Of course, the sellers can also engage in search and, in the case of unique items, will occasionally do so in the literal fashion that buyers do. In this—empirically unimportant—case, the optimum amount of search will be such that the marginal cost of search equals the expected increase in receipts, strictly parallel to the analysis for buyers.[8]

The case of seller's search may well be empirically unimportant in the case of consumer goods (although door-to-door sales of vacuum cleaners, encyclopedia and certain home improvements such as aluminum siding and storm sash are common enough—and do not life insurance salesmen engage in sellers' search?), the salesmen of industrial equipment, process supplies and raw materials surely are not empirically unimportant. The average purchase times the probability of the salesman actually making the sale may warrant maintenance of a sales force which calls directly on purchasing agents or those who influence the purchasing agent's decisions. Unlike most consumer markets, this brings the buyer into direct contact with the manufacturer; consequently the feedback from ultimate user to producer can be much more accurate and detailed than is true with those consumer goods which go through a retailer and perhaps a wholesaler as well. Buyer complaints in the latter instance must be filtered back through the marketing channel, unless the buyer writes the manufacturer directly. But here again the contrast between industrial markets and consumer markets is interesting. The consumer may feel that registering a complaint even directly with the manufacturer is not "worth while," especially if the purchase is minor in amount. The industrial buyer, on the other hand, with larger average purchases, is surely more likely to see that the supplier hears of his complaint. Furthermore the manufacturer is inclined to heed the large buyer but not the small one. Hence the manufacturer selling in industrial markets is probably fitting his product more successfully to the needs of the buyer because of more efficient informational feedback than one finds in consumer markets.

The manufacturer of industrial products is not able to afford a sales force (his searching mechanism) which contacts users directly if the average purchase times the probability of making the sale does not return revenue great enough to support the sales force. Thus many process supplies and such items as janitorial supplies may move to the user through industrial wholesalers, whose total product line is broad enough to yield high average sales and hence to support a sales force. In this case the seller's search is delegated to a middleman, just as the manufacturer of consumer goods may delegate his search to retailers.

IV

We can now recapitulate the discussion above and proceed to draw some conclusions about the design of public policy directed toward improving the quality of consumer demand. The magnitude and accuracy of the information which the consumer has assimilated from past purchases and other sources of information at the point in time when he is considering a purchase varies widely from individual to individual and, for a given individual, from product to product. Perfect competition assumes that the buyer has perfect knowledge of alternative offers of sellers. The point here is not so much that this knowledge is not perfect; this has never been questioned. More interesting is the wide variation in the state of information across markets.

Prior to the consumer's engaging in incremental search, his knowledge of alternatives is based on an accumulation of experience, be it great or small. This experience may have generated information which is nearly perfect if the four criteria mentioned early in this paper are met. Some large percentage of purchasing situations, however, fail to meet one or more of these criteria.

If the buyer feels that his experience is inadequate, he is motivated to search. Search will be extended to the margin, where the expected returns from further search are judged equal to the incremental cost of the search. The expected returns will be greater the larger dispersion of prices and quality and performance characteristics of the sellers' offerings; the greater the present value of the stream of purchases of the item the individual expects to make in the future; and the lower the rate of obsolescence of the information the buyer gathers in the process of the search. Among individuals, evaluations of both cost and returns will vary, causing some to search more or less than others.

The gross imperfections in some markets which can result from the low quality of consumer demand is suggested in its extreme form by the life insurance industry. Data on the yearly net cost per $1,000 of coverage are available for 1959–68 for the 71 companies with $500 million or more of ordinary life insurance in force, figured on insured age 35. The range is from a low of $0.37 per $1,000 for one insurer to a high of $5.95 for another, with an interquartile range of $2.25 to $3.85.[9] Although the terms of the policies are not strictly comparable and the data are subject to other qualifications which we need not delve into here, it is difficult to imagine differences in the "product" (however defined in this instance) which would explain such price discrepancies. Part of the explanation no doubt is that purchasers of life

Footnotes at end of article.

insurance look on the annual premium, rather than the net cost, as the price of the policy. The dispersion of the 10-year premiums for the 71 companies is much narrower, ranging from a low of $212.50 to a high of $266.60. Although the life insurance market is not as imperfect as the dispersion of net cost figures suggest, one can conjecture that the intelligent purchasing of life insurance is so complex that consumers do not engage in extensive search because of an inability to assay the alternatives very completely or satisfactorily.

The individual consumer stands in interesting contrast with the industrial purchasing agent. Although the basic decision rule determining the extent of search will be the same, the returns from both the maintenance of an information system designed to evaluate performance and the larger average size of purchase will lead to more careful search by the industrial purchasing agent than by the consumer. Thus the quality of demand in industrial markets is considerably greater than in consumer markets. Total market performance in the broadest sense is enhanced in the industrial case because search by the seller commonly leads to direct contact the manufacturer of the product and the buyer who will use (rather than resell) the product.

These points are all subject to more qualification than space permits, but the main thrust of the argument would seem to hold. If this is true, what is the significance for the public policy discussion of "the consumer problem?"

First, the complaint that consumers do not have sufficient information available for intelligent purchasing decisions misses the point. If costless search were possible, consumers could acquire complete information in some high proportion of purchasing situations. But even if all conceivable relevant information on, for example, detergents, could be printed on the packages, price and quality comparisons would still be required. Search calls not only for the collection of information on the individual brands and versions of the product in question, but for comparisons among brands as well. What is needed, therefore, is not so much *more* information but rather more efficient information, i.e., information which is not only "complete" but also provided in a form which permits comparisons with maximum efficiency. This would lead to a reduction in the incremental cost of search, and so the search process would be pushed further than if these conditions were not met.

A second and related point addresses the common charge that consumers do not use the information already available. Marketers have complained, for example, that housewives do not even take advantage of the most accessible information, i.e., they do not read the labels on the package. This, too, misses the point. Given the rationale of the search process, the quality of demand would be improved and competition enhanced if information presented on the label and elsewhere were presented in a manner which minimizes the cost of search and comparison. Consumers would still not make use of all available information, however, because presumably the equilibrium condition would not always call for such extensive search. Nonetheless market performance would be improved.

A third observation deals with one part of the argument that consumers seem to be content with the quality of performance of consumer markets. But adequate search presumes that the consumer knows what features of the product are important, i.e., which pieces of information are relevant for the purchasing decision. In fact, however, some industries have been embarrassed by studies which have revealed the importance of certain product features not previously considered by the average buyer. The furor over automobile safety, the concern about flamable fabrics and about the side effects of pharmaceutical products are illustrations. Buyers may have thought they were operating under conditions of adequate (by some definition) information, but publicity has changed that perception at least to some degree.

A fourth comment concerns the role of consumer complaints. It is often argued that the unhappy consumer will complain to the retailer or manufacturer and that this serves to discipline sellers. But a complaint carried back to the seller is an extension of the search process. It will not be carried back unless the expected benefit from complaining is greater than the "cost" of making the complaint. This cost can be high relative to the expected return the buyer may consider complaining as unpleasant, he may not be sure be sure how strong a case he has, or the time and inconvenience may be significant. Especially in the case of low frequency items in which his experience is limited, he may question whether the product really performed less well than competing products. For these various reasons the complaints which are actually made may be only the tip of the iceberg and the unregistered complaints may lead only to an undercurrent of consumer grumbling.

If the quality of consumer demand is to be improved, means must be found for increasing the efficiency of search, i.e., reducing the cost of search and raising the returns. Better consumer education is universally praised as one means of doing this. No doubt consumer education in the schools can be improved so that buyers can better evaluate the returns from search and can carry out the search process more efficiently. Outside the schools, however, one does not have the benefit of a captive audience; adults will turn to consumer education materials only as part of the search process. Thus the consumer magazines find that subscribers use their srevices most frequently when purchasing big-ticket items. These services no doubt improve the efficiency of search, but buers will use them only when their perception of the expected return warrants.

Greater use of standards holds promise as a means of making search by consumers more efficient, since standards are in substantial part a proxy for infomation. The recent legislation calling for the establishment of standards for automobile tires should reduce the confusion about the meaning of "first-line,' "second-line" etc. Although the consumer may not know just what features distinguish the first-line from the second-line tire, at least he can assume that the minimum standards met by one manufacturer's first-line tire are greater than those met by another manufacturer's second-line tire.

Use of the term "standards" in the marketing of consumer goods causes considerable confusion because of variations in the meaning of the word. Some products are subject to what we will call legal minimum standards, i.e., certain standards must be met before the item can be marketed legally. Drugs subject to clearance by the Food and Drug Administration would be a case in point. Or standards might be established by law, agreement or by common usage for the use of particular terminology as with octane ratings of gasoline. The recent Truth-in-Lending Act involves this type of standardization in that the annual rate of interest, previously subject to several definitions, now will be used in a consistent manner across virtually all consumer transactions. Standardization of terminology is not to be confused with what might be called standard and mandatory specifications. When the need for broader use of standards is discussed, opponents of further regulation often argue that this will minimize the range of choice to consumers. But it is one thing to have legislation which prohibits the production of tires other than first-line tires; it is something else to have legislation which permits the production of other than first-line tires, but limits the use of the term "first-line" to tires meeting certain minimum requirements.

The Fair Packaging and Labeling Act of 1966 (the so-called "Truth-in-Packaging" Act) is a step toward standardizing not just the nomenclature but the actual package sizes of certain consumer goods. The objective here of course is to facilitate the search process by easing the task of comparing prices. To the extent that this reduces the cost of search, the quality of demand in consumer markets is improved.

Advertising is one source of consumer information which is subject to a steady barrage of criticism for a variety of reasons. Without delving into the subject in any detail, it is relevant to note that if false and misleading advertising is absent, advertising is of course a source of information to the consumer. It is imbalanced, though in that the disadvantages of the product are rarely mentioned, nor can one rely on the advertisements of competing sellers to point out these weaknesses in the products of other marketers. Moves to require certain minimum disclosures in advertising may introduce some qualifications into what may now be exclusively laudatory advertising comments about a product, thus improving advertising as an informational source.

It has been argued above that the quality of consumer demand may be deteriorating. Although consumers are supposedly increasingly well educated, they are also earning higher income. Thus the perceived risk of an unsatisfactory purchase is reduced, since the opportunity cost of replacing the item is lowered. The proliferation of products, versions of products and brands widens the spectrum of consumer choice. Delightful as this may be on some counts, it does increase the cost of search. As products become more complex, certain performance characteristics may be below the threshold of perception even though they are nonetheless important.

If the reasoning set forth here is generally correct, it helps explain why legislative attention has been drawn to such markets as packaged foods, automobiles, insurance, tires and pharmaceuticals. In each of these markets one or more of the four criteria cited early in this paper are not met and search is relatively unsatisfactory. Consumer groups and interested legislators sense the imperfections in these markets. This suggests that public policy toward consumer markets is likely to continue to move toward making the process of consumer search more efficient.

FOOTNOTES

[1] Donald F. Cox has suggested that these sources of consumer information be classified as "consumer dominated," "marketer dominated" and "neutral." See Donald F. Cox, ed., *Risk Taking and Information Handling in Consumer Behavior*, Division of Research, Graduate School of Business Administration, Harvard University, Boston, 1957; p. 605.

[2] For a full discussion of this aspect of consumer behavior, see Francesco M. Nicosia, *Consumer Decision Processes*, Englewood, Cliffs, N.J.: Prentice-Hall, Inc., 1966.

[3] George J. Stigler, "The Economics of Information," *Journal of Political* Economy, Vol. 69 (June, 1961), p. 216.

[4] op. cit., p. 215.

[5] op. cit., p. 218.

[6] For a detailed study of the question of perceived risk among consumers, see Cox, op. cit.

[7] Wesley Claire Mitchell, "The Backward Art of Spending Money," *American Economic Review*, Vol. 2, March, 1912, p. 269.

[8] Stigler, op. cit., p. 216.

[9] *Flitcraft Courant*, July, 1968.

LIFE BEFORE DEATH IN THE CORPORATE STATE

(Remarks of Commissioner Nicholas Johnson, Federal Communications Commission, with a lot of quotes from his friends, brought to you by some of America's finest corporations, that demand your valuable dollars in exchange for their cents of values)

The owner of MacClintock Enterprises . . . shook his head sadly, and reached into a Wedgwood box for a two-dollar Corona. . . .

He stopped to look out over Manhattan as a frown filled his tanned features. . . . He pointed out the window. "A new plague has arrived. A plague that is sweeping down on all of us, choking our brains until they are limpid seaweed!" He crossed to a huge television set, pointed at it.

"There it is, Hio. *There* is the plague!"

He turned it on.

"Watch it, watch this transistorized octopus spring to life in a whirl of color and lies, cotton candy and stupidity. See it, Hio, *hear* it!!"

An announcer's voice warned you to "Stay tuned to this channel for a new, all new fun game, 'Name Your Father,' which follows immediately!"

Music filled the room and suddenly the 27-inch screen was crammed with a pulsating many-hued spectrum as a shrill voice rasped madly, "And *now*, Live from Hollywood in Living Compatible Color!!"

"You, you rainbow-hued son of a bitch," snarled Henry MacClintock, *"you* are the enemy!!"—Don McGuire, *The Day Television Died*

PREFACE FOR BUSINESSMEN

A great many Americans from all walks of life, educational levels, and geographical regions, are asking some very fundamental questions today about their own lives, and what our political leaders are doing to enhance the "quality of life" for all Americans.

This quest is, in many respects, a moral, ethical, religious and philosophical awakening. And since so much of it has to do with business, it would be difficult to find a more timely or more consequential topic for this year's annual Weinstock lecture on "the morals of trade."

In spite of the efforts of some politicians to preach class hate and divisiveness, we are coming increasingly to realize our common concerns as a people. And a theme that runs throughout much of the literature—and the talk—is the impact of institutionalism and big business (which takes the form, in this country, of "the corporate state") upon human values and life.

That this new wave of self realization and reordering of national priorities is of preeminent significance for the business community is obvious. The principal challenge confronting business is that of understanding what is going on and then fashioning a response.

ANNOUNCER: If she kissed you once . . . will she kiss you again?

Be certain with Certs—the delicious candy mint that stops bad breath.

Delicious candy mint. Perfect mint.

Certs is two--two--two mints in one.

Certs contains a sparkling drop of Retsyn to stop bad breath.

With Certs if she kissed you once, she'll kiss you again.

Be certain with Certs.

"[M]ake no mistake about it, the current wave of discontent that pervades the land extends far beyond a handful of young radicals."

—Secretary of HEW Robert H. Finch

"Lately it seems
Everything I see
Tells me life is moving much too fast
And underneath the strain
Folks don't act the same
And if that's progress
I'll take the past
Going to find myself a country road
Grassy fields on either side
Going to put on my jeans, and my boots,
and my country hat
Sit by a stream as the sun goes down
Straighten out my mind
Soothe my soul
And go back where it's at

You can have your concrete cities
You can have your poisoned air
You can have your smoke a rollin' from the
stack
Don't offer me your pity
And don't you call me square
Just because I see where things have
jumped the track"

—"Where It's At," a current popular country and western sung by George Hamilton, IV

"The number one problem is moral pollution. The same thing that keeps the Indian up on the reservation keeps the smoke up in the air."—Dick Gregory

"The affluent part of the population has already tasted full material satisfaction and has found out that the consumer's paradise does not deliver the happiness it promised."—Erick Fromm

78% of the undergraduates in a 1970 Harris poll said that the United States' problem is a real lack of values, that it is "too materialistic."

It seems clear that, notwithstanding sporadic bombings, most of our industrial plant will continue to stand intact. There is no reasonable probability of a successful move to nationalize major industries; most social critics are as distrustful of government as of corporate enterprise. Nor is profit likely to be outlawed—in the form of confiscatory taxes or otherwise.

At the same time, what the business community is now going through is mild compared to the revolution of the spirit that is about to crash upon it. Corporate blindness and intransigence from the conservative, and massive public relations programs from the progressive, are not going to carry the day. There are going to be significant shifts in consumer preferences, and only the truly perceptive businessmen are going to be able to avoid substantial losses.

This lecture is a personal statement about life as I perceive and try to live it as a human being. It is also a professional statement by me as a public official, with implications for the kind of society I would like to make possible—as an option—for those others who seem to me to be saying they might wish to choose it. It is intended primarily as a contribution to the dialogue of those who are trying to bring about orderly change not as support for those who are encouraging violent destruction—whether through aggressive action or through unreasoning adherence to the status quo. I hope that many in the business community will find this statement useful, but it is intended as neither an apology, nor a strategy, for business.

The U.S. is 14th in the world in infant mortality.

The U.S. is 19th in the world in life expectancy for males.

"Education squashes my growth."—Berger in *Hair*

"I have been driven to the conclusion that the university is really under the control of a small and active group of trustees who have no standing in the world of education, who are reactionary and visionless in politics, narrow and medieval in religion. Their conduct betrays a profound misconception of the true function of a university in the advancement of learning."—Charles A. Beard, upon his resignation from Columbia University, October 9, 1917

"Our children are being programmed to demand sugar and sweetness in every food . . . are deliberately being sold the sponsor's less nutritious products and . . . are being counter-educated away from nutrition knowledge."—Robert Choate

SOCIAL SANITY

Every age, every society, imposes some stresses and strains upon the people who live there. In most respects, Americans today are an advantaged people. We complain about the burdens thrust upon us by our wealthy, industrialized society, but we are also enjoying its fruits.

It's true that the medical care we receive is inferior to that in many less wealthy nations—but it is still decidedly better than that received by most of the world's peoples. It's true that Americans' nutritional levels are substantially less than our knowledge and wealth could and should make possible. But there's no question that the prospect of potential starvation is not the real specter in this country that it is for many of the nations of the world. We may not spend our leisure time as creatively as we are able, but we do have more time to call our own than any preceding people in history. There is a great deal wrong with our educational system—at every level. Other nations have features of their educational programs that are superior to ours. But we are still, as a nation, one of the best educated people on earth.

WOMAN. How can you tell a great shampoo from a good one? In the dark. When I say great shampoo, I mean Lustre Creme. It makes your hair smell good, feel so silky you can tell the difference in the dark. Lustre Creme does more than get your hair clean, it's got conditioners that make your hair silky. Nicer to touch. Why take my word for it. Turn out the lights. See for yourself. . . .

Mr. America, walk on by The liquor store supreme; Mr. America, try to hide The emptiness that's you inside.—The Mothers of Invention

There are 4–6 million alcoholics in the United States; more in San Francisco alone than narcotic addicts throughout the entire United States.

"The most striking feature of this increase has been the upswing in suicide among young persons." In ages 15–19 and 20–24, suicide ranks as the fifth cause of death.—Joint Commission on Mental Health of Children, *Suicide Among Youth*

In the past ten years there was a 52% increase in the number of known, active narcotics addicts.

In the past 50 years the divorce rate has doubled; in the past ten years it has increased 50%.

In the past ten years crimes against the person have doubled.

The incidence of syphilis is up 26% this year alone.

The number of patients in mental hospitals and psychiatric outpatient clinics has increased approximately 50% in the last ten years.

"In France, some experts have persuaded themselves the U. S. Government itself is secretly trying to get the Now Generation off pot and onto the grape. Thus Patrick Le Chene, one of France's most prestigious wine experts, recently went so far as to say: 'The American Government thinks it's better to get drunk than drugged . . . . Wine may just be the best antidote to drugs that anyone has come up with.' "—Newsweek

When sadness fills your heart
And sorrow hides the longing to be free
When things go wrong each day
You fix your mind to escape your misery
Your troubled young life has made you turn
To a needle of death.—"Needle of Death," by Bert Jansch, © Copyright 1966 Heathside Music Ltd., London, England.

In ironic fact, as many commentators have already pointed out, it is the increased wealth, education and leisure that are the product and prerequisite of our 20th century industrialized society that feed the rhetoric

and revolutionary life styles that now challenge it.

It is important to make this point. Everything has not gone wrong in America. There are a great many things that are going very much better than they might—or than they used to. Our analysis is not very useful unless we keep that perspective.

At the same time, our society—as well as that of other highly industrialized and urbanized nations—does take its toll on the human beings who live here. Mostly this is something that we just feel—personally, and from our contacts and conversations with others. But the pressures are also reflected, to some extent, in the irrefutable statistics of personal and social disintegration: the rising rates of alcoholism, suicide, drug addiction, divorce, crimes of violence, venereal disease (as an index of unreasoning and unemotional promiscuity), or mental illness. And for every one of us who show up in the statistics there are hundreds more who might have.

GIRL. If you're a guy who likes the girls, but can't get anywhere, then take a tip from Groom & Clean, and groom, don't grease your hair. Look, axle grease on both hands. Water can't clean it off. The grease is there to stay. Add Groom & Clean to the right hand and it clears the grease away. See. Grease buildups gone. When you wet-comb clean, sexy hair is seen. Yes, sexy hair comes naturally, when you use Groom & Clean.

"Our abundant society is at present simply deficient in many of the most elementary objective opportunities and worth-while goals that could make growing up possible. It is lacking in enough man's work. It is lacking in honest public speech, and people are not taken seriously. It is lacking in the opportunity to be useful. It thwarts aptitude and creates stupidity. It corrupts ingenious patriotism. It corrupts the fine arts. It shackles science."—Paul Goodman.

"Our tradition tells us that we should be individuals, initiators, and creators, free and responsible . . . But the trend . . . transforms individuals into specialist-links . . . increasingly incapable of autonomous functioning."—John Gardner.

"The Independence Day [1970] finds the nation in 'a recession of the spirit'—a psychic downturn so pronounced that the mood may in itself constitute a kind of American crisis."—Newsweek.

"A specter is stalking in our midst whom only a few see with clarity. It is not the old ghost of communism or fascism. It is a new specter: a completely mechanized society, devoted to maximal material output and consumption, directed by computers; and in this social process, man himself is being transformed into a part of the total machine, well fed and entertained, yet passive, unalive, and with little feeling."—Erich Fromm.

The general semanticist, Alfred Korzybski, made a distinction between people he described as "sane," "insane," and "unsane." He contended that there were a great many people who could not be classified as "insane" who were, nonetheless, not really leading lives that were sufficiently productive and joyful to be characterized as "sane."

Most of us are, in some measure, to be found in Korzybski's category of the "unsane." We have not come close to becoming the persons we could be. How many people do you know in your own acquaintance who you think of as "fully functioning"? How many people would you describe as whole persons who have worked out lives devoid of hypocrisy and self-deceit, lives in which beauty, artistic creativity, religion/philosophy, love, healthy sexuality, self-fulfilling productivity, physical well-being, joy and growth of individuality permeate each day?

FRED WEIGEL. I can really fluff my job when my stomach's not right. And Rolaids is the only thing that helps me. I work for the Palm Springs Tramways. Play host to VIP's; you know, show them the sights. If I start having acid indigestion, heartburn, my job suffers, too. I'll pop Rolaids in my mouth. I know when something helps.

"The gap between rhetoric and reality is so wide, the values actually operative so unrelated to biological, intellectual, and spiritual development in its fullest sense, that an authentically human existence for most Americans is an impossibility."—Arnold S. Kaufman

"Indeed, no social emotion is more widespread today than the conviction of personal powerlessness, the sense of being beset, beleaguered and persecuted. It extends not only to Black Panthers and members of the Students for a Democratic Society but also to businessmen, publishers, generals and (as we have recently come to observe) Vice Presidents."—Arthur M. Schlesinger, Jr.

"[P]eople [are] caught in an appalling web of frustration and despair."—William Hart, General Electric

"The human being cannot live in a condition of emptiness for very long; if he is not growing *toward* something, he does not merely stagnate; the pent-up potentialities turn into morbidity and despair, and eventually into destructive activities."—Rollo May

"Malaise and tensions are mounting throughout the world. Even affluent and strong societies show symptoms of a deep-seated uneasiness amidst uncontestable economic and technical progress. Violence has become a way of life and death when things get too complicated. Quick bloody clashes flare up almost everywhere, and nobody knows if larger confrontations are lurking just around the corner."—Aurellio Peccei, Vice-Chairman of the Board, Olivetti, Chairman of the Board, Fiat-Concord (Buenos Aires).

There are many ways of escaping from life. Suicide and the excessive use of alcohol (our nation's number one drug) are only the more dramatic examples. One can also escape into work, the library, a flurry of volunteer paperwork or organizational activity, sexual promiscuity, television watching, or anyone of a number of "hobbies."

The pressures to escape, the repression of our fulfillment, are forces we all feel and respond to in varying ways. We are distinguished only by our capacity for adaptability, and that inner force of resistance called our "individuality."

Just to say that we are living in a "sick society" doesn't advance the dialogue very much all by itself. It is a useful expression, however, as a prelude to—or summary of—further analysis. There are a great many psychiatrists, sociologists and other social commentators who are describing and analyzing the forces within our modern, industrialized, urbanized society that tend to discourage the growth and fulfillment of the human potential of individuals.

WOMAN. The headaches I get build up after a day with the kids and cooking and shopping and picking up and the pressures, well, then my head feels like it's wedged between two book ends. So about four o'clock I take some Anacin Tablets and by the time he walks in the door I feel like a human being again. Announcer: For headaches that seem to take everything out of you, you need today's Anacin. The strong, fast pain fighter. This is the formula for a major pain reliever in every leading headache tablet. Though the other well known extra strength tablet contains several useful pain relievers, it contains only this amount of this specific pain reliever. But Anacin has more, twice as much of this major pain reliever as the other extra strength tablet. Anacin relieves pain fast. So helps relax pain's tension. Helps lift pain's depression. Woman: Whenever I have a headache, I swear by Anacin.

ANNOUNCER. Anacin.

I don't believe the radio stations of Russia and America but I like the music.—Leonard Cohen

The creative artist is the "antennae of the race."—Ezra Pound

"A good case can be made that the Beatle environment is preferable to the 'Ah, Sweet Mystery of Life' and 'Stardust' environment of twenty or thirty years ago, as being less escapist, involving more thought and calling forth a more positive response."—William F. Fore

"But art, being magic, is part of religion and essential. We must have release for our emotion, and if we do not find proper catharsis in acceptable channels, we will find it in improper and uncontrollable ways, and that is just what our youth is doing."—Agnes De Mille

"[A]rt expresses the meanings and trends which are as yet unconscious, but which will later be formulated by the philosophers, religious leaders, and scientists of the society."—Rollo May

I am sorry for the men of these times. They Talk of nothing interesting And have no ambition and Die without ever being Aware of the music of verse.—Ou—Yang Hsiu

"The needs here are clear . . . A partial list of activities would include . . . a major beginning in the development of cultural life—bringing drama, music, dance, painting, movie making, etc., into hundreds of thousands of communities and millions of lives which currently have no real sense of this dimension of human existence."—Erich Fromm

These forces are often first felt by the artists in our midst. These are the individuals who have antennae that are simply orders of magnitude more sensitive than those of the rest of us. They "feel" what is happening so long before the rest of us perceive it that even when they express their feelings they tend to leave many of us baffled.

ANNOUNCER. Listen to Mr. and Mrs. Ken Davis tell why their 1970 Buick LeSabre is something to believe in.

Mr. DAVIS. On Sundays, we always like to go out for a bargain, and this is probably one of the reasons we got a Buick, because we thought it was a good bargain. I never realized I didn't have an antenna on the outside of the car. I saw these wires on the windshield and the other night they told me it was the antenna. This is the best mileage I have had in any car I have owned. You don't have to turn the wheel at all, you just point it. It goes like a dream.

Mrs. DAVIS. You know, we don't baby the car as far as the interior and they have always stood up. This car has got such a steady feeling to it.

Mr. DAVIS. Buicks seem to hold their value better than some of the low priced cars.

Mrs. DAVIS. We're a young family and we're driving a Buick, and *people think, well, gee, maybe, maybe you're really coming up in the world.*

Mr. DAVIS. This car, I think it's going to be the best I have owned.

ANNOUNCER. The 1970 Buick is something to believe in. Wouldn't you really rather have a Buick?

"In Europe, the mass media are regarded as carrying out or modifying the work of the statesman, the journalist, the educator, and the serious artist; in the United States they are defined largely as carrying out the work of the businessman as advertiser, the theatrical entertainer, and the newspaper."—Reuel Denney, *The Astonished Muse*

"The broadcasters tailor their programs to meet the requirements of their advertisers, of the censorship, of their own slick and clique tastes, and of a broad common denominator of the audience, none of whom may be offended: they will then claim not only that the public wants the drivel that they give them, but indeed that nothing else is being created. Of course it is not! Not for these

media; why should a serious artist bother?"—Paul Goodman

"All great art is by its very essence in conflict with the society with which it coexists. It expresses the truth about existence regardless of whether this truth serves or hinders the survival purposes of a given society. All great art is revolutionary because it touches upon the reality of man and questions the reality of the various transitory forms of human society."—Erich Fromm

"[T]he BBC cannot accept dismissal by artists and writers and men and women of sensibility as a purveyor of pap, as does commercial television in America."—Huw Wheldon, BBC Controller of Programs

"I believe that if a man were permitted the right to write all the ballads he need not care who should make the laws of a nation."—Andrew Fletcher, Scot patriot, 1704

"The artist, who through his imagination creates forms which change the vision of others, is potentially capable of changing the world more radically and more surely than the most successful and radical political philosopher."—Garbriel Laderman

They are our modern day out-riders, exploring the mountain ranges and rivers that lie ahead of our wagon train. That is just one reason why it is so dangerous and self-destructive for a society to inhibit total freedom in artistic expression.

WOMAN 1. Here you are dear.

WOMAN 2. Oh thanks, but I can't look at another dress, all this shopping has given me such a headache.

WOMAN. 1. I'll get you something.

WOMAN. 2. Wait a minute, it better be something strong.

WOMAN 1. I've got what you need Laura.

WOMAN 2. What's that?

WOMAN 1. Anacin.

WOMAN 2. Anacin?

WOMAN 1. Sure, take a couple.

ANNOUNCER. Anacin works fast to bring relief. Fast, strong, dependable relief when you need it most.

WOMAN 1. Headache all gone Laura?

WOMAN 2. Oh, I forgot all about it.

WOMAN 1. I knew it. Here you are dear.

ANNOUNCER. Anacin has more of the pain reliever doctors recommend most, yet just two Anacin tablets give you more of this specific ingredient than four of the other leading extra strength tablets. These others contain several useful pain relievers and four of them would be more than you should take, but it would require at least four of the other extra strength tablets to give you as much of this specific pain reliever as in two Anacin. For fast, strong pain relief, reach for Anacin.

Once there was a man,
Who spoke his thoughts out loud,
Who believed in what he said,
And walked out in the crowd,
But they took him
And they taught him
What they wanted him to say.

Once there was a world,
In which a man could live,
In which a tree could grow,
In which a man could give,
But they took it and
They churned it
Into modern brick and steel.
—Jeremy Clyde, "The Progress Suite—Part 5: Epilogue"

"Day after day, year after year, climbing those same steps, punching that time card. Standing in that same goddam spot grinding those same goddam holes."—gig grinder Ray Walczak, Milwaukee.

"Fortune's interviews with the young workers reveal them saying things about their employers which are remarkably similar to the complaints of college students: the job is boring, you are just a number, you feel tied down, you're in a jail cell. . . ."—Nicholas von Hoffman.

"[D]istrust is not limited to radicals. Ask shopkeepers, housewives, young executives or insurance salesmen . . . [Y]ou will find that there is a deep and pervasive feeling among all segments of the populace that 'things aren't working'. . . . [T]he great majority of Americans share that uneasiness, . . ."—John W. Gardner.

"I shall make little distinction in value between talking about middle-class youths being groomed for ten-thousand-dollar 'slots' in business and Madison Avenue, or underprivileged hoodlums fatalistically hurrying to a reformatory; or between hard-working young fathers and idle Beats with beards. For the salient thing is the sameness among them, the waste of humanity."—Paul Goodman.

It is revealing, I think, that the same kind of concerns expressed by thoughtful psychiatrists and social philosophers are not the exclusive preserve of a small group of liberal intellectual elitists. They are also finding expression on the media derived from, and designed for, the masses of people. The fact that some of the expression is not very articulate, that the rhetoric is often hard to translate, and the thinking is occasionally sort of muddle-headed, is kind of beside the point. The more significant observation is that a good many Americans are coming to share some common feelings at about the same time.

ANNOUNCER. What's "The Profile?"

"The Profile" is looking like this . . . so you get looked at like this.

When you have "The Profile . . . you not only make the scene . . . you steal it.

How can you keep "The Profile?"

By following the Profile Bread Menu Planner available at your grocer's.

The Profile Plan can help you keep slender.

And delicious Profile has no artificial sweeteners.

What have you got to lose—except tomorrow's weight.

"Man is stronger the more fully he is in touch with reality. As long as he is only sheep and his reality is essentially nothing but the fiction built up by his society for more convenient manipulation of men and things, he is weak as a man."—Erich Fromm

"Of all the people I talked to, the most frustrated and angry were those trapped in spirit-numbing jobs and in neighborhoods beseiged by pollution, noise, traffic, decay and crime. The happiest were those whose jobs gave them some relief from tedium, and a chance to live near open fields and green trees, sunlight, creeks and country roads."—Karl Fleming, Newsweek, Los Angeles Bureau Chief.

"The best answer (to how to make the citizen important again), I assume, is to try to keep stretching people's imaginations and concern, mainly through the media of communications. Television has the greatest opportunity—and the farthest to go—to widen horizons in the arts, technology, science, societal differences, the political issues of the nation and the world."—Dr. Benjamin Spock.

But there's a six-lane highway down by the creek
Where I went skinny-dippin' as a child
And the drive-in show where the meadow used to grow
And the strawberries used to grow wild
There's a drag strip down by the river side
Where my cows used to graze
Now the grass don't grow
And the river don't flow
Like it did in my childhood days.—Joe South, "Don't It Make You Want to Go Home" Copyright 1969 by Lowery Music Corp.

The voices are those of a cross section of America: the full range of ages, educational backgrounds, social positions, races, geographical regions, wealth, job categories, and so forth. These are the people who write me the thousands of letters I get every year. They are the people who, together, make up this country and set its course. We ought to listen to what we are telling each other, and try to respond with as much intelligence, imagination and compassion as possible.

BOY. I think I'm in love. Hi!

FRIEND. Did you talk to her?

BOY. Yeah, but she turned off like I had bad breath.

FRIEND. How about a little of that?

BOY. Listerine?

FRIEND. Shhh! Yeah, every day.

BOY. Why Listerine?

FRIEND. Because, dummy, Listerine kills the germs that can cause bad breath.

BOY. That's so strong.

FRIEND. And that's why it works so long.

BOY. If I use Listerine every day I get the girl, right?

FRIEND. Unless she gets you first.

BOY. Yeah, right.

FRIEND. Hey, Dick.

BOY and GIRL. Shhhhh! Listerine Antiseptic, shhhh. Kills germs. Lasts for hours.

Oh the world is a beautiful place to be born into if you don't mind a few dead minds in the higher places.—Lawrence Ferlinghetti

"I believe this Administration finds itself, today, embracing a philosophy which appears to lack appropriate concern for the attitude of a great mass of Americans—our young people.

"Let us give America an optimistic outlook and optimistic leadership. Let us show them we can solve our problems in an enlightened and positive manner."—Secretary of the Interior Walter J. Hickel, in a letter to President Nixon

". . . Polls have repeatedly shown that when all is said and done, most Americans do want to see our problems solved, including the problems of poverty, race and the quality of life. They do want to see justice done."—John W. Gardner

"We are approaching the condition of King Oedipus of Thebes. Thebes was a tribal society, and when the King set about investigating the responsibility for misery and disorder, he found out *he* was the criminal."—Marshall McLuhan

"Either out of ignorance, or out of calculated political cynicism, our citizens are being told that crime will stop if we erase the Bill of Rights—that unity will come if we suppress dissent—that racial conflict will end if we ignore racial justice—and that protest will cease if we intimidate the people who report it."—New York Mayor John V. Lindsay

"Today, alas, our national leadership hardly seems aware of the fact we are in a crisis; in fact, it hardly appears to know what is going on in America and the world. It is feeble and frightened, intellectually mediocre, devoid of elevation and understanding, fearful of experiment, without a sense of the past or a sense of the future."—Arthur M. Schlesinger, Jr.

Once the religious, the haunted and weary
Chasing the promise of freedom and hope
Came to this country to build a new vision
Far from the reaches of kingdom and Pope
The spirit it was freedom and justice
Its keepers seemed generous and kind
Its leaders were supposed to serve the country
But now they don't pay it no mind.—Jerry Edmondton, John Day and Nick St. Nicholas, "Monster," © Copyright 1969 by Trousdale Music Publishers, Inc.

THE GOVERNMENT AS PROBLEM

To say that the government isn't working is scarcely a partisan statement. I seem to recall comparable sentiments being expressed during many of the past twenty years. Although the extent to which government is viewed as the problem—not just a lethargic institution incapable of effecting solutions—may be somewhat new. One cannot help but

wonder how long a politics based upon parental hatred of children can endure.

There seems to be an increasing sentiment outside of government to get on with the job. Polls seem to indicate that a great many Americans—silent or not—recognize that we have some very serious problems in our society, are looking for leadership, and are prepared to make some sacrifices to effect solutions. I recall a white cab driver who had been giving me some pretty reactionary complaints in his unlettered way. On a long shot, my curiosity prompted me to ask for his solution to "the Negro problem." Bracing myself for the worst, he surprised me: "I think they have to be given better jobs and more money. A man has to have some dignity."

MAN. Hi. Could you tell me if the apartment is still available? It is available.

GIRL. How much?

ANNOUNCER. Nerves, stress, headache pain. When you feel one of those headaches building, Anacin has what it takes to relieve headache pain and its tension. An exceptional formula that sets off a chain reaction of relief as pain leaves, easing its tightness and nervous pressure. That's how Anacin relieves headache pain and its tension. Try Anacin.

"But we do say that until political leadership addresses itself to the major problems of our society—the huge expenditure of national resources for military purposes, the inequities practiced by the present draft system, the critical needs of America's 23,000,000 poor, the unequal division of our life on racial issues—until this happens, the concern and energy of those who know the need for change will seek outlets for their frustration."—U.S. Supreme Court Justice William O. Douglas

"Mighty nations that do not respond to the needs of their own people have traditionally tried to solve problems and overcome frustrations through violence abroad and repression at home. In the process, they have hastened their own exit from center stage. The greatest security problems for a nation are the hostility and frustration of its own citizens."—Arnold Toynbee

". . . an important thing to understand about any institution or social system, whether it is a nation or a city, a corporation or a Federal agency: it doesn't move unless you give it a solid push. Not a mild push—a solid jolt."—John W. Gardner

"What country can preserve its liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance."—Thomas Jefferson

"This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it."—Abraham Lincoln

"Whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of a right ought to reform the old, or establish a new government; the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind."—Declaration of Rights in Maryland

"The right of revolution is an inherent one. When people are oppressed by their government, it is a natural right they enjoy to relieve themselves of the oppression, if they are strong enough, either by withdrawal from it, or by overthrowing it and substituting a government more acceptable."—U. S. Grant

Others are growing increasingly impatient and violent. This trend has been predicted by most social observers whenever a government fails to respond to the legitimate demands of its citizens. Indeed, this nation was born out of just such a violent response to intransigence in government, and the legitimation of revolution in the United States has been repeatedly attested to throughout our history by political leaders of virtually every political stripe.

MR. ONG. Mrs. Gibson, how are you today?

MRS. GIBSON. Oh, so, so. No starch please, Mr. Ong.

MR. ONG. After four years I don't know no starch for Mrs. Gibson? What's the matter today?

MRS. GIBSON. Oh, a headache I woke up with, had breakfast and lunch with, now I'm doing the shopping with it. Keeps coming back. I have to take some more of these.

MR. ONG. Oh, Mrs. Gibson, I don't want to butt in, but you should try Vanquish.

MRS. GIBSON. Mmm, they're different.

ANNOUNCER. Vanquish is different. It gives you the well known pain reliever in this tablet, . . . plus extra medications . . . in this tablet, and this tablet, . . . and buffers as in this one. Three headache relievers and two gentle buffers in each unique caplet. Vanquish. It's got everything going for it, . . . for relief so complete your headache shouldn't come back.

MR. ONG. I know, I know no starch.

MRS. GIBSON. No, no. No headache.

ANNOUNCER. With Vanquish, . . . your headache shouldn't come back.

Hear you must what the people say.
You know there's something
That's going' on around here,
That surely won't stand the light of day
—Dave Crosby, "Long Time Gone"

How sharply our children will be ashamed
taking at last their vengeance for these horrors
remembering how in so strange a time
common integrity could look like courage.
—Yevtushenko

"I think the corporation today is the basic source of generic power and has the greatest ability either for ill or for good to turn this country around."—Ralph Nader

"Modern technology need not destroy aesthetic, spiritual and social values, but it will most certainly do so unless the individuals who manage our technology are firmly committed to the preservation of such values."—John W. Gardner

"[C]orporations, like all businesses whether large or small, are in the primary business of making money; indeed, they do not even exist to produce certain goods or services that may prove useful or necessary to society."—Andrew Hacker

"When I started teaching here twenty years ago, everyone fully believed in the capitalist system and we started from there. Now a lot of the students not only question the system but downright distrust it."—Professor Thomas C. Raymond, Harvard Business School

"Many a businessman feels himself the prisoner of his business and the commodities he sells; he has a feeling of fraudulency about his product and a secret contempt for it. . . . Most important of all, he hates himself, because he sees his life passing by, without making any sense beyond the momentary intoxication of success. Of course, this hate and contempt for others and for oneself, and for the very things one produces, is mainly unconscious, and only occasionally comes up to awareness in a fleeting thought, which is sufficiently disturbing to be set aside as quickly as possible."—Erich Fromm

THE CORPORATE STATE

I do not argue that the government no longer has any power. Not at all. It makes decisions that affect billions of dollars that flow from the people—as taxpayers and consumers—to the large corporations: defense contracts, agricultural and maritime subsidies, oil import quotas, natural gas rates, airline routes, and so forth.

It's just that the impetus for action tends to come from the management of the larger corporations rather than from government officials. The largest American corporations are larger, and more influential by almost any measure, than all but very few of the world's nations. These managements have a theoretical responsibility to shareholders, but in practical fact are responsible to virtually no one.

There is a split in the thinking—or at least the talking—of business management today. Milton Friedman and others take the position that the only legitimate concern of corporate management is with the making of money. Legitimate or not, that would appear to be the limit of the concerns expressed by most corporate officials. Increasingly, however, corporate management and business school students are expressing their uncomfortable feelings of disquiet, and are at least talking about their "social responsibility."

ANNOUNCER. Once in a while wouldn't you like to take a vacation from tension without leaving town? You can with Quiet World, the modern non habit-forming calmative tablet for simple nervous tension. Quiet World relaxes with calming and tension relieving ingredients. Try Quiet World and take a vacation from tension . . . without leaving town. We don't call it Quiet World for nothing.

Don't point your finger,
Say your prayers at me
The truth is hard but I'm gonna tell it:
"There's a whole lotta ways to sell it."
—Tom Paxton, "The Hooker," © Copyright 1967 by Deep Fork Music, Inc.

"Industry is a giant funnel taking in nature and turning out garbage for its own profit."—a college student quoted by Leslie V. Dix, FTC

"Why these corporations are so shortsighted in this important public relations field I cannot understand, but instead of volunteering to join in smoke abatement they are resisting it. I have about reached the conclusion that, while large industry is important, fresh air and clean water are more important, and the day may well come when we have to lay that kind of a hand on the table and see who is bluffing."—Senator Barry M. Goldwater

"He responds, as I've explained, only to stimuli affecting his corporation. That's the thing, you see. He has totally identified with his corporation. I'm sure if you talk to him about his corporation, he'll hear and understand you and might even talk to you. Otherwise he has no sensory faculties at all."—Dr. Klune in Paddy Chayefsky's play, "The Latent Heterosexual"

"When a man is measured only by a balance sheet, the system breeds a pursuit of a dollar by any means and thus may destroy ethics. And the disturbing fact is that in recent years evidence has been accumulating that many companies, which are perfectly capable of prospering without resorting to chicanery, are so obsessed with profits that their policies actually encourage lawbreaking by their officials."—Norman C. Miller, *The Great Salad Oil Swindle*

He wants to find men
Who can love for no reason
Who open their heart.
To life of all seasons
But they've all gone it seems
Off in their limousines
—Joe McDonald, "For No Reason"

"A General Motors executive said yesterday that bumpers on GM cars provide 100% protection from any damage—provided the speed of the car doesn't exceed 2.8 miles an hour."—A.P. wire service report

Meanwhile, there is a growing awareness on the part of a great many people—not just young college students—that unchecked corporate greed is today more the cause of America's shame than its great pride. Large corporations tend to exert an inhibiting influence in the growth and development of the human personality.

Stewardess

Business does to its women's bodies
What it does to its men's minds
It binds them tightly
Snuffing out the free
Covering with a uniform
Painting any parts that stick out
With the company colors
And a smile
Making replaceable people
With replaceable parts
Wigs and Brains, Inc.

They also tend to be behind most of the modern day despoiling of the air, water and land. They tend to be, like war, "unhealthy for children and other living things." Indeed, they are more than like war, they are war. For profit can come from any human enterprise. You can make money by blowing up bodies or by burying them; by administering poison gas or anesthesia. And when the only morality is measured in dollars, no appeal to human values can ever make much sense.

ANNOUNCER. Cigarettes are like women. The best ones are thin and rich. Silva Thins are thin and rich. Thin so they taste light, lighter than other 100's, lighter than most kings. Rich, well because rich is better. Cigarettes are like women, the best ones are thin and rich. Silva Thins are thin and rich.

"Nothing since the invention of printing has so drastically affected the way human beings live, think and generally react to their circumstances."—Malcolm Muggeridge.

"[Television] has it within its power to decide what kind of people we become. Nothing less."—William Deeds, M.P.

"We 're in science fiction now. . . . Whoever controls the language, the images, controls the race."—Allen Ginsberg.

"[Broadcasting] matters more over the long run . . . than what anybody else does because [it is] more persistently shaping the minds of more people than all the rest of us put together."—Archibald MacLeish.

"[There must be] something more than naked commercial selfishness [in broadcasting]."—Herbert Hoover, 1925.

"In order to keep financially alive, the industry must serve the largest possible number of people. But in order to best serve the whole community, the industry should be the voice of its intellectually and morally most advanced sector."—Frank N. Stanton and Paul F. Lazarsfeld, 1949.

"In case after case it appears that the broadcast industry itself has firmly blocked release to the public of certain facts. Although this blockage has sometimes been on behalf of the political party in power, or the military, with which large corporations are closely allied, most of it seems related to the financial and profit interests of corporations controlling broadcasting, either as station or network operators, sponsors, or a part of the business community generally, as opposed to the over-all national interest."—Harry J. Skornia, Television and the News.

"Broadcasting stations should not be simply house organs grinding out the tune of big business interests which own them—and there is some evidence that this is a real danger today."—Senator Warren Magnuson, Chairman, Senate Commerce Committee.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 520

At the request of Mr. ALLOTT, the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 520, a bill to authorize the construction, operation, and maintenance of the closed basin division, San Luis Valley project, Colorado.

S. 635

At the request of Mr. ALLOTT, the Senator from Oklahoma (Mr. BELLMON) was added as a cosponsor of S. 635, a bill to amend the National Mining and Minerals Policy Act of 1970.

S. 1176

At the request of Mr. ALLOTT, the Senator from Kentucky (Mr. COOPER) was added as a cosponsor of S. 1176, a bill to provide for the cooperation between the Federal Government and the States with respect to environmental regulations for mining operations.

S. 1245

At the request of Mr. Moss, the Senator from Nebraska (Mr. CURTIS) and the Senator from Arizona (Mr. FANNIN) were added as cosponsors of S. 1245, a bill to amend the act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data.

S. 1442, S. 1443, S. 1444 AND S. 1445

At the request of Mr. Moss, the Senator from Minnesota (Mr. HUMPHREY), the Senator from Rhode Island (Mr. PELL), and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 1442, a bill to amend the Internal Revenue Code of 1954 to provide that the first $3,000 received as civil service retirement annuity from the United States or any agency thereof shall be excluded from gross income; S. 1443, a bill to amend chapter 83 of title 5, United States Code, to eliminate the survivorship reduction during periods of non-marriage of retired employees and Members, and for other purposes; S. 1444, a bill to increase the contribution by the Federal Government to the costs of employees' health benefits insurance; and S. 1445, a bill to provide increases in certain annuities payable under chapter 83 of title 5, United States Code, and for other purposes.

S. 1561

At the request of Mr. GRIFFIN, for Mr. BENNETT, the Senator from North Carolina (Mr. ERVIN) was added as a cosponsor of S. 1561, a bill to protect the freedom of choice of Federal employees in employee-management relations.

S. 1664

At the request of Mr. SCOTT, the Senator from California (Mr. TUNNEY) was added as a cosponsor of S. 1664, a bill to authorize appropriations for the Commission on Civil Rights.

ADDITIONAL COSPONSOR OF A CONCURRENT RESOLUTION

SENATE CONCURRENT RESOLUTION 21

At the request of Mr. CASE, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of Senate Concurrent Resolution 21, calling for the suspension of military assistance to Pakistan.

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Mississippi (Mr. EASTLAND), I ask unanimous consent that I may be permitted to submit a statement with respect to the nomination of Jack T. Stuart, of Mississippi, to be U.S. marshal for the southern district of Mississippi.

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

Mr. EASTLAND. Mr. President, the following nomination has been referred to and is now pending before the Committee on the Judiciary:

Jack T. Stuart, of Mississippi, to be U.S. Marshal for the Southern District of Mississippi for the term of 4 years; reappointment.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Monday, May 10, 1971, any representations or objections they may wish to present concerning the above nomination, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

ADDITIONAL STATEMENTS

SURVEILLANCE OF MEMBERS OF CONGRESS BY FBI IN 1936—SO WHAT ELSE IS NEW?

Mr. METCALF. Mr. President, in view of the current furor over the surveillance of Representatives and Senators, I invite the attention of Senators to a portion of a speech in this Chamber on June 15, 1936—the remarks of Senator Burton K. Wheeler, of Montana, during the debate on S. 4552, a bill to extend the retirement privilege to the Director, Assistant Directors, inspectors, and special agents of the Federal Bureau of Investigation:

During the Daugherty administration we saw members of the Bureau of Investigation in the Department of Justice, with which Mr. Hoover was connected, at that time, breaking into Senators' offices, raiding their offices, going through their correspondence. We saw them going into Representatives' offices. Men from Mr. Burns' department were employed as elevator men here to catch what Senators and Representatives were talking about, according to the uncontradicted and sworn testimony before the committee investigating the Department of Justice. Agents were investigating every Member of the Senate who criticized in the slightest degree the Department of Justice. They came out and surrounded my house with detectives.

They sent men out to Montana to try to get something on my late colleague, Mr. Walsh. The late Senator Caraway was subject to their investigations. Practically every Member of the Senate was subjected to that tyranny by the Department of Justice, and Mr. Hoover was in the Department of Justice at that time under Mr. Burns.

So, what else is new?

REFRESHING DIFFERENT VIEWPOINT OF VIETNAM WAR

Mr. SCOTT. Mr. President, the Foreign Relations Committee has been holding hearings and will continue to hold hearings concerning our involvement in the war in Southeast Asia. Most of the testimony presented so far has characterized this Nation's involvement as being war mongering and I might say that most of this testimony has been given by persons who fail to appreciate what really has been accomplished by this administration since the President took office. On Wednesday, April 28, a former Navy lieutenant from California, Melville Stephens, presented a different point of view.

It was refreshing. He talked about the need to assure the survival of the Vietnamese people. He referred to the atrocities he observed where the enemy massacred peasants, including an 11-year-old boy. This young man, a decorated wounded veteran, who served three tours of duty, totaling 34 months, is well decorated for his actions. When I asked him to tell the committee, and those at the hearing, of the medals he received and the ribbons he was wearing on his jacket, he said:

Senator, I think they are obvious.

This was the statement of a modest man, a man who was not looking for any personal glory or was not in any way impressed by his importance. He was telling the committee that his awards for certain deeds were incidental to the testimony he was presenting, cautioning our Nation to go slow in its program of withdrawing troops. He said we must be cautious of the price we pay for peace. Mr. President, this former assault boat commander has been through it all. Discussing the march of protesters, he said:

I am offended to see Americans carrying the flag of the VC.

So am I and so should all of us who are privileged to be Americans. In questioning Stephens, he said he had been in Washington two weeks and that the majority of the veterans in Washington, and of others, when you talk to them one to one, were no different; their views were much the same as his own. I ask unanimous consent that his cogent remarks at the Foreign Relations meeting be printed in the RECORD.

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

STATEMENT OF MELVILLE STEPHENS

Senator Fulbright, I want to thank you for the opportunity to be here. I particularly appreciate the chance to speak because I know that my views are not very popular these days. However, my convictions are. Based on my own experience and what I believe is a very realistic sense of the situation and the feelings of the Vietnamese people.

I was in the Navy from June 1967 to September of last year, and spent nearly thirty-four months in the Southeast Asia combat zone. This nearly 3 years period included ten months aboard a cruiser of the seventh fleet in a gunfiire support role, during which I made frequent trips to various places in I Corps; and almost two years in Vietnamese in-country tours. I worked extensively with the U.S. Ninth Infantry Division and various South Vietnamese units including the Vietnamese Marine Corps, the Vietnamese Navy, the ARVN, the regional and popular forces and the irregular defense groups. During my last tour, which ended in May of last year, I had the opportunity to travel extensively throughout the country and witness first hand the process of American withdrawal and Vietnamese units taking over the combat role.

I cannot speak more highly of my personal affection and regard for them as friends and as comrades; my concern, and the reason that I am here today, is to ask you to consider carefully your course, so that peace for Americans does not come at the cost of additional sacrifice for these people.

It seems, that since I have returned to the States, that the cries for unconditional withdrawal, and the setting of an immediate date for ending American support have become very loud, and I know that you have been listening carefully . . . I believe that these arguments have two principal weaknesses. First they are based on questions which should have been asked in the early 60's, but were not. The questions of legality, and of specific strategy were very valid ten years ago. However, we are there, we have been there for many years, the situation is entirely different and those questions are no longer the relevant ones. Second, the very truth that all wars are terrible and brutal is especially true of this one in which the civilian population is so intimately involved.

Only those of us who have fought there and lived among the people can know how really true this is. I certainly agree that it has gone on too long, and must come to an end, but I ask you to consider carefully the manner in which it is to be ended.

A great many of them have taken their stand because of the American commitment to the GVN. I would like to think that you and I and the American people have a responsibility to these Vietnamese who have had faith in us and risked their lives for something they believe in. Peace for us must not come at the cost of their lives.

As I look around Washington today and this past week, I am very offended to see Americans carrying the flag of the VC. I fear that some of the American people have, in their passion for peace, made heroes of the Viet Cong. In South Vietnam, they are not heroes.

I heard a great deal about American atrocities last week, particularly from the other Vietnam veterans who were here. I certainly do not deny that some of them took place. But there is certainly another side. I would like to tell you about two of the incidents of which I am personally aware. In the spring of 1969 near Can Tho, I was unfortunate enough to be a witness to a Viet Cong grenading of a Vietnamese School bus, which was clearly marked as a school bus. Two of the kids were killed outright, several were wounded so seriously that I doubt they could possibly have survived, and three others were maimed in the most grotesque manner. Earlier in my tour, in the city of My Tho in the Central part of the Mekong Delta, I became close friends with an eleven year old boy named Tran who had been orphaned by the Viet Cong. Tran told me that his father had been elected to a minor hamlet office late in the fall of 1967, and as an example to his father, Tran was seized by the Viet Cong and had his arm cut off with a machete. Tran's father refused to resign, but was later killed along with his mother during the Tet Offensive of '68.

Senators, as I say, I can speak from personal experience of only a few incidents like this, but anyone who spent any time at all in Vietnam can tell you of the brutality of the Communists. They have been quite blunt in stating that terror and mass executions are their principal strategy. The South Vietnamese I lived with know this. They know that they take their lives in their hands to support the South Vietnamese Government. They depend on us for the support we have promised.

Senator, I understand the passion of all of us for an end to this war, but it is my firm conviction that peace at the price of the South Vietnamese people is too expensive and one that I could not live with. I want to tell you from my personal experience, that setting an arbitrary date for American withdrawal, can only hurt the chances of the South Vietnamese; and the current program of American withdrawal is as rapid as I believe the situation permits.

When I speak of my fear for the Vietnamese people, I certainly do not refer to the generals and high ranking officials—frankly, I am sure that they will take care of themselves—but I refer to the junior officers and the troops, to the small merchants, the farmers and the local officials, the people we would consider the average citizens. I think that the issue of how we end the war is not one of a nation saving face, but of our responsibility as a nation and as individuals to these citizens of South Vietnam. Many have committed themselves because we asked them to, and I hope in our urgency for peace, that we do not abandon them.

GOOD NEWS FROM THE OIL AND GAS INDUSTRY

Mr. HART. Mr. President, most of the time, the trade press for the oil and gas industry is busy pointing out how prices are too low. There is no incentive, they tell us, to drill new wildcat wells to find new reserves. The industry, they say, is just "running out the string," and there will not be enough oil or oil to go around.

Yesterday, however, there was good news for a change. I shall read into the RECORD some headlines from "The Oil Daily" for Wednesday, April 28.

On page 1: "Texaco To Boost Spending, Earnings Up 15.3 Percent."

Page 4: "Marathon Net Jumps"; "Kermac Income for First Quarter Rises 15 Percent."

Page 5: "Cities Service Labels First Quarter Dip as Temporary"; "Murphy's Net Income Rises."

Page 6: "Conoco Earnings and Gross Set Records in First Period"; "Woods Earnings Go Up Sharply"; "Apco Revenues Up"; "Rowan Drilling Earnings Go Up"; "SOInd Nets 9 Percent Gain."

Page 7: "Tone of the Market; Triangle Boosts Price"; "Great Lakes Asks Gas Rate Increase."

Page 8: "Gulf Earnings"; "Phillips Net Up 13 Percent"; "Getty Sees Net Gains"; "El Past Natural Gas Reports Bigger Net."

Apparently, Mr. President, bankruptcy is not staring the oil and gas people in the face at present.

I ask unanimous consent that the articles to which the headlines relate be printed in the RECORD.

There being no obection, the items were ordered to be printed in the RECORD as follows:

TEXACO TO BOOST SPENDING, EARNINGS UP 15.3 PERCENT

BOSTON.—Texaco Inc. plans capital and exploratory spending in 1971 of $1.06 billion compared with $906.1 million last year, chairman Augustus C. Long told the annual meeting Tuesday.

He also said that "promising results have already been obtained" in drilling offshore Louisiana on three structures, "confirming the prospectiveness" the tracts, expected to be natural gas producers. He said expansion of recent discoveries in Indonesia will add total of 225,000 b/d by mid-1972.

Texaco's 50 percent joint venture in Ecuadors' Amazon Basin has turned up 13 separate oil fields, he noted.

He reported first quarter net of 87 cents versus 75 cents.

Stockholders were told consolidated net income of Texaco for the first quarter of 1971 totaled $236,783,000, or 15.3 percent above earnings of $205,423,000 for the first three months of 1970.

On a per-share basis, first quarter earnings in 1971 amounted to 87 cents, compared with 75 cents for the first quarter of 1970.

Texaco's worldwide operations, including the company's interests in affiliated com-

panies, again increases in crude oil and gasoline prices, has been held up for public release until Lincoln and McCracken return from Alaska. They are due back in the nation's capital on May 2, so the price report may not be released until May 3 or 4, officials said.

After some "slight reworking," Lincoln's report was said to be in shape for release by the White House Tuesday, but a press briefing on the report could not be held by Lincoln on it until his return from Alaska and so it, apparently, will not be released until next week.

Sources familiar with the price report appeared satisfied Tuesday with the variations made in the original version sent to Nixon more than a week ago by Lincoln, following a conference at the White House on it last weekend.

The report, describing the "short-term" situation, is expected to point out that gasoline prices have dropped dramatically since last November.

Marathon Net Jumps

OIL DAILY NEWS SERVICES

FINDLAY.—Marathon Oil Co.'s net income for the first three months of 1971 rose 10.2 percent from a year earlier. J. C. Donnell II, president, reported Tuesday. He noted that 1971 results reflected comparison with a depressed initial period last year.

New high levels of operations in North America and improved operations at the company's Burghausen, West Germany, petroleum chemicals refinery were major factors in this year's earnings improvement.

Net income for the first quarter was $21,072,000, or 71 cents per share, compared with $19,125,000, or 64 cents, in 1971. There was an average of 80,000 fewer shares outstanding during the 1971 period.

Total revenue in the first quarter amounted to a record $291,478,000, up from $241,106,000 in 1970.

Contract development of holdings in offshore areas of Alaska, Louisiana and California was primarily responsible for all-time high North American production of liquid hydrocarbons. Higher allowable rates of production in Texas also made a substantial contribution, Donnell noted.

Domestic refining and marketing, while benefiting from new facilities which went on stream at Marathon's Robinson, Ill., refinery in the last quarter of 1970, were hampered by inadequate product price levels.

Overseas, tanker liftings of Libyan crude oil, including royalty oil, declined from a year earlier as a cutback in production ordered by the Libyan government in July 1970 remained in effect.

Volumes of crued oil refined at Burghausen held at the high rate made possible by the addition of new units in mid-1970. Sales of refined products in Europe achieved record levels on the strength of demand for hearing oil and coke.

Kermac Income for First Quarter Rises 15 Percent

OIL DAILY CORRESPONDENT

OKLAHOMA CITY.—Kerr-McGee Corp.'s consolidated net income for the first quarter of 1971 amounted to $9,223,470, an increase of 14.9 percent over income of $8,033,854 for the same quarter of 1970.

D. A. McGee, chairman and chief executive officer, told stockholders attending the company's annual meeting here Tuesday that the substantial increase in income resulted from improvements in nearly all areas of the company's operations.

Earnings per common share for the first quarter of 1971 amounted to $1.21, an increase of 16 cents over per common share earnings of $1.05 for the first quarter of 1970.

McGee said that sales for the first quarter of 1971 amounted to $148,127,617, as compared to sales of $113,762,592 for the same quarter of the previous year.

Cities Service Labels First Quarter Dip as "Temporary"

WILMINGTON.—Charles S. Mitchell, chairman of Cities Service Co. told the annual meeting of shareholders Tuesday that an earnings' decline in the first quarter of 1971 reflected higher costs of wages, materials and interest and price weakness in gasoline, copper and petrochemicals.

But Cities Service's "performance for all of 1971 will be more encouraging than was shown in the first quarter," Mitchell said. "There is every reason to believe that the price weakness of the first quarter is a temporary condition and recovery can be expected."

Cities Services, it was reported at the meeting had net income of $34.3 million, equal to $1.22 per share, in the three months ended March 31, compared with $38.5 million, or $1.37 per share, in the first quarter of 1970.

Directors of the company declared a quarterly dividend of 55 cents per share, payable June 7 to stockholders of record on May 10. This is the same quarterly rate paid in 1970.

Mitchell said "total sales are continuing to rise, and were at an all-time high of $475 million, up 9 percent in the first quarter. During the remainder of the year, we will realize the benefits of new projects that will be completed."

J. Edgar Heston, president and chief operating officer, stated that the long-developing energy crisis has dramatized the importance of finding and producing tremendous volumes of new oil and natural gas to satisfy America's growing appetite for energy Current demand is twice as large as 20 years ago and is expected to redouble by 1985.

Charles J. Waidelich, executive vice president-operations, announced that Cities Service had undertaken "an aggressive capital-expenditure program, totaling more than $300 million this year," up from $285 million in 1970. Included are substantial outlays for development of additional reserves of petroleum, natural gas and minerals; expansion of pipeline, and increased tanker capacity; and additions to manufacturing facilities for petrochemicals, industrial chemicals and petroleum products.

Robert V. Sellers, vice president-finance noted that "changes in the tax laws and revision in Federal Power Commission regulations have drastically altered the pattern of capital generation in the oil and gas industry." The cut in the depletion percentage and the "preference tax" reduces the ability to generate cash internally which means an increased dependence on outside sources of capital, he explained.

Charles V. Wheeler, general counsel, observed that trends in governmental activities "will influence the progress of Cities Service importantly in the years ahead." He cited steadily increasing taxes, noting that the total tax involvement of Cities Service in 1970 was twice the company's net income; the need to resolve conflicting opinions on environmental control; continued inflation; and the government's increasing role of intervention in the buyer-seller relationship.

Murphy's Net Income Rises

EL DORADO, ARK.— Murphy Oil Corp had net income of $3,358,000 in the quarter that ended March 31. C. H. Murphy, Jr., president, announced.

The earnings, equal to 67 cents a common and common equivalent share, compare with $2,344,000 or 45 cents a share in the first quarter of 1970.

Murphy said the increase in earnings resulted from improved volumes and refined product prices in Canada and western Europe. Gains from the company's international oil trading and transportation activities and increased contract drilling operations from the enlarged drilling barge fleet. These factors more than overcame the adverse earnings effect of poor refined product prices in the United States, higher overall exploration expenses and the increased cost of crude oil.

Noting that first-quarter earnings were 43 percent higher than a year ago, Murphy cautioned that the same rate of gain could not be expected throughout the year.

Murphy's sales and operating revenues in the first quarter were $81,386,000, compared with $66,158,000 in the first quarter of 1970. Net production of crude oil and natural gas liquids averaged 44,742 b/d, up from 43,606. Net production of natural gas averaged 69,222 mcfd, up from 59,526 mcfd a year earlier Refinery crude runs were 65,653b/d compared with 57,644 b/d in the first period of 1970, and finished petroleum products sold averaged 135,752 barrels a day, compared with 117,679 a year earlier.

Conoco Earnings and Gross Set Records in First Period

NEW YORK.—Continental Oil Co. reported earnings and revenues in the first quarter of 1971 reached record highs for any first-quarter period.

John G. McLean, president and chief executive officer, said consolidated net income for the first quarter totaled $37.6 million. an increase of 13.8 percent over net income of $33 million in the same period last year. Per-share earnings were 75 cents in the first quarter of 1971, a gain of 21 percent from the 62 cents earned in the first quarter of 1970.

Gross revenues in the first quarter of 1971 amounted to $790.5 million, a gain of 16.9 percent over the comparable 1970 period. Capital expenditures totaled $84.9 million in the 1971 first quarter, an increase of 20 percent over capital expenditures of $70.7 million during the first quarter last year.

"The increase in first quarter net income is due to earnings' gains from each of Conoco's four major divisions," McLean indicated. "These gains were partially offset by increased corporate expenses, primarily net interest charges.

Conoco's world-wide operating volumes during the first quarter of 1971 were greater than the same period last year. Net production of petroleum liquids increased slightly to an average of 584,015 b/d. Natural gas deliveries averaged 1,275 million cubic feet per day, an increase of 4.8 percent. World-wide refinery runs rose 29.3 percent to 446,584 b/d, while refined product sales were 631,967 b/d, an increase of 14.6 percent.

Woods Earnings Go Up Sharply

OKLAHOMA CITY.—Woods Corp. announced earnings for the first quarter of 1971 were sharply higher than those for the same quarter a year ago.

Net earnings from continuous operations for the three months ended March 31 were $647,000, equal to 25 cents per share. Net earnings from continuing operations for the first quarter last year were $348,000, or 13 cents per share.

Woods reported total revenues from continuing operations rose to $12,320,000 for the three months ended March 31, compared to revenues from continuing operations of $10,580,000 for the same period a year ago.

Revenues of Woods oil and gas division rose to $1,134,000 for the quarter, compared to $899,000 for the first three months of 1970.

Apco Revenues Up

OKLAHOMA CITY.—Apco Oil Corp. reported an increase in gross revenues and a decline in net earnings during the first quarter. Gross revenue of $27,433,817 increased 5.6 percent over the $25,977,283 in the first quarter of 1970. Net earnings during the first

quarter of 1971 totaled $1,050,404, compared to $1,908,421 last year.

Primary earnings per share comparison between the two years was 42 cents in the first quarter of 1971 and 77 cents for the corresponding period in 1970.

The lower earnings performance in the first quarter of this year results from several factors, said J. H. Pittinger, president. Exploration expenditures were disproportionately higher in the first quarter of 1971, he noted.

Apco accelerated its worldwide exploration efforts late in 1970 and a portion of these expenditures were written off against income in the first quarter.

"Yields on the short-term investment of our cash fell appreciably from the unusually high levels of last year, and non-operating revenue declined proportionately," Pittinger said, adding:

"Earnings from the manufacturing-marketing divisions were below last year as the result of lower gasoline prices, higher raw material and labor costs, and lower value for offshore import quota."

While the first quarter financial results were disappointing, some improvement in gasoline prices is expected as we enter the peak motor travel season and exploration expenses should moderate during the remainder of 1971, the Apco president observed.

ROWAN DRILLING EARNINGS GO UP

HOUSTON.—Rowan Drilling Co. Inc. Tuesday reported consolidated net income of $271,525, or 25 cents a share on gross revenue of $3,963,837 in the first quarter of 1971 compared with $242,906 or 22 cents, on $5,419,872 in the first quarter of 1970.

M. C. Rowe, chairman and chief executive officer, repeated two points he made at the company's annual meeting here last week:

1) Two big land rigs, an offshore tenderrig unit and a posted barge unit were temporarily out of service in March to undergo modification, and 2) the company's Alaska aircraft charter business is operating at minimal capacity because of economic conditions associated with delays in building the trans-Alaska pipeline.

MARCH DELIVERIES

Trans Mountain Oil Pipe Line Co.'s total deliveries of petroleum for the month of March 1971 averaged 354,784 barrels per day compared to 268,684 b/d for the same period in 1970. April deliveries are expected to average 345,000 b/d.

SOInd NETS 9 PERCENT GAIN

CHICAGO.—Standard Oil Co. (Indiana) reported consolidated earnings for the first quarter of 1971 were $95.2 million, higher by 11 percent than the $85.6 million of the 1970 first quarter. Chairman John E. Swearingen said earnings per share were $1.38 compared with $1.24 per share for the first three months of 1970.

Total revenues for the first quarter 1971 were up 9 percent to $1,238,000,000 as compared with $1,135,000,000 in 1970

Swearingen said the higher earnings resulted from higher prices for refined products early in the quarter and increased production of crude oil and natural gas. He said costs continued to rise during the first quarter of 1971 reflecting higher wage and benefit expenses and other effects of inflation. Swearingen cautioned that unless gasoline prices improved from current depressed levels the first quarter rate of increase may be higher than that realized for the year as a whole.

New records were set in the 1971 first quarter in operations generally, Swearingen said. Net production of crude oil and natural gas liquids averaged 798,000 b/d an increase of 11 percent. Sales of natural gas totaled 3.9 billion cubic feet a day up 6 percent. Sales of refined products averaged 1,194,000 b/d, up 4 percent. Sales of chemical products were $97 million, an increase of 7 percent over the 1970 first quarter. Refinery runs averaged 972,000 b/d down 5 percent.

TONE OF THE MARKET—TRIANGLE BOOSTS PRICE

Signs detected Tuesday pointed toward a partial rejuvenation of the mid-country gasoline market. Moves last week by several key supplier regarding abandonment of Group 3 price origin basis and shifting to terminal value basis appeared to be fitting into an economical slot that observers contacted considered very acceptable.

However, it was pointed out that it was too early to assess field reaction to a move considered by many much more realistic than the pricing practice that has been followed for years.

Triangle Refineries has boosted Chicago wholesale gasoline prices to 13.25 cents from former 12.75-cent level. Field reports Tuesday indicated that Tenneco has raised gasoline prices by 55 points to jobbers in Alabama, Mississippi and Louisiana, also in Georgia and Panama City, Fla.

Effective Tuesday, American Oil partially restored dealer tank wagon from 9.4 cents to 16.4 cents in Blount County, Tenn. Action will advance retail price from 24.9 cents to 33.9 cents. Normal level is considered 37.9 cents.

One major—and a relatively new marketer on the East Coast—was said to be restoring his gasoline prices "to established levels" in the Carolinas, on Long Island and in Connecticut, Maine, Rhode Island and New Hampshire.

However, the gasoline marketing picture continues murky. This week's nationwide survey of key consuming areas revealed further slippage on both dealer tank wagon and service station price levels with the former down a quarter of a cent from last week to 16.25 cents and the latter declining to 22.55 cents.

Both Milwaukee and Kansas City continue to be two of the nation's chronic depressed areas at the pump with erosion amounting to as much as 10 cents.

GREAT LAKES ASKS GAS RATE INCREASE

WASHINGTON.—The Federal Power Commission reported that Great Lakes Gas Transmission Co. plans to increase, by $9,647,370 annually, its wholesale natural gas and transportation service rates, effective June 1.

Great Lakes said the proposed rate increases are necessary, principally because its existing rates do not generate sufficient revenues to meet interest coverages and other tests required to obtain long-term financing. The higher rates also include a minimum rate of return of 9.92 percent, designed to recoup total cost of service.

GULF EARNINGS RISE

ATLANTA.—Consolidated net income of Gulf Oil Corp., for the first quarter of 1971, is $146.2 million, an increase of 5 percent over the $139.2 million earned in the first three months of 1970, board chairman, E. D. Brockett, told shareholders at the Gulf annual meeting here Tuesday.

Earnings are equal to 70 cents per share, an increase of 3 cents per share over the 67 cents per share recorded in the first quarter of 1970.

Gulf's sales and other operating revenues for the first quarter are estimated at $1,754,000,000, an increase of 11.2 percent over the $1,578,000,000 reported in the first quarter of last year.

Noting that 1971 first-quarter net income and per-share earnings exceeded that of each of the preceding five quarters, Brockett said that he looked to the remainder of 1971 with optimism.

Brockett also told shareholders of two discoveries of oil and gas, and noted that this made a total of three Gulf finds in the first quarter of 1971.

At the beginning of the year, Gulf reported the discovery of oil offshore the democratic republic of Congo.

More recently Gulf, as operator (and 30-percent interest owner) for the Danish Underground consortium, discovered oil and gas deposits in the central North Sea. Production here should begin by the second quarter of 1972, Brockett said.

Offshore Gabon, in Equatorial West Africa, Shell Gabon drilling on a license in which Gulf has a 30-percent undivided interest, tested over 1,000 b/d of clean oil.

Brockett said that these three discoveries demonstrated further diversification of Gulf's raw-material supply.

During the first quarter, Gulf recorded world-wide daily average increases in net production of crude oil, condensate and natural gas liquids, net natural gas production, crude oil processed, refined product sales and chemical sales.

PHILLIPS NET UP 13 PERCENT

BARTLESVILLE.—Phillips Petroleum Co's 1971 first-quarter earnings were $36,115,000, or 49 cents a share, 13 percent higher than the $31,959,000, or 43 cents a share earned in the 1970 first quarter, W. W. Keeler, chairman and chief executive officer, told stockholders Tuesday at the annual meeting.

Keeler pointed out that 1971 first-quarter earnings were adversely affected by a number of factors. "Although gasoline sales volume rose, total petroleum sales volume decreased as a result of a much warmer winter, which lowered demands for heating distillates and liquefied petroleum gas," he stated. "Except for synthetic rubber and carbon black, chemical sales volumes decreased. Prices for most chemicals were lower. Costs of doing business were higher, particularly for purchased materials and for labor."

Keeler told stockholders that "for the year 1971, we should experience a continued increase in crude oil production, due especially to start of production in the North Sea and greater output from Nigeria and eastern Venezuela. We expect gas sales volume to increase, and gas prices to continue higher. We anticipate improvements from overseas manufacturing operations and less penalty from fibers activities, and will continue to benefit from cost reduction measures."

GETTY SEES NET GAINS

LOS ANGELES.—Getty Oil Co's first quarter 1971 consolidated net income of $31,195,000, or $1.61 per share, was up 35 percent, compared with consolidated net income of $23,099,000, or $1.15 per share, in the 1970 first quarter.

Consolidated sales and other revenues for the 1971 first quarter were $367,299,000, compared with $327,102,000 in the year-ago period.

George F. Getty, executive vice president and chief operating officer, said consolidated net income for the entire year of 1971 was expected to amount to $119 million.

He attributed the 1971 increased first-quarter earnings to greater production of crude oil, condensate and natural gas liquids by Getty Oil; price improvements for those products; increased gasoline and Number 2 fuel sales in the company's Eastern Seaboard marketing region; better charter rates for the company's available international fleet vessels; and the normal operations of the Delaware refinery, which in the 1970 first-quarter incurred higher expenses because of operating difficulties at the 42,000 d/b fluid coker.

The financial operating data of Mission Corp and Skelly Oil Co. are consolidated with the data of Getty Oil Co. First-quarter consolidated earnings of Mission and Skelly Oil totaled $10,650,000, compared with 1970 first-quarter results of $9,919,000. Getty Oil's share of Mission and Skelly earnings was $5,795,000 for the 1971 first quarter, compared with $5,245,000 for the 1970 period.

EL PASO NATURAL GAS REPORTS BIGGER NET

El Paso Natural Gas Co. reported first quarter net income of $12,047,000, or 46 cents a share diluted, for the first quarter of 1971, compared with $11,995,00, or 45 cents a share diluted for the 1970 quarter.

Sales totaled $251.5 million vs. $237 million. The net income reported by El Paso is after preferred dividend requirements.

DOROTHY LAMPTON TITCHENER

Mrs. SMITH. Mr. President, Dorothy Lampton Titchener, of Binghamton, N.Y., is a very remarkable woman. She is a true leader. She is truly a selfless person in her dedication to the cause of social and governmental action. A few of her many great attributes and accomplishments have been chronicled by the Binghamton, N.Y., Sun Bulletin of April 22, 1971.

I wish to pay tribute to her, and I ask unanimous consent that the Sun Bulletin article about her be printed in the RECORD. The only error in judgment that she ever made to my recollection was when she proposed me for Vice President in 1952.

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

PAL ROLE WILL CAP HER 50 YEARS IN COMMUNITY ACTION

She must be near the top rank of American women volunteers in the fields of social and governmental action.

Thirty years ago, before Women's Lib was ever heard of, she was trying to run a woman for vice president of the United States.

She will mark her golden year of social action this summer by accepting the chairmanship of Binghamton Police Athletic League's appeal for support in its continuing war against local juvenile delinquency.

She is Mrs. Dorothy Lampton Titchener, widow of industrialist Paul F. Titchener, and the prime mover who planned, created and supervises 612 city housing units as chairman—by appointment of four mayors of both parties—of the City Housing Authority for the past 16 years.

Officer or director of 15 activist organizations at the local, state and national levels, Mrs. Titchener in 1969 was elected president of New York State Association of Housing and Community Renewal Officials. She is a former national public relations chairman for the Association of Housing and Redevelopment Officials and she was selected to conduct regional Housing Commissioners' Workshops in New York City for that group.

SHE KNOWS THE PROBLEMS

Mrs. Titchener is no stranger to police work and the policemen who help direct the programs of financially troubled PAL.

One disgruntled housing applicant pulled a knife on her.

Another threatened to burn her Cadillac.

Dorothy Titchener is color-blind, sympathetic and empathetic in the administration of the 612 housing units for which the Housing Authority has responsibility. She dislikes the term "housing units" as a merciless bureaucratic phrase which does not reflect the essential human factors which exist in 612 families from lonely oldsters to 14-member households.

She has the reputation among most of her tenants of being warm hearted, hard-headed, fair and tough. Her principal problem is that there are always some 300 families seeking apartments which are not available.

Mrs. Titchener feels that she administers a society in microcosm, a society embracing any society's proportion of success, failure, love, hate, happiness, despondency, culture and delinquency.

She considers law enforcement of prime importance in any society.

INCOME AND HOUSING

She feels that many otherwise astute citizens do not understand the so-called low-cost housing under the aegis of the Housing Authority. They dismiss the relationship between income and responsibility. A highly paid executive with 12 children, she says, can be considered a poor man, but neither poorer nor richer than the Vietnam veteran with no skills and a wife and child.

The state sets income limits which must be justified by an applicant's payroll deduction forms. The authority counts the dependents. Mrs. Titchener and her colleagues must then measure all the other human factors relating to an applicants' need.

Children are Mrs. Titchener's special interest. She has two daughters out of Wellesley and a son who is a research psychiatrist out of Princeton and Duke Medical School, who among them have provided her with 11 grandchildren.

And there are children by the hundreds in the Housing Authority's colonies: 165, for example, in the 27 garden apartments off Exchange street, hundreds more at Carlisle Hill and Saratoga Heights.

Most of them, she says, have benefited or will benefit from playtime spent without fee at the PAL Camp at Kirkwood.

STARTED WITH SCOUTS

In Dorothy's Titchener's 50 years of voluntary service in many areas, she has never accepted a penny in payment.

The half-century started with her election to Broome County Girl Scout Council in 1921. Elected commissioner a year later, she selected the site and raised the funds for Camp Amahami.

In 1929, she directed Broome County's first Christmas Seal Sale and became one of the founders of the Family and Children's Society. Elected to the Junior League, she headed its drive for a successful day nursery—and edited its magazine.

Becoming active in the Triple Cities Business and Professional Women's Club in 1941, she became district director, vice president and president of the State Federation. Then she became radio chairman for the International Federation.

It was as state head of the Business and Professional Women that Mrs. Titchener campaigned for nomination of either U.S. Sen. Margaret Chase Smith of Maine or Judge Sarah T. Hughes of Texas as vice president. The boys in the back rooms wouldn't buy it.

PLEBISCITE OVERWHELMINGLY ENDORSES GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, it has been brought to my attention that a plebiscite conducted by the Beverly Hills Bar Association has indicated overwhelming support for the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide.

This bar association, with a membership of 1,700 persons, voted by a 9 to 1 ratio to urge the Senate to ratify this convention.

I think that there is similar support for this convention around the country. A New York organization—the Ad Hoc Committee on the Human Rights and Genocide Treaties—represents more than 52 national organizations, whose membership is in the millions. They have consistently supported this convention. Their chief spokesman has been former Justice Arthur Goldberg.

I again urge this body to give its advice and consent to the genocide convention.

Mr. President, I ask unanimous consent that the letter from Mr. Martin Webster, president of the Beverely Hills Bar Association, be printed in the RECORD.

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

BEVERLY HILLS BAR ASSOCIATION,
Beverly Hills, Calif., Jan. 29, 1971.

Mrs. BETTY K. TAYLOR,
Executive Secretary, Ad Hoc Committee on the Human Rights and Genocide Treaties, New York, N.Y.

DEAR MRS. TAYLOR: We feel you will be interested in knowing that our Bar Association (1700 members) conducted a plebiscite regarding the position of the United States on the Genocide Treaty. The results favored approval of the ratio of 9 to 1.

We were pleased with the action of the Foreign Relations Committee of the United States Senate. I trust you will bring the contents of this letter to the attention of that Committee and all others who you believe might be interested in the position of our Association.

Very truly yours,

MARTIN H. WEBSTER.

THREATENED CUTBACK OF FUNDS FOR ENVIRONMENTAL CONSERVATION

Mr. PACKWOOD. Mr. President, for years the Soil Conservation Service has been doing an excellent job of helping to improve our environment. However, now it appears that at a time when the American public is becoming increasingly concerned about the critical condition of our environment, we are going to cut back on this valuable environmental conservation program.

Recently, I had the opportunity to testify on this important subject before the Senate Subcommittee on Agriculture Appropriations.

I ask unanimous consent that my remarks be printed in the RECORD.

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

STATEMENT OF SENATOR BOB PACKWOOD BEFORE THE SUBCOMMITTEE ON THE DEPARTMENT OF AGRICULTURE AND RELATED AGENCIES OF THE SENATE COMMITTEE ON APPROPRIATIONS

Mr. Chairman and Members of the Committee, I am pleased to have this opportunity to speak to you on the subject of appropriations for the Soil Conservation Service. I have received a considerable number of letters, telegrams, and resolutions from local Soil and Water Conservation District Supervisors and the state associations urging me to speak to this Committee on their behalf.

For the past 35 years, the Soil Conservation Service has been deeply involved in assisting farmers in the State of Oregon in a variety of resource conservation programs. More recently, these programs have expanded considerably with the increased public concern for our total environment.

As I am sure you know, local soil and water conservation districts have worked with all the natural resources that contribute to our environment and have done so since they were first organized. In view of the growing concern for more emphasis on improving or preserving environmental quality and promoting rural development in general, I think

it is clear that we need additional technical services and funds provided for the Soil Conservation Service to carry out this important work.

My testimony today is concerned principally with three areas: first, additional technical assistance to soil and water conservation districts: second, assistance to the Small Watershed (PL–566) Program, and third, assistance to the Resource Conservation and Development Program.

As most of you probably know, the number of technically trained people—the district conservationists and their assistants—is continually being spread thinner and thinner. The number of SCS people assisting soil and water conservation districts in my state has declined sharply over the past several years. In 1967 there were 284 SCS personnel in Oregon while this year the number has been reduced to 230. Obviously, something is wrong when more and more federal emphasis is being placed on expanding conservation and environmental programs, but fewer people are being made available to do the job within an existing and successful conservation program.

Mr. Chairman, I strongly urge that additional funds be provided to strengthen the necessary programs and allow for the addition of more personnel for the Soil Conservation Service.

With regard to the Small Watershed Program, through the Department of Agriculture the Federal Government has assisted Oregon Communities in water resource development under the provisions of PL–566, the Watershed Protection and Flood Prevention Act. Since 1954, 57 groups throughout the state have made applications for planning assistance. Although 21 watershed projects have been authorized for planning assistance, the remainder have been placed in a growing backlog, with future priorities being assigned by the State Engineer. As is the case throughout the country, applications from Oregon have far exceeded the ability of the Soil Conservation Service to service them. Clearly, the Small Watershed Program funds are inadequate to meet the current needs. At the present time Oregon has five projects authorized for construction for which no funds have been provided for installation of project measures.

A related item is the need for additional funds in the Farmer's Home Administration watershed loan program. These loans have provided a means for local sponsors to finance their share of the costs. However, because of the lack of balance in national appropriations between PL–566 construction monies for SCS and loan funds for FHA, there is a lack of orderly installation for watershed projects in Oregon. For example, PL–566 funds programed for the start of construction on the Wolf Creek project in Baker County this year were not utilized because of the inability of the Farmers Home Administration to fund the local sponsor's loan. In order to maintain an orderly schedule, it seems to me that the solution lies in securing a better balance between PL–566 monies appropriated to SCS and FHA loan funds. I would urge that this be accomplished.

Concerning the Resource Conservation and Development program, I would like to briefly mention the status of current projects in Oregon. At present, only the Upper Willamette project has been approved for operations, and the Columbia Blue Mountain project approved for planning. One other project, Grant-Wheeler, has made application with the Soil Conservation Service. I might add that two other RC&D applications for Lower Willamette and North Coast are in the final stages of preparation. Mr. Chairman, I strongly recommend that additional funds for the RC&D program be appropriated. The RC&D program is a major factor in our rural development effort.

In summary, I respectfully request the Committee to favorably consider an increase in funding for conservation operations, watersheds, and RC&D so that the level of assistance furnished to local residents in Oregon can be accelerated. The quality of our environment is at stake.

CONCERN OVER DEVELOPMENTS IN EAST PAKISTAN

Mr. KENNEDY. Mr. President, on April 1, I spoke in the Chamber to express my deep concern over developments in East Pakistan.

Suppressed reports to our Government were telling of a heavy toll being paid by the civilian population as a result of the violence. It was a story of indiscriminate killing, the execution of students and dissident political elements, and the suffering of tens of thousands of innocent civilians. It was a story of families dislocated and homes lost. It was a story of little food and water. And coming in the aftermath of tragedy by natural disaster, the outbreak of violence and the near total disruption of government services were compounding an already difficult situation. Conditions were threatening famine for millions—and the spread of epidemic and disease.

Over the last month I have communicated my concern in this matter to officials in the Department of State and elsewhere, in an effort to encourage and support reasonable initiatives by our Government and the international community to help meet the urgent political and humanitarian problems of East Pakistan.

Regrettably, the record will show that little has been done. And so the plight of the people in East Pakistan is rapidly deteriorating into a nightmare of more suffering and death for millions.

Although reports suggest that violence has subsided considerably, reports also indicate that feelings are tense between the people and the army of the central government. The great bulk of the population is alienated as a result of the army's violent repression—which, as events in Dacca last week underscore, continues sporadically.

Moreover, reports also indicate that the army effectively controls little ground—and that except for Dacca, and Jessore, and the area immediately surrounding these cities, government services and administration are practically nonexistent. The transportation and distribution of available foodstocks and medical supplies is at a standstill—even in the area ravaged by last fall's natural disaster, where conservative estimates say a million persons are solely dependent for survival on effective relief operations. The tragedy of the Bengali people in East Pakistan has now spilled over into India, which so far has found it necessary to give asylum to well over a million refugees.

Mr. President, hundreds of thousands of people in East Pakistan—perhaps millions of people—are slowly reaching the point of starvation and death.

We are conditioned in the world we have created, to accept such suffering and injustice—especially in our time when violent conflict and oppression are active in so many areas. But the newer world we seek will not evolve if we ignore these challenges to leadership, and take comfortable refuge in the mundane patterns and attitudes of the past.

In the case of East Pakistan—in the effort to help her people caught in the passion of conflict—I cannot believe that our Government and the international community stand paralyzed in face of great tragedy. The situation can no longer be ignored. At stake are human lives—innocent lives—Pakistani lives—thousands, even millions of lives—whose destruction will burden the conscience of all mankind, unless something more is done to save them.

It is easy to deplore the repression and political disorganization in East Pakistan. It is easy to deplore the deteriorating conditions of the people. It is easy to proclaim a policy of concern. It is easy to advocate meaningful steps to ameliorate the conflict and bring relief to the people.

But such rhetoric is no alternative to action. And I strongly feel that whatever our own Government has done on the humanitarian needs in East Pakistan, has fallen short of what should have been done—and, like so much of our moral and humanitarian leadership in recent years, has been done without a sense of urgency, creativity, and deep compassion for those in dire need.

And so today, as an American concerned about the dignity and preservation of the ultimate resource on our planet, I appeal for immediate action by the United Nations, which so far has chosen silence over leadership. I appeal to the leaders of Pakistan, to the leaders of other countries, and to our own Government, to support a mercy mission and airlift into areas in need. And, hopefully, the appeal of the Indian Government for assistance to meet refugee needs within her borders, will receive a sympathetic response by all concerned.

Let us leave no stone unturned in accomplishing this objective. But let us do so with meaningful action to meet immediate needs, and with the urgency a serious crisis of people demands.

ADDRESS BY HELEN DELICH BENTLEY

Mrs. SMITH. Mr. President, a very forceful and impressive address was given on April 28, 1971, by Mrs. Helen Delich Bentley, Chairman of the Federal Maritime Commission, before the Star Spangled Flag House annual dinner in Baltimore, Md.

Because it is very worthy of reading and consideration, I ask unanimous consent that it be placed in the RECORD.

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

PRIDE AND PRODUCTIVITY

During the presidential campaign of 1860 Alexander Stephens of Georgia was asked why he believed Lincoln's election would mean war. "Because," he said, "there are not virtue and patriotism and sense enough left in the country to avoid it."

The observation has the ring of currency for anyone who examines the American scene today. On the surface at least, we appear to be a house divided—not on one overriding issue as in Lincoln's day but on many issues basic to our values and actions.

For the first time in a long time, thoughtful Americans are questioning our capacity for self-government.

We believe in the rule of law. But increasing numbers of our citizens reject and flaunt the law when it serves their mood of the moment.

We believe in free speech. But some among us claim the privilege for themselves alone while denying it to others.

We know that the country's deepest roots are spiritual. But we don't want our children acknowledging the fact during school hours.

We demand clean air and water and responsible use of the land. But we endure a floodtide of hard-core pornography.

We subscribe to the proposition that a government is only as good as its word. But when our Government insists on keeping its word to protect the liberties of a small and struggling nation in Southeast Asia, its leaders are mocked and their integrity challenged.

Meanwhile, the doomsayers tell us—usually from comfortable quarters outside the workaday world—that our problems are too big and too many to be solved. Even if we had the will and the way to save the cities and bring the races together and make jobs for everybody, we couldn't afford the dollar cost.

No wonder good people are asking, "What's this country coming to?"

It's a fair question. If we care about our future we had better answer it candidly and realistically in the light of our own responsibility to contribute to the national supply of virtue and patriotism and sense.

One of the items in short supply, it seems to me, is pride in our heritage. Too many of us are too quick to equate change with progress—to condemn and dismiss the past because it has produced a less-than-perfect present. It's almost as if we were ashamed of what our fathers have wrought.

Well, confession may be good for the soul, but so is the truth. And the truth is that the American system of governing and living has worked better and longer than any other system devised by man.

Has the performance measured up to the promise? Of course not. But those who read failure into the record of America simply don't understand what self-government is all about and their role in making it work.

What was promised nearly two hundred years ago was the opportunity for men to live useful, productive lives, according to their conscience and talents, free from oppression by the state or their neighbors. What was guaranteed was not happiness but the right to pursue it—not peace but the right to earn it—not solutions to problems but the right to reach them in a reasoned, orderly manner.

These standards have served us well. We have held to a government of laws dedicated to the dignity of man. We have built an economy that outproduces all others and has shown a tremendous adaptability to changing markets and needs. We have shared our resources with nations less fortunate than our own and we have used our power to nourish and support freedom around the world.

Let's keep the record straight. Some of the problems that vex and divide us today are the result of progress we have made in living up to our ideals as a Nation.

Those who despair at signs of hostile communication between the races forget that a few decades ago there was no serious communication at all.

Those who renounce the system because it tolerates a 12 percent poverty level don't allow for the fact that, by present standards, the rate used to be 30 percent.

Those who demand "Peace Now" echo the sentiments of us all. Neville Chamberlain responded to a similar demand in 1938 and the dictator he was trying to accommodate brought the world to its knees.

Those who deplore crowded and disruptive conditions on our college campuses should be reminded that until a generation ago only the privileged few made it to a campus.

I don't minimize our problems but neither do I think they are insoluble. This is a "can do" country. We have proved it in a thousand crises since a handful of patriots won a fight for independence they had no right to win. But the doing takes time and patience and dedication and a sense of purpose.

The President of the United States has promised to bring to an honorable end our involvement in a war which he did not start. By any fair reckoning, he is making good on that promise. Not enough, say the protestors: "Stop the war now or we will stop the Government."

The reasoning is a symptom of the times. We want instant cures for all that ails us. We want them to be cheap and painless, uncomplicated but the lessons of the past or their long-run implications for the future.

I can understand impatience with the War. I can understand the cry from the ghetto and the desire of the young to make the Country over in their own image—to build a better society than they found. What I cannot understand is the feeling that the way to build is to tear down—that old values and institutions must be rejected out-of-hand.

There is something very sad about the person who sees in the flag of his Country on the wrong he believes it has done. There is something pathetic about the citizen who uses the flag only to express dissent and never to affirm his identity with the Country's triumphs and trials.

Between what is and what ought to be there is the all-important ground of what can be. This is where the builders have to work and this is where they need the inspiration and guidance that history affords.

To know where we are going, we must know where we have been. "My Country right or wrong" is more than the boast of the professional patriot. It's a fact of life for each of us. We can criticize the system as we like, change it or improve it as we will, but we cannot escape the consequences of what we do as Americans.

Daniel Webster said it simply in a simpler age: "I was born an American; I will live an American; I shall die an American; and I intend to perform the duties incumbent upon me in that character to the end of my career."

The duties incumbent upon us "in that character" have not changed. They include the duty to judge a man by what he does, to respect the integrity of a government which functions by consent of the governed, to honor laws enacted in our name, to accept the rule of the majority, to proclaim by deed and word the dignity with which every man is endowed by his Creator.

These are the disciplines that hold a society together and give it body and thrust. No one can force us to assert them. No one can save us if we choose to ignore them.

The challenge of the 'seventies, as I see it, is not whether we can manage change and the pressures that change will bring to bear upon our social and political and economic lives. Rather, it is whether we can manage ourselves—whether we will have the sense to use our freedom wisely, to compose our differences for the common good, to keep our commitment to constant moral values.

"Give me a lever long enough and a place to stand," the Greek mathematician (Archimedes) said, "and I will move the world."

We have all the leverage we need in a bountiful land and a blessed heritage and a system that offers rich rewards for hard work and fair play. We seem to be unsure of a place to stand.

During the decade of the sixties, according to the F.B.I., the number of serious crimes in this Country jumped from two million a year to five million a year—an average annual increase of 11 percent. The New York Times recently summed up the state of law and order in metropolitan New York in these terms: "This city's eight million people live in daily fear of mugging, robbery and other violent crimes."

What has gone wrong? Have we abandoned our belief in the sanctity of life itself? Or have we permitted our concern for the rights of the lawbreaker to blind us to the rights of his victim?

Sociologists tell us to chalk it all up to social unrest. I don't buy that because the record doesn't support it. There are other causes for the soaring crime rate, and one is that we have created a climate in which the would-be criminal has every reason to believe that crime does pay.

The statistics as recited by Roger Freeman of Stanford University tell the story. Only 20 percent of the offenses known to police are cleared by arrests. Of those arrested, only one in six goes to jail. The one in 30 criminals who is unlucky enough to wind up behind bars serves on the average only 55 percent of the time to which he was sentenced.

We can't have it both ways. We can't expect the law enforcement officer to do his duty when the courts stack the deck in favor of the criminal.

Neither can we expect government to provide our young people with the direction and discipline that we fail to provide in the home and school and church. Drug abuse is claiming a grim and growing toll of youngsters throughout our society. Let's treat it for what it is—a disease of major proportions. But the best cure is prevention, and the best way to prevent it is to instill in our children the ability to choose between right and wrong.

We are a productive people. Americans have always found satisfaction in an honest day's work and in the fruits of their labor. We must not make the mistake of relegating the work ethic to a lesser place in our scale of values.

Again, the choice is ours. We can have a welfare state if that is what we want. But the cost will be staggering, not in dollars alone but in damage to the human spirit.

Today, an estimated 10 million American adults exist outside the Nation's labor force. Most of them lack skills for the work to be done. Some of them are paid more for not working than they could earn on available jobs.

Experience has demonstrated that reliance on Government dole is a one-way street, and it isn't the way to a vigorous, cohesive society. Between 1965 and 1970 the Federal Government alone spent more than $250 billion on social programs. Those were years of unperecedented civil strife and violence. As President Nixon has pointed out: "Never in human history has so much been spent by so many for such a negative result. The cost of the lesson has been high, but we have learned that it is not only what we spend that matters, but how we spend it."

The President's spending welfare program would replace the present rewards for idleness with incentives for work. Let's hope the Congress has the foresight to pass it.

Like everyone else, the working man has a responsibility to relate his aspirations to the public interest. The inflation that has broken the back of millions of family budgets is no longer due to excessive demand. It is the result of upward pressure on costs—stemming mainly from rising wage rates.

Recent collective bargaining agreements in major industries have added to this pressure by exceeding probable productivity gains. Union leaders and members will serve their Country well by practicing reasonable self-restraint in contract negotiations scheduled this year.

The power of organized labor needs no further documentation. If I read the American mood right, what most of our people need and want from labor and management alike is an end to bickering and a willingness to

get on with the job of providing quality goods and services.

We are dangerously close to pricing ourselves out of world markets. By demanding ever larger wage increases and ever broader fringe benefits, we have pushed production costs to the point where corporations and consumers the world over find it increasingly difficult to "buy American."

And that's only the half of it. In many areas of our economy we are demanding Grade-A pay for less than Grade-A work. The quality of American goods and services simply doesn't measure up to the competition in the international marketplace.

It isn't the eight dollars an hour that the longshoreman collects, for example, that hurts us. It is the fact that he often fails to do eight dollars worth of work. It isn't just the construction worker's superior pay that hurts. It is the fact that he often builds an inferior house.

Let's face it. We are not turning out as good products today as we used to. They don't work as well, they don't last as long, and they don't perform as promised. The buyer of the American car expects trouble, the buyer of the foreign car doesn't. And when we take the car to the garage for repairs or servicing, we expect more trouble, and usually get it.

Why? Why do we have to call the appliance man two and three times before he makes it to the house—and then call him back to do the job right? What has happened to the pride in workmanship that made this Country great?

Other countries have it. The Japanese have it. That's one reason Japan has taken markets away from us and is flooding this Country with her products. The Russians appear to have it to a greater degree than we do. Remember, ideology is not a prime consideration in the world of economics. If the Russian trademark comes to signify better workmanship and serviceability than ours, people are going to buy Russian goods and ship them in Russian bottoms—and that's what more and more people are doing in many markets vital to our national interest.

Perhaps we have had it too good for too long. Perhaps we feel that we can get by with less effort, less care, and less than the best we're capable of. If so, we are dead wrong and we're going to pay a fearful price for the lesson.

The quality of life is all the rage these days. The masters of rhetoric bombard us daily with exhortations to clean up the air, banish the slums, beautify the cities, and purify the water. This is all well and good. Improving the physical environment is important to all of us.

But the quality of our life cannot be separated from the quality of our work. We improve society by improving ourselves. And that means giving the best of ourselves to the task at hand. It means reaching out for new challenges—seeking higher standards of achievement—adhering to the moral and ethical principles that we know are right—doing the best we can, not what we can get by with.

Let's keep our values straight. Two cars in the garage and one in the driveway are not the end of the American dream. Merely putting in time on the job, no matter how high the pay and how strong the security, is not the American way. The good life is not the soft, comfortable life.

Do we have to have the bottom fall out to make us realize that we get from the economy only what we put into it? Will it take another Depression to remind us that personal initiative and self-reliance and pride of achievement count more than one-upmanship at the bargaining table?

I'm talking about attitudes and actions—actions that reflect a person's belief in his worth as a human being and his obligation to earn and preserve the opportunities of American citizenship that others have won for him. This is the spirit of America—not just to be free but to use freedom nobly and vigorously, to do all that our aspirations and instincts require, and to excel in all we do.

Young people especially seem to be following an "all-or-nothing" approach. Last spring the campuses were aboil with protest—some of it violent and much of it unreasoning. The same students returned in the fall with a completely opposite outlook—one of indifference and apathy. It was as if they were saying, "Since we can't have our way, we quit."

Well, life isn't that simple. If we're going to give a good account of ourselves in this increasingly competitive, admittedly imperfect world of the 70's, we've got to have the endurance and perspective to match our faith.

"What we require," as James Michener wrote a year ago, "is a balance between protest and stability. This is never easy to obtain but is worth attempting because we know that if through indifference we lose our liberties, we shall not regain them in this century."

We must demand as much of ourselves as we demand of society. There are no free lunches, and no freeways to Utopia. If we want the freedom not to be robbed, we must crack down on the freedom to rob. If we want more leisure, we must earn it by giving a day's work for a day's pay. If we want a better government, we must do a more effective job of participating in the political process.

Pride and productivity have carried this Country a long way. I am confident that we have enough virtue and patriotism and sense to solve the problems that confront us. The system is sound. It's up to us to make it work.

NEW BREED OF TOURIST IN WASHINGTON

Mr. SCOTT. Mr. President, an interesting column has appeared in the Washington Star. It was written by Smith Hempstone. The title is, "New Breed of Tourist Comes to Washington." It makes a great deal of sense.

Mr. President, I ask unanimous consent that this fine column on another view of recent developments in the Nation's Capital, be printed in the RECORD.

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

NEW BREED OF TOURIST COMES TO WASHINGTON

Spring is tourist time in Washington, bringing Americans in the tens of thousands to visit their national monuments, to recapture the roots of their past.

A new breed is with us now and has been these past 10 days. And their banners (with apologies to Longfellow) bear some passing strange devices. They want an end to the war in Vietnam (who does not?). They want free abortions on demand, clean water, gay liberation, union lettuce, Nixon's political scalp, jam on Thursdays. They want, they want. They want everything, these babies who were always picked up when they cried, and they offer so little aside from the spectacle of themselves clustered lemming-like in the streets.

Their spearhead was a group of about 1,200 Vietnam Veterans Against the War, who put on demonstrations of their version of search-and-destroy missions, ending up by discarding their decorations. To this observer's knowledge, no reporter in this city of reporters made a serious effort to discover how many of the 1,200 actually had served in Vietnam or to validate the decorations they said they held.

Many of them, including their leaders and the badly wounded ones, unquestionably were genuine. Perhaps, as in the case of all those Black Panthers "killed" by the police, some enterprising writer for the New Yorker will put the record straight.

Then came Saturday's emote-in down Pennsylvania Avenue to the Capitol. There were the usual hirsute patriots carrying the flags of North Vietnam and the Viet Cong, the placards of Mao Tse-tung and Leon Trotsky, chanting obscenities. They were, it is true, peaceful, although nothing really is more insulting than to praise a man for doing what he ought to do.

Finally, after five hours of rambling, repetitious speeches and folk music, the crowd of 200,000, largely white and young, trickled off to do its thing. Medical personnel were kept busy dealing with drunkenness and overindulgence in narcotics. End of Phase Two.

Now we are in the middle of Phase Three. We have in town a sizable group of ladies and gentleman who call themselves the Peoples Coalition for Peace and Justice. One of their leaders is a philosopher named Rennie Davis, who once was involved in some litigation in Chicago.

These worthies are here to rap (as they say) with federal employes in an effort to persuade them to join in a general strike and to sign a made-in-Hanoi "Peoples Peace Treaty" to end the war. On Monday and Tuesday, "tribesmen" of the Mayday Movement, a group of militants associated with the Coalition, have promised to extend our political education by attempting to block early-morning computer traffic at 21 key points in downtown Washington and suburban Virginia.

And it is, of course, gratifying in the extreme to know that the Nixon administration, in its wisdom, has put at the disposal of the Coalition a portion of federal parkland here to use as a training ground and assembly area for people who have announced their intention to break the law. It is probable that the whole shebang will cost the taxpayers not less than $1 million, and possibly a good deal more (the tab for the three-day 1969 Vietnam War Moratorium was $688,714).

Now the people of this country have the right to assemble here peacefully to petition their government. But they do not have the right to interfere with the lawful activities of other citizens. They do not have the right to plot (however sophomorically) the overthrow of their government or to try to interfere (however ineffectually) in the process of government. There is a place for such people and it is called jail.

This cup, of course, will pass from us. Rennie Davis & Co. are not going to become the government of this country. Mrs. Sallye Davis (Angela's mama and one of our speakers last Saturday) is unlikely to become attorney general. While Rep. Bella Abzug has, admittedly, a certain entertainment value, I do not see her as a future secretary of state.

Meanwhile, a few home truths which should not go unsaid: While 1,200 veterans demanded an immediate end to the war, 2.49 million others did not cry out for peace at any price; while 10 senators and 29 representatives endorsed Saturday's rally, 90 senators and 406 representatives did not; while 200,000 Americans chose to take their politics into the streets last week, nearly 200 million others did not.

Which is not to say that the Vietnam veterans who did not come to town, the congressmen who did not endorse the demonstration, the Americans who did not choose to spend Saturday listening to David Ifshin and Peter, Paul and Mary, like the war.

It means merely, I like to think, that they want the war ended without a scuttle, that

they prefer ballots to ballyhoo, that—when all is said and done—they desire a democracy rather than a mobocracy.

And so they must unless the prophecy of W. B. Yeats—"Things fall apart; the centre cannot hold; Mere anarchy is loosed upon the world."—is to come to pass. Unfortunately, it can happen here.

ARENA STAGE—A CREDIT TO THE CULTURAL LIFE OF NATION'S CAPITAL

Mr. McINTYRE. Mr. President, since its opening in 1950, Arena Stage has grown at an amazing rate and has offered consistently more ambitious and more professional productions for the audiences of Washington. The Arena Stage, with the adjacent Kreeger Theater, is certainly a credit to the cultural life of our Nation's Capital.

I have, on occasion, attended Arena Stage and have been much impressed. To show my appreciation, I ask unanimous consent that a Saturday Review article entitled "Arena Stage: Full Speed Ahead" be printed in the RECORD.

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

ARENA STAGE: FULL SPEED AHEAD

(By Henry Hewes)

WASHINGTON, D.C.—The record of Arena Stage is splendid. Although its national reputation owes a great deal to the fact that two of its recent productions a*The Great White Hope* and *Indians*) happened to go on to win high acclaimon Broadway, a critic who has followed Arena Stage's progress since its inauguration in 1950 is more impressed by the consistency and daring with which this company has risked its future solvency to reach out for the very best.

For Arena has raised its production standards to a quality unsurpassed by any American producing organization. Its activities have widened progressively from year to year. And its facilities have evolved from a 247-seat converted moviehouse to a 500-seat renovated brewery to a handsome new 811-seat theater of its own.

The current offering in the present facility, a documentary drama about the *Pueblo* incident, is a stunning demonstration of the theatricality that can be achieved in an arena where the audience completely surrounds the playing area. When we enter, we can hear all around us the foreboding pulse of the ship's turbines. Through the stage floor's inlaid grillwork radiates the internal glow of the engine room. As the play begins, sections of the floor rise up to become the Captain's bridge. And above this area are suspended catwalks and ladders, which not only suggest the totality of a naval vessel, but also provide dynamic acting areas that director Gene Frankel has used to add a vertical forcefied of interplay to the action.

In this superbly dramatic atmosphere, Stanley R. Greenberg objectively retells the *Pueblo's* story by alternating between the two formal hearings—one naval, one Congressional—and a chronological re-enactment of the events themselves. Shepperd Strudwick portrays Commander Lloyd Bucher, whom he strikingly resembles, with controlled conviction. He emerges not as a by-the-book officer, but as an extraordinarily patient protagonist whose sentimental consideration for his men may be more deeply American than the official pragmatism of our political and military leaders.

Where *Pueblo* is less successful is in its attempt to counterpoise these two philosophies with clear dramatic impact. To do this would require more delineation of what occurred in secret Washington deliberations, and these are excluded because Greenberg has chosen to use only those words and events available in print. Nevertheless, we do leave the theater with a fresh awareness that our government and our military establishment are operating under dangerously schizophrenic conditions. And we recognize that the decisions of Commander Bucher and his men are symptoms of a currently insoluble American dilemma.

Because all plays do not thrive equally well in a large threater-in-the-round like this one, Arena Stage has just built and unveiled an adjacent 500-seat proscenium stage, which is named the Kreeger Theater. Eschewing caution, Arena's founder and artistic director, Zelda Fichandler, opened the Kreeger with the American premiere of a most difficult work, Peter Barne's *The Ruling Class*. The play had won its blasphemous young author the critics' award as the most promising playwright of the 1968–69 season. But because it had not been a commercial success in the West End, no New York producer proved willing to attempt it.

Oddly enough, the production here better realizes Mr. Barnes's strange and remarkable play than did the one in London. Credit for this must be shared. First of all, the drama benefits from the intimacy of the theater itself. The Kreeger has a fine semi-thrust audience-stage relationship, somewhat similar to the one that makes New York's Theater De Lys so satisfying.

Then to assure the optimum performance of the work, Mrs. Fichandler has imported British director David William and two Canadian actors, Douglas Rain and Eric House, to play the two leading roles. They are marvelous. Mr. Rain, who recently finished a long and highly acclaimed London stint starring in *Hadrian VII*, is completely at home as another religiously deluded Britisher, the fourteenth Earl of Gurney, who believes he is both Jesus Christ and God. His eccentricity, which proves less troublesome to his family than does his sincere espousal of Christ's philosophy of love, is made hilariously entertaining by Rain, who superbly combines eloquence and vulgarity, as he cautions skeptics, "Please remember, you're dealing with the Big One." But Rain also totally convinces us of the sincerity of his belief, so that Barnes's challenging argument is emotionally and intellectually supported.

When the Earl's family consults a psychiatrist and he is able to cure the Earl of his delusions, Rain nicely makes the transition to the more horrendous but more socially acceptable eccentricities of an ultra-conservative member of the House of Lords. With the same fanaticism that he followed the God of Love, he turns to the God of Justice, and he becomes a moralizing avenger, a Jack-the-Ripper who stabs any woman who offers him love.

Mr. House is delightful, too, as a British butler who breaks into a vaudeville dance at the solemn reading of a will that bequeaths him a small fortune. And the rest of the cast, from the regular Arena Stage company, blend beautifully into this most original work.

To accept two such large theatrical challenges and emerge as successfully as Arena Stage has done reflects both a shrewdness of judgment and a remarkable efficiency on the part of its leadership. But this is only part of the reason for Arena's national eminence. It has, in a surrounding where community spirit does not noticeably flourish, made itself a responsible, functioning part of Washington life.

An important part of Arena's community service is a children's theater program, which is startlingly different from the old-fashioned, innocuous stuff Americans have have come to associate with the genre. Called Living Stage and led by Robert Alexander, an inspiring and committed spokesman for the capacity and wisdom of today's children, the company consists of six performers who are expert at improvising. Sometimes they go to high schools, and sometimes small parties of youngsters are brought into a large rehearsal space at Arena. The performers encourage the kids both to become involved in exercises where each of the audience uses his own creative imagination and to make suggestions for scenes they would like the actors to improvise, indicating how they would like them to come out. There is no censorship as the actors level with the kids and insist that the kids level with them.

Is this expansion into a second theater and the maintenance of a public service children's program practical for an organization that in the fall of 1972 will find it most difficult to raise the $300,000 needed annually to cover its deficit? That deficit is currently being supported by a Ford Foundation grant, but the subsidy was awarded with the understanding that Arena is to expect no further support from Ford beyond this point. Administrative Director Tom Fichandler doesn't minimize the problem, but he hopes that some revenue may be gained by booking visiting attractions into the Kreeger at those times when the company is not performing there. Conceivably, the Kreeger could become a plus item.

Indeed, there is a possibility that smaller theaters will be most in demand in the future. For gathering together in such an intimate atmosphere to share a genuine theater experience may be an ideal change of pace from the nightly viewing of TV masterworks in the living room.

Whatever happens, Arena Stage is proceeding full speed ahead, as if its board were going to be able to raise $300,000 annually in the District of Columbia, where there are no industrial corporations capable of giving substantial financial assistance. If the funds are not forthcoming, the Fichandlers insist they will not continue on a smaller budget with reduced standards and activities. It is a proud attitude, but their twenty-one years of dedicated work entitles them to it.

LEON SULLIVAN ELECTED TO GENERAL MOTORS BOARD OF DIRECTORS

Mr. SCOTT. Mr. President, in Pennsylvania there is a remarkable individual who during the earliest period of his young life took the leadership in setting the direction of the civil rights movement. He is an exceptional man who has given so much time and energy for the purpose of equal justice. Leon Sullivan is a black minister in the city of Philadelphia. He is a leader in the Opportunities Industrialization Centers of America. He founded this organization in 1964.

Today after these many years of service to others he has been elected to the board of directors of the General Motors Corp., the first black man to be so recognized. Mr. President, there is an exceptional news article on the Reverend Mr. Sullivan in Business Week for April 10. I commend it to the reading of Senators and ask unanimous consent that it be printed in the RECORD.

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

[From the Business Week, Apr. 10, 1971]

A BLACK DIRECTOR PUSHES REFORMS AT GM

"For several years, I didn't talk with white people," says Philadelphia's Reverend Leon

H. Sullivan, "because I didn't want them to try to persuade me not to do what I was doing." Sullivan now talks readily to whites, and he is generally the one doing the persuading. His newest and most important white audience: 22 fellow members of General Motors Corp.'s board of directors.

Sullivan's election to GM's board, like most of the activities of that puissant corporate giant, is portentous for U.S. business. In a broad sense, it highlights the gradual shifts of U.S. industry to meet mounting social challenges. More specifically, Sullivan himself, a nationally-known civil rights activist, symbolizes the swelling band of blacks appearing on corporate boards.

At least 14 major companies—Pan American, Chase Manhattan, First National City, A&P, and CBS among them—have elected Negro directors in the past year or so, and more will follow. Though most of these directors see themselves as businessmen or lawyers rather than as advocates of minority groups, Sullivan's outspoken social commitment could ultimately drive them toward more militant stands. This would intensify already gnawing questions about the role of directors as representatives of special interest groups and, in fact, about the role of directors generally.

Sullivan became the first black director of the world's largest industrial corporation last January 4, after GM Chairman James Roche personally made a trip to Philadelphia to offer him the job. They met in a small office at Progress Plaza, the black-owned shopping center that Sullivan organized.

"I told Mr. Roche he should have no illusions about what I am," Sullivan recalls. "He knows I'm a man who expresses his opinions, and that I will not be tied to the traditions of the board. I'm more interested in human returns than capital returns. My main concern is helping to improve the position of black people in America. I want to be a voice from the outside on the inside."

Dissenter.—If anybody at GM wondered what that meant, they are finding out fast. At the most recent of three board meetings Sullivan has attended, he cast the lone vote supporting the Episcopal Church's request that GM pack up and get out of South Africa. Sullivan had told his fellow directors earlier that GM and other U.S. companies are underwriting apartheid. "The South African government should be told that apartheid must come to an end," he insists, "or else, office by office, plant by plant, business by business, we should get out."

Beyond this, Sullivan has begun to move on just how GM should help blacks. This week, he disclosed to BUSINESS WEEK details of what he is asking GM management to do. "We'll see how far GM wants to go," he adds.

Program.—Sullivan and staff members of the 90-city Opportunities Industrialization Centers of America, the job training organization he founded in 1964, met in Philadelphia with a GM team headed by Treasurer Roger B. Smith and again with a second GM group in Detroit. They discussed three components of Sullivan's three-year plan for GM.

One is to set up a new black dealership program to add 50 new dealers in the next 36 months. Sullivan's people visited all the country's black auto dealers and found most of them in bad shape [page 54]. "We're getting letters from blacks all over the country wanting GM dealerships," Sullivan reports. He wants GM to lend a generous helping hand with money and management training to present and future black dealers—especially training on such matters as finding better locations, managing cash flow, and learning about service departments and the used-car end of the business. He wants GM to set up a "model dealership right here in Philadelphia where I can watch it." His idea is to bring in black dealers for intensive training. "This will be my personal project, if GM will cooperate. GM is going to have to back me up."

Sullivan also wants GM to supplement existing auto mechanic training centers with centers aimed specifically at inner-city blacks, starting in 10 cities such as New York, Philadelphia, Washington, Seattle, and Atlanta. Graduates would go to work for GM and other auto companies and their dealers. Sullivan wants 1,000 mechanics trained the first year, 3,000 the second year, and 5,000 the third, "at a minimum."

Finally, Sullivan wants GM to hire an initial 225 blacks as junior, middle management, and sales executives to work throughout GM. "People have said for years, 'I can't find them.' Well, I'll find them," he promises. "I'll recruit them, and together with the GM Institute, I'll train them. My goal is to get 1,000 black executives, men and women, in the next three years. I want to see them working all over GM, moving up that ladder."

Implications. Such ambitious proposals, to be followed by more, show how much is at stake in Sullivan's new foothold on the commanding heights of American business. Like such figures as Justice Thurgood Marshall and Senator Edward Brooke, he is now a "first," and his election to GM's board is another milestone in the black struggle toward full participation in society. Further, Sullivan's election raises at least two other issues of compelling importance.

First, it reinforces GM's avowed determination to take a new approach on the social-issue front [BW-July 11, 1970 p. 72]. It is one of several moves—appointing a vice president for environmental matters, and creating a five-man public policy committee—that herald this new readiness. If GM now follows through on Sullivan's proposals, it will move into a position of decisive leadship in minority training and hiring. "When I go to the annual meeting in 1972," Sullivan says, "I want GM to make a report on hiring minorities that will really impress America."

Second, such action strengthens GM's hand in its tough new stance toward its most searching critics, such as Ralph Nader and the Nader-flavored Project for Corporate Responsibility in Washington that runs Campaign-GM. In recent speeches, Roche, probably looking toward next month's annual meeting, lashed out against people who "seek less to correct a wrong than to condemn a system . . . [who] crusade for radical changes in our system of corporate ownership, changes so drastic that they would all but destroy free enterprise as we know it."

Project Responsibility is pushing three proposals on GM's proxy statement calling for greater disclosure in annual reports and for changes in the election and composition of GM's board. Project official Susan L. Gross believes GM's "shift in strategy" is aimed at "destroying our credibility." Nader, who regards GM's recent moves as "cosmetic," calls Roche's speech "unvarnished GM, a massive display of GM's malignancies."

Sullivan so far is sidestepping the broad questions of corporation reform, but he is far from confused about his role. I'm not tied to GM," he says. "I'm not a businessman or a professional director. I'm a minister, and I see my role as GM as an expression of my ministry. When I'm not effective, I'll resign." Almost as an afterthought, he adds: "If I resigned, it could mean a worldwide boycott of GM."

GAMBLE. Talk like this tells many businessmen that GM is taking a considerable risk with Sullivan on its board. The price could be, at the least, a painful public relations backfire. But people who know GM and Sullivan do not agree. They reason that GM carefully checked out its man, and by electing him showed it was ready to accept his goals. Even Nader, who calls Sullivan's election "a good appointment," believes GM "is prepared to move in his particular area of interest.

Sullivan, in turn, proceeds cautiously. As the NAACP's Assistant Executive Director, John Morsell, says: "He didn't get where he is by being impulsive." Sullivan's rhetoric is uttered without truculence or threat. And he habitually balances his demands with expressions of confidence in GM and its management. "I'm not interested in wrecking GM," he says. "I want to help GM make a profit. I've been impressed with the sensitivity I've found on the board. I think they want to see GM move forward."

Though Roche consistently denies that critics' pressure precipitated Sullivan's appointment, outsiders persist in seeing a connection. A black director of another company offers this assessment of GM's choice: "The guy is a good fire escape. Nothing he's going to cost them will be half as expensive as what Nader was getting ready for them." Franklin Thomas, the head of Bedford-Stuyvesant Restoration Corp. who also sits on the boards of CBS and First National City Bank, has a less cynical view. "It seems that some of the major corporations are reaching for additional perspectives," he says, "and Leon Sullivan's appointment reflects this."

Asked for his reasons why GM picked him, Sullivan replies: "First, I'm black. Second, I have good credentials, a solid education. I'm not frightened by corporations. It seemed like the moment to get some outside voice in GM that will express itself. It's impossible to people who know me that I can be put in a pocket. If I'm silenced, I'll leave. But I think they knew what they were doing."

The man who knows best agrees that the corporation knew what it was doing. Says Chairman Roche: "For some time, we've been considering adding to our board to include a minority member. We wanted to find somebody who had a record of accomplishment, somebody who had roots in the minority communities around the country, and somebody who could counsel and advise us with respect to policies and procedures regarding minorities." After looking over many candidates, GM "came to the conclusion that Dr. Sullivan seemed to have the best talents and those qualities we were seeking."

Roche indicates that GM expects two-way benefits from Sullivan. "I think he can be very helpful to GM in giving us suggestions as to how we might make greater progress with our programs, and then secondly, in interpreting that progress to the people on the outside. He will know at first-hand what we are doing and what progress we are going to make."

Militant. This strongly suggests either that GM feels it knows how much it must deliver to win Sullivan's cooperation, or else that it has committed the sort of blunder it rarely makes. As Sullivan's background shows, he would be a bad choice as a token black who would be content to sit near the door.

Tall, articulate, and proud, GM's new director is a shrewd 48-year-old black activist who left Charleston, W. Va., in 1943 to study at Manhattan's Union Theological Seminary. After several years as a militant civil rights worker helping Harlem's Adam Clayton Powell, and following a stint in a small church in South Orange, N.J. ("I was getting a big head in Harlem"), Sullivan accepted a call to lead Philadelphia's Zion Baptist Church, the largest black church in the city. "The congregation gave me a free hand," he says. Church membership has grown from 600 to more than 5,000 members, and the church still provides Sullivan with his sole means of support.

"He doesn't bang his shoe on the desk. He get the facts, and gives advice."

In the early 1960s, Sullivan developed his "selective patronage" or boycot tactics to pressure Philadelphia businessmen into hiring blacks. "They thought I had horns," he says. This work brought him considerable prominence, and he subsequently went to Atlanta to help Martin Luther King and Ralph Abernathy work out their Operation Breadbasket boycotts.

Philosophy. Despite all this activism on behalf of blacks, Sullivan is traditional about economic maters. Self-help is the keystone in his approach. He started the Opportunities Industrialization Centers to enable young blacks to train themselves and he takes pride that the OICs train Chicanos and white Appalachians as well.

He believes in creating black businesses. While he solicits financial help from foundations and corporations, he insists that blacks contribute, too, as a matter of pride and as a way of retaining control of their activities.

Sullivan's philosophy of self-reliance hardly antagonizes businessmen, of course, and he has a long roster of business admirers. The latest, not surprisingly, is James Roche. "I think Dr. Sullivan's philosophy basically is a very sound one. He recognizes that whatever can be done for the minorities should be done within the framework and concepts of our American system."

William B. Eagleson, Jr., president of Philadelphia's Girard Trust Bank (whose board Sullivan joined last October), says he has helped the bank with its minority loan program, finding ways to assist faltering black entrepreneurs who were not attractive credit risks. "He does this not by banging a shoe on the desk," says Eagleson, "but through discussions, getting the facts, giving advice."

Former Chase Manhattan Chairman George Champion, who now serves as head of a 25-man advisory committee Sullivan formed to drum up business support for his OICs, calls Sullivan "the most persuasive man I've ever met, and the most dedicated." Thomas B. McCabe, chairman of Scott Paper Co.'s finance committee, helped Sullivan set up the advisory committee. "I take my hat off to GM," says McCabe. "He is no yes-man. He'll be a very strong advocate for what he believes in."

Hurdles. A businessman's idea of a good job, though, falls far short of what GM's organized critics in Washington would like to see. In fact, Theodore Jacobs, who runs Nader's Center for Study of Responsive Law, feels Sullivan is "going to have a tough time being effective without using some extra-corporate methods. If he is really going to be effective, he won't last long." At the Project, Susan Gross labels his election as more "corporate charity. What GM gives, GM can take away," she says. "We need structural changes in corporations."

Sullivan is steering as careful a course with such critics—in fact, with anyone who wants to tell him how to do the job—as with GM's board and management. "I hear from people all over the country," he relates. "Most of them have their own agenda, their own interests. I must be my own man and not the tool of anyone."

Then he rounds things off: "I'm willing to see as many people as I can. I will learn from everyone." Nader? "I have never met Mr. Nader but I have great respect for him." The Project? "I will value the opinions of these groups and look deeply into their positions." He plans to meet with Channing Phillips, a Washington minister who was a Project candidate for GM's board last year, and with Marion Wright Edelman, a member of the Project's board. He adds, "My decisions will be made entirely independently of Campaign-GM or any other group."

Caution: The blunt fact is that, while Sullivan is sympathetic to the objectives of some corporate reformers, he does not yet have to take a public position. When the Project's three proposals came up for a vote before GM's board, Sullivan simply said he had not had enough time to study them. "I did nothing definitive. I'm letting my opinions evolve as I learn more." For the present, it is clear that Sullivan will stick to minority hiring and leave broad corporate reform to others.

For their part, GM's Washington critics seem willing to leave it at that. "We've been careful about claiming him as our director," says Susan Gross. Channing Phillips accepts the fact that "the broader interests cannot be served by a single man."

In another quarter, the NAACP's John Morsell hopes Sullivan at least "can stiffen the corporation's nominal commitment to equal opportunity." And Joseph L. Bower, a Harvard Business Administration professor, is one who believes Sullivan will fill a critical role, "even if he doesn't deliver the goods," by asking questions that would otherwise go unasked.

Sullivan will hardly be satisfied with that. Doubts about his effectiveness, in fact, steam mostly from the uneasy conviction that he and GM will sooner or later come to blows. Few directors, black or white, can ever push through their ideas over management objections. Nader wants Sullivan to "break new ground as a director" with such tactics as issuing minority reports and holding meetings in black ghettos to solicit consumer complaints.

Sullivan, though, is unlikely to wage war on GM from the board room. He believes, or says repeatedly that he does, that GM's management intends to follow through with his suggestions. Effectiveness, in such a case, would mean helping GM to do what it has already decided to do. "Mr. Roche said it was his desire to work with me, and I have no reason to doubt it." But Sullivan adds his usual hedge: "We shall see what we shall see."

No one doubts that Sullivan means it when he says he will resign if he feels stymied at GM. But he tempers his hopes with realism. "I don't see myself as Sir Galahad or Mr. Clean. I'll do what I can."

Whether or not Sullivan is now, or will become, a new breed of corporate director, he clearly stands apart from the roster of black men already on America's corporate boards. Comparison with Sullivan's missionary fervor makes them appear racially unconcerned, an image they dispute. Yet there is little doubt that their sense of their responsibilities differs markedly from those that Sullivan expresses.

Philadelphia lawyer William T. Coleman, who sits on Pan Am's board, insists that "a black should not be chosen just because he's a black." Like most black directors, Coleman argues that "a director must always remember that he represents the stockholders. That's why he's there."

But Thomas Wood, a director of Chase Manhattan, points out that representing stockholders entails more than short term profitability. "The main job is to work for tomorrow," says Wood, "and in the long run you may have to do things to insure that tomorrow is worth working toward."

Franklin Thomas sees his board membership as part of his broad commitment to neighborhood renewal. "One of my purposes is to get the financial institutions in the city to realize that it makes good social sense and good business sense to make areas like Bedford-Stuyvesant better places to live."

Sullivan, meantime, is looking beyond GM's shareholders and GM's daily concerns to the vast, interrelated problems of society as a whole. The missionary in him believes deeply that the 1970s must inexorably be a decade of black progress, while the realist in him fears that progress could be thwarted. "Unless business uses its resources to help people," he warns, "it will lose those resources."

SAFEGUARD ABM THREATENED WITH OBSOLESCENCE

Mrs. SMITH. Mr. President, I have repeatedly opposed the Safeguard ABM program. My principal opposition has been that I have felt that it would be obsolescent before it could be put in place. I have repeatedly made that warning to Senators in the debate on authorization and appropriations for the Safeguard ABM.

I have, therefore, read with interest today's column by Rowland Evans and Robert Novak, in which they report that the Safeguard ABM program is now threatened with obsolescence.

FLINT JOURNAL COMMENTS ON WITHDRAWAL FROM VIETNAM

Mr. GRIFFIN. Mr. President, I ask unanimous consent that an editorial published in the Flint, Mich., Journal of April 29, 1971, be printed in the RECORD.

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

WHITEWASHING FOE IS NO ANSWER TO WAR

Peace demonstrators in Washington keep the rhetoric flowing on the Vietnam involvement and the wisdom of immediate and unilateral withdrawal of U.S. troops.

As the speeches resound and the rejoinders pour forth, it is evident that almost all of it is in the form of restatement of old opinions and earlier stances and very little attention is being paid to the realities of the moment.

The size and the mood of the major peace gatherings of the week—if not of the militant aftermath in Washington—indicated the growing willingness of major segments of the population for the quick withdrawal sought by the peace leaders.

There is no denying the validity of those peace rallies which are of a nonviolent, orderly nature.

It is too much to ask at this late stage of the game that those addressing these rallies, or those responding, "stick to facts." Unfortunately, the passions and the frustrations on both sides have implanted too many misstatements, too wide a gap between the parties and too great a lack of faith in each other.

Neither side can legitimately accuse the other of being responsible for this disastrous lack of communication. Both sides have ignored the weaknesses in their position and overemphasized the strong points. Both have been guilty of distortions and on each side some have been guilty of pure fabrications or wishful thinking.

This past cannot be ignored, but it must be minimized as much as posible so that it does not hamper reasonable decisions in the present.

Simply put, the immediate question is whether it is best to withdraw immediately without regard to the consequences or to continue the war for an unspecified longer time in the hope that South Vietnam can, in a reasonable period of time, become strong enough to deny North Vietnam a victory through force of arms.

It is understandable that those advocating immediate withdrawal put as good a face on their position as possible. But it is essential

that those who have not yet committed themselves to this "peace-now" policy recognize that strategy.

In trying to persuade the nation, the peace-now advocates are showing a growing tendency to whitewash the foe in order to make more palatable their willingness to let North Vietnam achieve its purposes.

Perhaps the peace proponents can convince the citizens and the legislators and the Nixon administration that immediate, unreserved and total withdrawal is the best way, but the only way a correct decision can be made is to acknowledge certain realities.

A favorite ploy has been to hold up Ho Chi Minh, now dead a year and a half but still a driving force in this contest, as "the George Washington of his nation." There is just enough truth to the picture to warrant its use, but there is much more of deception.

It would be far more accurate to call him the "Napoleon of his nation." He was, indeed, a patriot and a fighter for independence and a charismatic leader and a remarkable individual. However unlike Washington, he was not content to forego war and settle for independence.

He led his nation into adventures inimical to the peoples' best interests. He was as ruthless as Stalin and Hitler in the extermination of those who opposed him. He won power on the grounds of a liberal constitution modeled after our own—and in a little more than a decade, after stamping out every sign of political independence within his nation, tore it up and instituted a Communist constitution providing almost limitless powers for himself and his party successors.

In trying to put a better light on their position, the peace advocates also seek to picture the struggle as strictly between two viewpoints within South Vietnam. Yet, in the darkest days of South Vietnam's fight against the Viet Cong, nobody argued that more than a small handful of native South Vietnamese were Communists. Most of the opposition to the earlier regimes, and even today's leaders, were not for communism but against the current rulers.

If it had not been for the deliberate intrusion of the North Vietnam, this dispute would have been settled long ago.

Those who condemn the thrusts into Cambodia and Laos never admit that if the North Vietnamese were not violating the borders of those two nations there would be no reason for such actions, or that the primary responsibilities still lie with the aggressive policies set by Ho Chi Minh and carried through by his successors.

To be creditable, those advocating withdrawal now must first acknowledge the North Vietnamese are the aggressors forcing their own philosophies and government upon the people of South Vietnam, Cambodia and Laos. Then they must admit that a precipitate withdrawal will favor these goals.

After that, they are free to argue that, despite these facts, it is to our best interests to withdraw immediately and try to convince the people of this policy.

It does not serve our interests now or in the future to sell this withdrawal on the grounds of a whitewash of the foe.

EDWARD G. UHL, PRESIDENT OF FAIRCHILD HILLER CORP.

Mr. GOLDWATER. Mr. President, the one industry in which the United States remains supreme throughout the world is the one we call aerospace. It has developed most of the outstanding leaders in the last two decades and the leadership is beginning to pay off.

Certainly among the outstanding men who have blossomed through the great strides this industry has made is Edward G. Uhl, president of Fairchild Hiller Corp.

Recently the magazine Aviation Week and Space Technology published an article entitled "Leadership Forum" about this wonderful American. Because it so concisely demonstrates the type of thinking practiced by these men, I ask unanimous consent that it be printed in the RECORD.

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

EDWARD G. UHL

All of us in the aerospace industry are concerned about reduction of R&D effort and the lack of public interest in new space and aircraft programs. It is easy to assume that our industry is being singled out by opponents in the Government. I believe rather that our problems are symptomatic of a more general and therefore more distressing national problem.

When one reads the newspapers today or listens to a television news program, he cannot help but become somewhat discouraged about the future of the United States (as well as the aerospace industry). Every form of media hammers incessantly at America's problems—the poor, the urban crisis, the Negro situation, the threats to the environment, the corruption among public and private officials—the list is endless. Periodical literature, novels and in-depth studies of all sorts are examining consistently the flaws in the American system and character. The net effect of all this is that we are in danger of becoming a nation of critical self-analyzers rather than a nation of doers.

This trend toward self-criticism has had its impact on the business and Government leaders of our country. Before embarking on any venture, no matter how sound or ultimately useful to the country, our purported leaders agonize and strain over the possible criticisms that may be made concerning their attempts. As a consequence, we have a leadership crisis in the country at the present time with no one willing to embark on risky but potentially worthwhile programs. Similarly, the desire to have a consensus approval of each new venture has rendered our forces for technological and social progress practically immobile. When one stands around waiting for each segment of the population to agree to a specific venture, he foredooms that venture either to be stillborn or to become a mediocre compromise.

Instead of focusing continually on what is bad for our society and worrying about possible criticism of a contemplated action, the United States must move forward in the direction of setting objectives and instituting constructive programs. This leadership should begin in our Government, but it should also be carried on enthusiastically by business, civic and cultural leaders. The accent must turn to the positive at all levels—from national commitments to individual business and social ventures. Our ultimate tests as a nation will not be how we have analyzed our failings but what we have done to establish and attain new goals, thus making the future better than the past. To do that effectively, we obviously must examine the past; however, we cannot permit yesterday's sins to make us fearful and hesitant in moving forward on new programs and objectives for tomorrow.

CONFIRMATION OF NOMINATIONS OF AMTRAK DIRECTORS

Mr. GRIFFIN. Mr. President, I am pleased that the Senate has confirmed President Nixon's nominations for the board of directors of Amtrak. Except for the appointment of the Secretary of Transportation and of Mr. Roger Lewis, the new chief executive officer, the other six nominees served as the incorporators of Amtrak.

While considerable dissatisfaction has been expressed by several Members of Congress with the elimination of certain routes, I believe the incorporators deserve a great deal of credit for getting the system in operation on schedule under very trying circumstances.

In the space of just 4 months, the eight incorporators had to effect a smooth transition from a private rail passenger system operated by some 25 railroads to a system operated by a single national corporation. This task involved selection of the routes within the basic system; negotiation of contracts with the railroads, including the thorny problem of developing a formula to determine the railroads' out-of-pocket costs for passenger service; and planning for immediate improvement in passenger comfort and convenience.

With a very limited budget, the incorporators had the delicate task of balancing the need to insure the corporation's financial solvency with the need to provide attractive and efficient passenger service. Some lines have been drawn and if service is to be improved, some sacrifices must be made.

If the corporation had emphasized quantity of service over quality of service, in the long run it undoubtedly would be subjected to even greater public criticism than it is presently receiving.

As it is, the corporation is expected to incur operating losses of $100 million during its first year of operation compared with operating losses of over $235 million per year which have plagued the railroads in the past.

At the same time, the incorporators have taken steps to assure greater passenger comfort.

The trains operating over the National Rail Passenger System will be utilizing the best 1,100 passenger cars in the country—all of which have been built since the mid-1950's. In addition, the corporation will have representatives—or quality control people—who will actually ride on the trains to assist passengers and evaluate what improvements are needed.

The standard by which Amtrak will be judged is not necessarily by the number of trains it operates but by how well it operates the trains that are run.

The frequent criticism of Government bodies, whether they be corporations, departments, or agencies, is that they are inefficient and often accomplish a great deal less than is expected. In the case of Amtrak, the reverse seems true: the criticism is against efficiency and modest and achievable goals.

I can fully appreciate and sympathize with the concerns of Senators who believe that additional service should be provided. As a matter of fact, I too regret that a number of large Michigan cities will be cut off from all rail passenger service as well as the fact that at present there is no rail service from Detroit to

the eastern part of the United States. The senior Senator from Vermont (Mr. PROUTY)—the ranking Republican on the subcommittee which will oversee Amtrak's operations—also will experience some substantial loss of service in his State, but, at the same time, he recognizes the importance of assuring that the corporation is given a chance to prove itself.

If additional routes are needed now, a better approach would be to pass the resolution reported last Friday by the Senate Commerce Committee which authorizes $100,000 for a 2-month study by Amtrak to determine the desirability of extending service.

It has been my personal privilege to know one of the nominees for many years. I refer to David W. Kendall of Michigan, who has done an outstanding job as chairman of the interim board of directors. His wealth of experience as a lawyer, as an executive officer of one of the Nation's largest automobile companies, and as counsel to President Eisenhower has been particularly important to this new corporation.

I know that Dave Kendall and the other incorporators have devoted a great deal of time and energy to the job of getting Amtrak off the ground. For the past 3 months, they have worked 7 days a week and almost 24 hours a day in order to meet the May 1 deadline. To their credit, even the strongest critics of the new rail system have expressed high respect for the qualifications and efforts of those who have served as incorporators and will serve as members of the first board of directors.

I salute the nominees and wish them well in the trying days and months ahead.

ADDRESS BY SENATOR BUCKLEY

Mr. SCOTT. Mr. President, when the 92d Congress was formed late after the November elections and the new junior Senator from New York (Mr. BUCKLEY) was certified, some questioned his credentials. Many asked whether the Republican Party would welcome him. I, for one, offered my support to the Senator and was convinced from my talks with him that he was a Republican.

Mr. President, there is no question where the Senator from New York stands in his support of the Republican principles. His recent speeches have set this tone. His articulation in support of President Nixon's program to return government to the people comes across loud and clear.

To share his personal thoughts with the Senate, I thought it appropriate to place in the RECORD the text of a recent speech he made in Philadelphia. These penetrating and progressive ideas provide the guidelines to the thinking and motivation of this attractive addition to the Senate, the junior Senator from New York.

Mr. President, I ask unanimous consent that the speech be printed in the RECORD.

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

ADDRESS BY SENATOR BUCKLEY

I want to thank you for the ecumenical spirit you have displayed in inviting a hyphenated Republican to address you. I take this as still another example of the good-natured tolerance which has typified this city and state. Actually, I didn't have to wait until tonight to come to appreciate your special virtues, as they are so well personified by your two very able Senators.

Although he is still a relatively recent arrival, Dick Schweiker has already made his mark on the Senate. After quietly observing some painfully inefficient though admittedly quaint practices on the Senate floor, he decided that there are times when freshmen ought to be heard as well as seen. He did a sort of time and motion study on the Senate last year and came up with a list of recommendations. Miraculously, the Senate leadership, perhaps nudged just a little by Hugh Scott, bought the package. And as a result of Dick's competence and perseverance, the Senate is now running more smoothly than it has in a generation.

Your Senior Senator, of course, needs no introduction from me. Hugh Scott's reputation has a way of preceding him wherever he goes, and justly so, for his virtues are legion. Most prominently, of course, he is the leader of our party on the floor of the Senate. This is a job calling for the wisdom of Solomon, the patience of Job, and—in some cases—the ability to deny things thrice even while the cock is crowing.

Hugh's parliamentary skills, however, tell only part of the story. He is a ready wit, a splendid raconteur, and a duly acknowledged authority on Chinese art. On the side he has managed to squeeze in the time to write a treatise on the law of bailments as well as a brace of treatises on practical politics. The first of these, published in 1949, was rather humbly titled "How To Go Into Politics." I can't say whether it ever made the Book-of-the-Month Club, but it surely must have made its mark somewhere, for in 1968 Hugh felt encouraged enough to write a second volume, this one rather more appropriately titled, "How to Run for Office and Win." And the spirit which prompted the selection of that title is precisely the spirit which led the party to national victory in 1968 and will lead it again to victory in 1972 both here in Pennsylvania and in the Nation at large. It is about the recapturing and rekindling of that spirit that I most want to talk with you tonight.

I don't know how many of you stayed up for the late, late show on election night last year. If you did, you may have caught my act at 1:30 a.m. when it was finally conceded that the New York Times' worst fears had been realized. And if so, I know you shared my astonishment when in the elation of victory I found myself proclaiming—on live television, in color, coast to coast—that I owed my election to a new politics and that I was its voice.

I will have to confess that until recently I have felt deeply embarrassed over my preemption of that new left's slogan. However, now that Richard Nixon is talking about more power to the people, I feel better. Because it would appear, if I may paraphrase Barry Goldwater, that plagiarism in pursuit of politics is no vice.

But I do feel compelled to explain what it was that I anointed myself the voice of—if only to dispel the notion that I took that occasion to make my first overture to the left.

Anyone closely associated with the New York political scene last fall understood what I was talking about because I was elected by a coalition which cut right across the traditional political spectrum. It was a coalition which included an astonishing 42 percent of New York's blue collar vote. Over 900,000 Democrats crossed over to a third party line—one labeled "conservative" at that—to reaffirm their support of my positions. And at least as of November third of last year, it was a coalition which represented a majority sentiment in New York State. I say this on the authority of Charles Goodell, who in an election post-mortem confirmed that over half of his vote came from traditional Republican loyalists who in a run-off would have voted for me.

This coalition was one which cannot be explained away, as a few have tried to do, as a temporary alliance of haters—of sinister forces marshalled by "the night riders of the hard right" to use the moderated rhetoric of one New York Times editorial.

Quite the contrary. It wasn't fear which caused tens of thousands of men and women to become involved for the first time in their lives in a political effort, and one at that which all the pros knew was doomed to failure. It wasn't hate which caused more than forty thousand individuals to mail in contributions. It wasn't a hardening of political arteries which mobilized the largest, most effective corps of student volunteers to work for any candidate anywhere in the country during the 1970 campaign.

Rather, it was love of country, an abiding faith in country, an overriding concern for the welfare of America which brought together the coalition which elected me. It was a concern which was shocked into focus by the tremors which swept this nation a year ago, which forced Americans to a realization of the extent to which their institutions and values had been eroded. They had witnessed a paralysis of authority as wave after wave of filth and violence reached their climax last May in the mindless orgy of destruction which set fire to a hundred campuses. And everywhere Americans turned, they saw other signs of a deep-seated national trouble: the seemingly uncontrollable rise in crime rates and welfare roles; the explosion of pornography; the flight from reality manifested both by the Woodstock phenomenon and the drive for peace at any price; the frustrations born of the unredeemable promises of big brother government.

Small wonder that Americans in and out of New York State felt an unprecedented concern last year over the institutional health of their country. This was the mood in New York throughout the campaign, a mood which I believe caused New Yorkers to vote for what they considered to be in the national interest rather than in their private interest. The times were simply too serious to place self above country.

I know that it is difficult to read national trends into last year's elections. In State after State it is clear that local issues or acute economic dislocations had a decisive influence on the outcome.

But this was not the case in New York last fall. There were no overriding local or economic issues. The campaign provided the voters with sharply defined alternatives, and the voters opted for the alternative which I alone represented, the alternative which at the national level is represented only by the Republican Party. I submit, therefore, that what happened in New York last fall has a deep significance for the country, and it should have a very special interest for the Republican Party. Because the views I expressed, the alternatives I proposed, were wholly consistent with the main thrust of the Republican critique ever since Franklin Roosevelt first began to unfold his new deal.

I believe we stand at a turning point in our Nation's history. There is a fluidity in the political scene, a regrouping going on as Americans search for more realistic, more effective approaches to government. And if New York is any indication, Americans are showing a new predisposition to listen to the traditional Republican analysis and a new willingness to become directly involved in the political process. This is a willingness borne of a sense of urgency, and founded on a con-

tinuing faith in the essential soundness of the American system.

We Republicans have a significant opportunity to reshape the politics of this country precisely because the people are searching for new answers. Honest answers—answers which substitute common sense for theory, and toughness for soft-headedness.

There have been a number of factors which have opened up this opportunity. Perhaps the most important of these has been the palpable failure of the panaceas spun out by the New Deal, Fair Deal and Great Society Utopians. The liberal theologians have promised us that every one of our problems could and would be solved if only enough authority were concentrated in Washington and sufficient billions spent by the superior brains who have chosen to settle on the banks of the Potomac. Their programs have been adopted, the sprawling bureaucracies have been created, and those billions upon billions of dollars have been spent. But nothing has been solved. The problems have merely grown more acute while government has increasingly intruded itself into every corner of the lives of its citizens.

Another, most important factor is the enduring common sense of the American people—a common sense which has restored sanity to our public affairs in the past and which can save us again if we deal honestly with the public.

The American people understand that we live in a predatory world and that we must look to our own defenses if we are to remain secure and independent. They understood that in a world of nuclear missiles we can no longer retreat to a policy of isolationism. They understand the need for firmness in law enforcement if we are to cope with crime; and because they know human nature, they know that a free society cannot co-exist with chaos. They can sense what is false in political cant, and increasingly they resent being patronized or deceived. They are ready, in short, for a politics which will make a serious and sustained effort to bring political assumptions, political expectations and political language into the closest possible intimacy with reality.

This is the task and the opportunity which faces the Republican party today. We Republicans can build a new coalition, a majority coalition, which will incorporate those millions upon millions of Democrats who have become disenchanted with the left ward drift of their party's leadership. These Democrats—and Americans generally—are not only beginning to understand the extent of the failure of all those gauzy Federal programs which were to have solved all of our problems for us, but they are also beginning to take full measure of the true cost of these programs: the cost in terms of ever increasing taxes and inflation; the cost measured in the erosion of personal freedom as government increasingly regulates our lives: the cost reflected in an ever widening gulf between government and the governed.

But if we are to succeed, we must do more than just point the finger at the failures of past democratic administrations. We must also take the initiative in formulating and then selling workable alternatives in areas where we have too often been silent. We must, for example, be able to demonstrate that we know how to cope with pollution without turning back the technological clock; that we can give minority groups effective access to economic opportunities without smothering their initiative through governmental paternalism; that we know how to begin cutting back the size of government in Washington and how to return effective authority to State and local governments.

This last, of course, was the central theme of the President's "State of the Union" message. Richard Nixon's assertion that he will make a concerted drive to reverse the historic flow of power to Washington is in my mind the most refreshing and the most vitally important proposal to be made by any American President since World War II. It is a proposal which I profoundly believe a substantial majority of Americans have been waiting for, hoping for, a proposal which will meet with an overwhelming popular response—once its import is fully understood and once the public is convinced of the seriousness of the administration's commitment.

It provides us with a clear standard against which to judge any proposal for action at the national level—a standard I might add, which from time to time we will need to apply to proposals which eminate from the White House itself.

And this is just one of a number of thoughtful, imaginative programs and policies which the administration has offered in recent months.

To cite just a few, the administration has submitted bloc grant revenue sharing proposals totalling $11 billion which would have the unprecedented effect of dismantling more than one hundred existing Federal bureaucracies, and of transferring their responsibilities to State and local government which are far better equipped to handle them. This is a bold, workable blueprint for cutting back the size and influence of the Federal government, and one which ought to have the broadest appeal. Yet because we live in a less than perfect world, and because the proposals do not bear the democratic stamp, it is less than certain that they will be enacted by the present Congress.

Although the Sierra Club has failed to note it, an administration has for the first time in our history presented a comprehensive environmental game plan which will achieve rational planning, enforceable rules, and effective results in the battle against pollution and in the battle to save what remains of our natural heritage. It is a plan which will achieve all this by utilizing and channeling our technology, and not by repudiating it.

On the international scene, the administration is charting a consistent and prudent policy which accepts without apology the role of leadership which history has thrust upon the United States, while at the same time dispensing with that messianic zeal which far too long has attempted to remodel the world in the American image. It is a policy which will be prudent in its commitments, but which will not flinch from commitments once made merely because the going gets tough. It is a responsible policy which is best designed to secure world peace because it can be relied upon by our friends and because it allows no room for miscalculation by our foes. It is a policy which has already achieved quiet miracles in the Middle East.

These are just some of the specifics which ought on the merits to sell themselves. But unfortunately, in the world of so-called "practical" politics, it simply is not enough to come up with a better mousetrap. It is one thing to propose and another to enact. It is already apparent that if the administration is to make significant progress, it must overcome the forces of inertia and partisanship which stand in the way of true reform.

And it is also apparent that we will never effect such reform until we are to effect a significant shift in the balance of power within the United States Congress.

We are facing a critically important election in just another year and a half, not only because the Presidency is at stake but because so many influential democratic Senators and Representatives will also be seeking reelection. These include a handful of men who by virtue of tenure and committee positions have a disproportionate influence on the affairs of this Nation: Men who can effectively veto any attempt by the President to reverse the flow of power to Washington and to restore a better distribution of responsibilities within the Federal system.

Thus if we are to change the course of events, we will have to carry our message to the people effectively and convincingly by speaking in honest terms about real problems and about common sense approaches to them. The audience is there, waiting—but we must overcome the wall of public cynicism which has been created by too many years of easy promises and spongy rhetoric.

We must convince an intelligent, restless, and gunshy electorate that there is a way out of the bureaucratic maze we have constructed, and that we Republicans have worked out the map and can point the way.

Only then will we be able to exert the full leadership to which our clearer understanding of the dynamics of a free society entitles us. Only then will we begin to elect in sufficient numbers public officials who are willing to relinquish authority at the national level, and to reassert initiative and responsibility at the State and local levels.

This will require a very special and sustained effort on the part of not only those of us who hold public office, but most especially, on the part of all those private citizens on whose generous contributions of time and money our political processes have always depended. The task which we must set for ourselves is not an easy one, but it can and must be accomplished and I know from my own experience in New York last fall that the impossible can be achieved if enough good people will set their minds and hearts to it.

And frankly, if we love this country and want to pass it on to the next generation reasonably intact, we have little choice. Because, if you will forgive my closing on a somber note, the sands are running out for this country unless we achieve a sharp change of course: and we will have to work for that change through the Republican party because whatever its flaws and limitations, the Republican party continues to offer the best hope for what remains the last best hope for mankind.

THE CALLEY CASE

Mrs. SMITH. Mr. President, I noted with interest Thursday night the press challenge to President Nixon on his actions in the Calley case in ordering that Lieutenant Calley be confined to his quarters rather than the stockade and in publicly stating that he would act as the final reviewer in the case under his power as Commander in Chief of the Armed Forces. The challenge was the latest in the criticism of alleged improper and unethical intervention by the President.

I was interested in the fallacious analogy that attempted to place Lieutenant Calley in the same situation as that of a case in a civilian court and that it was unthinkable that a civilian murderer would be permitted to be free on bail. The fallacy of this attempted analogy should be evident in the apparent overlooking of the simple fact that Lieutenant Calley is in no manner free on bail but rather still imprisoned. The President's action did not release him from imprisonment. It only changed the place of his imprisonment from the stockade to quarters during the period of the appeal and review of his case. He is not out free on bail.

As for the President's public statement that he would act as the final reviewer in this case, such is no more than a statement that he would exercise the authority vested in him. In no way did it either

commit him to a specific type of decision or in any way indicate what his decision might be.

The lead editorial of the Portland Press Herald of April 8, 1971, incisively put this matter into proper perspective when it stated:

Neither the President nor the people are justifying My Lai or absolving Lt. Calley of his participation in it. It is not a misplaced sense of mercy nor the guilt of a whole society that motivates the public or its Chief Executive. It is the inability to extract and isolate the simple commission of the crime from the complexity of circumstances which surround it. Those circumstances make it impossible for millions to accept this deed, in all its horror, in the strict legal context of premeditated murder.

The President is not interfering. He simply promises the principals and the people a review of the case by the ultimate authority.

I think the President performed a very wise and useful service to his Nation and to Americans in his statement. For one of the more overriding aspects of this tragic case was the tremendous national emotion over the verdict and sentence. Even some who had theretofore called for Calley's scalp suddenly shed crocodile tears for him and seized upon the decision and verdict to attempt to discredit the Army.

In his public statement, the President acted to "cool" down the national emotion. He succeeded dramatically in doing so. How effectively and quickly he so dramatically "cooled" down emotions was very clearly evidenced in the mail I received on the Calley verdict. What had been an exceedingly heavy volume of mail—and overwhelmingly for Calley and against the jurors in the case—not only suddenly dropped off to a mere dribble but significantly shifted—following the President's statement.

It was impressively evident that the President's statement caused many Americans to pause in their judgment, to gain perspective, and to replace emotion with reason.

I ask unanimous consent to place in the RECORD the full text of the Portland Press Herald editorial of April 8, 1971, entitled "Complexity of Circumstances."

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

COMPLEXITY OF CIRCUMSTANCES

Army Capt. Aubrey M. Daniel III, may be overplaying his role as prosecutor in the court martial of Lt. William L. Calley Jr. when he challenges the President of the United States for intervention and intent to review the case.

The Captain wrote the President of this concern saying that he feared the presidential action would open the system of military justice to charges "that it is subject to political influence."

Despite his concern about political influence, the Captain sent copies of his letter to six senators.

The prosecutor expressed shock and dismay at Mr. Nixon's intervention "in the midst of the public clamor."

That clamor almost necessitated White House intervention. No other source bears the qualifications. Any other source would have been more susceptible to charges of politics or expediency.

Captain Daniel suggested that the President should be expressing support for the six jurors who, with their families, have been "subject to vicious attacks upon their honor, integrity, and loyalty to this nation" since the verdict. He feared political expediency might make the work of those jurors meaningless and said that "for this nation to condone the acts of Lt. Calley is to make us no better than our enemies and make any pleas by this nation for the humane treatment of our own prisoners meaningless."

Those who harass and threaten the jurors and their families are fools and, were it possible, their incarceration might serve society as well as the imprisonment of Lt. Calley. But the jurors' efforts cannot be made meaningless. Indeed, they have made the whole matter more meaningful than ever before. We do not read the public outcry as condonation. Neither do we see inconsistency in President Nixon's earlier characterization of My Lai as a "massacre" and his present stance in the Calley case.

Neither the President nor the people are justifying My Lai or absolving Lt. Calley of his participation in it. It is not a misplaced sense of mercy nor the quilt of a whole society that motivates the public or its Chief Executive. It is the inability to extract and isolate the simple commission of the crime from the complexity of circumstances which surround it. Those circumstances make it impossible for millions to accept this deed, in all its horror, in the strict legal context of premeditated murder.

The President is not interfering. He simply promises the principals and the people a review of the case by the ultimate authority

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THE WAR POWERS BILLS: PUBLIC ANESTHESIA

Mr. GOLDWATER. Mr. President, the editorial section of last Monday's Washington Post contains an interesting analysis of the various end-the-war and shackle-the-President resolutions. The piece was written by Mr. Kenneth Crawford, whose memory of congressional efforts in the field of military policy clearly retains an accurate impression of the words spoken by the Chairman of the Foreign Relations Committee 10 years ago when he was then arguing for broad presidential powers to cope with emergencies free of legislative restraint. Also, Mr. Crawford concludes that the weight of historical evidence shows that Congress might actually be more impulsive than Presidents where war is concerned. Here is a writer who seems to understand the plain fact that regardless of what Congress does the President will act according to his own sense of what is required by America's national security interests.

Mr. President, this kind of penetrating and realistic analysis can clear away much of the misconceptions about the true nature of the war powers bills and vividly reveal the sudden turn-abouts which can and do occur in the minds of Members of Congress. These same points are among the reasons for my own deep doubts about the wisdom of this type of legislation. So that the original viewpoints of this fine article might come to the attention of all Members of Congress, I ask unanimous consent it be printed in the RECORD.

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

[From the Washington Post, Apr. 26, 1971]

A VARIETY OF END-THE-WAR RESOLUTIONS—NEW PUBLIC HEARINGS BEFORE SEN. FULBRIGHT'S COMMITTEE

(By Kenneth Crawford)

This time something tangible may well come of the Senate Foreign Relation Committee's hearings on the war in Asia, which opened to the cheers of anti-war Vietnam veterans. Public demand for withdrawal, shown by polls and dramatized by demonstrators, is turning Congress around. The rate of turnaround suggests panic. Chairman William Fulbright hopes to sustain the momentum with public hearings on a variety of end-the-war resolutions.

Previous committee victories have been insubstantial. Its efforts have repealed the Gulf of Tonkin resolution, which President Johnson invoked for authority to escalate the war, and put over a resolution forbidding use of U.S. ground troops in Cambodia. The Nixon administration accepted both these measures, explaining that it didn't need the Tonkin authority to wind down the war and had no intention of sending troops across Vietnamese borders once the raids on Cambodia sanctuaries were completed.

The administration will not be this amiably inclined toward proposals now before the committee, especially the McGovern-Hatfield resolution calling for withdrawal of all American forces by the end of this year and, a cut-off of funds for any purpose other than withdrawal as of May 1. Even some members of the committee feel that this is too drastic a limitation and consider mid-1972 a more realistic deadline. A modified version of McGovern-Hatfield would seem to have a chance for adoption by the House as well as the Senate, so much has the atmosphere changed in the last few months.

The President can be expected to resist any such limitation. He has argued that to fix a time certain for withdrawal would be to sacrifice his bargaining power both to negotiate a peace settlement and to assure release of U.S. prisoners of war. Moreover, he has not abandoned his hope of leaving a small, professional residual force in Vietnam after the main body of American troops has been withdrawn. Sen. Vance Hartke's demand that he pull out at once and rely upon the North Vietnamese to release prisoners later strikes the administration as imprudent, not to say totally irresponsible.

An alternative proposal—that the United States agree to withdraw its troops three months after the prisoners are released—is kicking around the Capitol but is not under consideration, so far as is known, at the White House. If worse comes to worst, if Congress shows signs of forcing withdrawal on any terms, or no terms, this might be a fall-back position for the President.

Also before the Fulbright committee is a resolution by Sen. Jacob Javits limiting presidential power to make war. It would authorize the President to use the armed forces to repel attacks on American territory, citizens or property but require him to seek congressional authorization within 30 days of the start of military operations. He could continue only if Congress approved. Some such measure is needed, Javits believes, to give Congress the share in war-making responsibility the authors of the Constitution meant it to have by vesting it with sole authority to declare war and to provide the armies and weapons to fight it.

This is an idea to the changeable heart of Fulbright and to several members of his committee. They insist, in the face of much historical evidence to the contrary, that Congresses are less impulsive than Presidents where war is concerned. They imply that the mistake of intervention in Vietnam would never have been made had Presidents Eisen-

hower, Kennedy and Johnson been required to seek formal approval from Congress before going to the aid of South Vietnam.

Adoption of the Tonkin resolution with only two votes against it in the whole of Congress would seem to dispute the validity of this assumption as many other such votes have over the years. But Fulbright now explains his sponsorship and defense of the resolution as an abberation induced by the Johnson administration's lies about alleged North Vietnamese attacks on American ships in the Gulf, an explanation that rests upon a tortured interpretation of the record. Intercepted messages clearly show that the attacks were ordered.

It is fascinating to trace the twists and turns of Fulbright's thinking about foreign policy and the manner of its formulation. It is important, too, because Congress and the public opinion it reflects have twisted and turned with him, but more slowly. He has been a weathervane if not a bellwether.

Ten years ago, in a lecture at Cornell, later printed in the Cornell Quarterly, Fulbright argued for expansion of presidential authority to conduct foreign affairs with a minimum of interference from Congress. In the dangerous and fast-changing world of the 1960s, menaced by nuclear weapons, he said, the President should have power to deal with emergencies unfettered by legislative restraints.

"It is my contention," he lectured, "that for the existing requirement of foreign policy we (of Congress) have hobbled the President by too niggardly a grant of power."

The world of the 1970s is not very different from the world of the 1960s but Fulbright now wants to make Congress' grant of power to the President far more niggardly than it has been. So do others who agreed with him 10 years ago. What has intervened, what has made the difference, is, of course, the Vietnamese experience. Had that war been quickly and easily won, as Congress expected it to be when it started, there would be no clamor for curtailment of presidential powers. Indeed Fulbright might still be advocating their expansion.

In 1964, Fulbright foresaw that the United States either would have to train and equip the South Vietnamese to defend themselves or to expand the conflict by intensified intervention. Pending a decision about the alternative to be adopted, he said, the United States had no choice but to "support the South Vietnamese army and government by the most effective means available . . . to meet its obligations and to fulfill its commitments . . ." In 1965, the Tonkin resolution authorized pursuit of the expansionary alternative and Fulbright and Congress were all for it.

Since then frustration has worn down the public and Congress. And something has happened to Fulbright. Last year he made a speech that contained no mention of obligations or commitments. He said it made no difference to the United States or to the people of Indo-China who ruled "these small and backward lands." He demanded that the United States give up "the untenable dream of an anti-Communist government in Saigon." Within a period of five years he had not only changed his mind; he had changed his concept of America's place in the world and of the proper internal arrangements for keeping it.

Then speaking last week to the American Society of Newspaper Editors, Fulbright conceded that Congress is "slow-moving and sometimes inefficient" but he said he didn't deplore this because "a legislative body's accomplishments consist as much in what it prevents as it does when it enacts." In other words, if it doesn't do much of anything it will make no bad mistakes. If it will now force the President to abandon Vietnam and assert the power to prevent future Vietnams, as well as lesser adventures, it will be doing what it does best.

The trouble is that what it does best won't solve the problems of the 1970s either at home or abroad. It won't be enough to avoid mistakes. The worst effect of Vietnam may be that it has anesthetized U.S. government

COSPONSORSHIP OF ODOMETER BILL

Mr. HART. Mr. President, there has been a lot of attention to methods for wiping out crime in the streets as part of the great law and order campaign. That is good.

But it seems at the same time we should take simple steps—especially when they are so obvious—to wipe out "white collar crime."

The bill regulating odometers which the senior Senator from Washington (Mr. MAGNUSON) has previously introduced, and I am honored to cosponsor, is a good example.

It is generally accepted that each year at least 1 million consumers buy cars on which the odometer reading has been adjusted to make the car seem a better bargain than it is. In fact, I have reason to believe that the number is much, much larger than that.

Of course, it is pure conjecture as to the average overspending for these cars. But say that it worked out to be $300. With 1 million such sales, that would be $300 million that consumers spend yearly for no value.

Much as such expenditures hurt—I can tell Senators that this is just the beginning for consumers hoodwinked with this practice.

As is evident, consumers buying used cars generally do so because they cannot afford new ones. Most of us are aware that as a car is used—that is, as the mileage piles up—certain mechanical repairs can be anticipated.

The used car buyer generally plans for those—figuring, say, that a "factory official car" is almost as good as new and likely to run about 40,000 miles before he faces major problems, such as with the transmission. As he goes down the line, the time lag before the new owner will face major expenditures shortens.

My mail pile in recent years has contained too many tales of where things did not seem to work out that way to be coincidental. Thus, we hear stories such as of the schoolteacher who retired and bought an "almost new" car to drive to her retirement spot in Florida—only to run into about $400 in mechanical repairs on her way there.

The problem hits on the other end of the age scale too.

The first car for most young men is a used car. Thus they make up a great percentage of the 23 million consumers who buy used cars annually.

In the case of the young, I suspect the harm done when a car turns out to be much more "used" than it was presented to be is deeper than merely economic.

For them it is the crushing blow of realizing that the adult world they are entering can be deceit-filled. Is it any wonder that a kid who has saved for months for that "little beauty," who treasures it, and then discovers that he has been taken is disillusioned with "the establishment."

Mr. President, it is wonderful that we are as a nation deeply troubled these days about crime. The bill offers us a chance to take one small step to save a lot of people in the future from being the victims of crime.

I am, as I said, honored to cosponsor it and hope for support from Senators.

NEW DIRECTIONS IN UNITED STATES-CHINA RELATIONS—ADDRESS BY SENATOR JAVITS

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD an address delivered by me before the National Model United Nations in New York City on May 2, 1971.

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

NEW DIRECTIONS IN UNITED STATES-CHINA RELATIONS

(An address by Senator JAVITS, delivered to the National Model United Nations, Statler Hilton Hotel, Grand Ballroom, New York City, Sunday, May 2, 1971)

A spring thaw—long overdue—seems to be cracking the ice of the glacial impasse which has characterized Sino-American relations for the past 20 years. Chairman Mao and Premier Chou have launched upon a course of "Westpolitick" which could be as portentous for Asia as Willy Brandt's "Ostpolitick" is for Europe. There are great opportunities, as well as potential dangers in both. But above all, hopeful and welcome as the signs may be, there should be no euphoria over ping-pong diplomacy.

UNITED NATIONS

For, a very crucial test lies just ahead—the question of Chinese representation in the United Nations. Neither the U.S. nor the Peoples Republic of China can control the timing of the "moment of truth" on this issue. The time table of the United Nations General Assembly forces it upon us this fall—probably in October-November.

Last November, the U.S. shifted the emphasis of its position on this issue in the General Assembly. The U.S. moved from a position of opposing Peking's entry to one of opposition to Taipei's expulsion. I was closely involved in this evolution as the U.S. Delegate to the General Assembly responsible for that issue.

The time has now come, in my judgment, for the U.S. to help find a formula which will provide for U.N. membership for the government of the Peoples Republic of China, carrying with it occupancy of the permanent seat on the Security Council; and provide that the government of the Republic of China on Taiwan is affirmed as a regular member of the United Nations. This is clearly the best policy for the U.S. and I believe that it is an interim solution which would command very broad support in the General Assembly.

It is possible, however, that the Chinese Nationalist government will refuse to cooperate in attaining this position. In such circumstances, there have been hints that the U.S. policy will be one of "going down with the ship"—to wit, sticking to the old position of insisting that the Republic of China on Taiwan is the sole legitimate government of all China. This would likely result in the General Assembly voting to seat the Peoples Republic of China and to expel the Republic of China on Taiwan.

Peking's participation in the United Nations will open important new opportunities, not only with respect to the bilateral Sino-

American issue, but also to Chinese participation in nuclear arms control negotiations being conducted under U.N. auspices. We must not expect, however, that Mainland China will display the courtesy and consideration toward the U.S. as a member of the U.N. that was shown to the visiting U.S. pong-pong team. It is to be expected that the U.S. and Peoples Republic of China will be ranged against each other on most issues that the debate will be brisk and that there will be lots of propaganda from Peking.

TAIWAN

The most contentious issue in relations between Washington and Peking has been the status of Taiwan—the seat of the Nationalist Government of Generalissimo Chiang Kai-shek since his defeat in the civil war and escape from the Chinese mainland in 1949.

For most of the past 20 years, the U.S. has appeared to go along with the contention of the Chiang Kai-shek government that it enjoyed control of Taiwan on the basis of its claim to sovereignty over the whole of China. Indeed, both Taipei and Peking have been firm in their insistence that Taiwan is a province of an indivisible China.

Beneath this diplomatic veneer of apparent acquiescence in Generalissimo Chiang Kai-shek claims, however, the U.S. has consistently maintained a quite distinct legal position. With respect to the issue of sovereignty over Taiwan, President Truman declared on June 27, 1950:

The determination of the future status of Formosa must await restoration of security in the Pacific, a peace settlement with Japan, or consideration by the United Nations.

On April 28, 1971, the State Department spokesman of the Nixon Administration declared:

In our view sovereignty over Taiwan and the Pescadores is an unsettled question subject to future international resolution.

The Spokesman went on to say:

We regard the Republic of China as exercising legitimate authority over Taiwan and the Pescadores by virtue of the fact that the Japanese forces occupying Taiwan were directed to surrender to the forces of the Republic of Taiwan.

In testimony before the Symington Subcommittee, of which I am a member, on November 24, 1969, the State Department made it explicitly clear that the U.S. does not consider the question of sovereignty over Taiwan to have been settled either by the U.S.-Japan Peace Treaty of September 8, 1951, or by the Japan-Republic of China Peace Treaty of April 28, 1952. The U.S. position with respect to those treaties was stated as follows:

In neither treaty did Japan cede this area to any particular entity. As Taiwan and the Pescadores are not covered by any existing international disposition, sovereignty over the area is an unsettled question subject to future international resolution.

For background purposes, it is important to recall that Taiwan was ceded "in perpetuity" by China to Japan by Treaty in 1895. At the time it was ceded to Japan in 1895, Taiwan had been a "province" of China only for eight years. Previously it had been claimed as a dependency, under frequently tenuous or questionable control by Peking since 1683. Except for the personnel of a garrison government, there was an official ban on Chinese migration to Taiwan, lifted only in 1875

In my judgment, the U.S. has since 1949 acquired a new obligation—an obligation to the 12-million indigenous Taiwanese people who make up 85 per cent of the population of Taiwan.

The Taiwanese people deserve the right to determine their own future. Accordingly, I feel that the status of Taiwan should be determined by referendum of the people of Taiwan of what will be their Constitution, their sovereignty or form of government for the future, a right which they have not enjoyed since 1949 and which under circumstances created by admission of Peking to the U.N. they need now to have.

JAPAN

As the emerging economic superpower of Asia, situated next door to China, Japan must be considered as a central factor in developments bearing on China and U.S.-China relations. From an economic viewpoint, Japan is likely to be more important to China than the U.S.; and the possibilities for China to develop trade and credits to aid in its economic growth are likely to be greater from Japan than from the U.S.

The growth of trade and economic ties between Japan and China is in the long term interest of the U.S. The most hopeful course for Asia in the 1970's and 1980's would be one in which China opted for economic development and normal economic relations with its neighbors, in place of the overriding priority Peking heretofore has given to ideological communist politics at home and abroad. The normalization of China's relations with Japan, and its other non-communist neighbors, is dependent on the prior normalization of its relations with the United States—in somewhat the same way that West Germany's normalization of its relations with its East European neighbors required a prior normalization of its relations with the Soviet Union. In the interests of peace in Asia, the U.S. should adopt a policy of easing the process of the normalization of Peking's relations with its Asian neighbors.

The acute need of the Asian people in the remaining decades of this century is rapid economic development—not ideologically controlled political revolutions. China may be moving toward an acceptance of this principle. If it is, we should encourage it.

INDOCHINA

I believe it would be very unwise to assume that the Chinese invitation to the U.S. table tennis team indicates any willingness on Peking's part to help us end the Vietnam war—that is what I meant by euphoria. Nonetheless, any improvement in Sino-American relations is bound to have important, if subtle, implications for the situation in Indochina.

Even during the period of greatest U.S. escalation in Vietnam care was taken to avoid giving Peking reason to believe that our operations threatened China's borders. This U.S. prudence—in an otherwise improvident war—derived from memories of China's massive intervention in the Korean War.

There have been many hints coming out of Peking in recent months that it too has now concluded that the U.S. is getting out of Vietnam and that the U.S. is not fighting in Vietnam any longer for the purpose of "containing China."

This mutual recognition that we do not pose the mutual military threat to each other that previously dominated strategic planning in both Washington and Peking could contribute to an earlier and more satisfactory resolution of the Vietnam war than might otherwise be the case.

This could prove true in terms of an international peace conference to deal with the problems of Indochina, more probably than in terms of any efforts by Peking to exercise military restraint on Hanoi.

There are indications that Peking has been moving with diplomatic adroitness in recent months to bolster its own position in Indochina at the expense of Soviet influence, and at the expense of the larger ambitions of the Communist Party of North Vietnam to establish its own hegemony throughout Indochina. A revised view of U.S. intentions must have contributed to this important new facet of Chinese diplomacy in Indochina.

SOVIET UNION

An easing of the military situation in Southeast Asia, especially one marked by the withdrawal of American forces from Indochina has important implications for Peking's own strategic planning and allocation of resources. The withdrawal of U.S. forces from Vietnam, the diminution of any feared U.S.-supported "threat" from Taiwan, strengthens China's security generally and with reference to the Soviet Union, with whom it is engaged in a bitter and protracted ideological and border disputes, particularly. But this should be a calming factor.

For, the U.S., however, has very rightly assured the USSR that we have no intention of trying to exploit or aggravate Sino-Soviet antagonisms for our own advantage over Moscow. In his State of the World message of February 25, 1971, President Nixon said:

"We see . . . no advantage to us in the hostility between the Soviet Union and Communist China. We do not seek any. We will do nothing to sharpen that conflict—nor encourage it."

In my judgment there can be no questioning of the correctness of the policy President Nixon has stated.

Since 1965, the United States has been bogged down in Vietnam in a way which has been quite detrimental to our interests elsewhere—especially in Europe and the Mideast. During the same period, the Peoples Republic of China has been bogged down in the confusion and preoccupation of its own, unique "cultural revolution." This domestic preoccupation of China, with frenzied ideological overtones, has been detrimental to Peking's interests outside its borders.

With both the U.S. and China freed from their respective preoccupations of the past six years—and perhaps on the verge of a detente in their relations with each other—Moscow will find it more difficult to advance its ambitions than it has in recent years. This could have a most salutory effect on curbing expansionist Soviet ambitions in the Mideast, which has become the primary arena of U.S.-Soviet confrontation.

In closing I would like to pay tribute to the China phase of the diplomacy of President Nixon. I continue to be a critic of his Vietnam policy. My views on that issue are well known. But I do not wish my differences over Vietnam policy to obscure my admiration and support for the imaginative and successful policies the President has pursued with respect to the two giants of Asia—Japan and China. The "new chapter" which has been opened up in Sino-American relations, together with the most skillful and foresighted agreement negotiated with Japan for the reversion of Okinawa—which "new chapter" I hope will also include an agreement on trade in textiles—are important achievements in the best interest of our nation and world peace.

SECRETARY RICHARDSON PUNCTURES HEALTH CARE MYTHS

Mr. BENNETT. Mr. President, the President has proposed a bold comprehensive health plan for the 1970's to help us overcome the crisis in national health care.

The President has clearly enunciated his health policy in a number of major proposals. However, many of today's health and social issues are not so clearly visible. Too many of the issues concerning health reform have been shrouded in myth.

An excellent article in a recent issue of the New York Times by Health, Education, and Welfare Secretary Elliot L.

Richardson helps explode some of these myths by showing how health care in the United States is a current example of a vast social issue encrusted with a layer of invention and illusion. The Secretary's article examines some of the Nation's health myths in order to see the administration's health proposals in light of the true problems behind them.

I ask unanimous consent to have printed in the RECORD the New York Times article of April 2, 1971, titled "Myth and Reality: Problems of Health Care."

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

[From the New York Times, Apr. 2, 1971]

MYTH AND REALITY: PROBLEMS OF HEALTH CARE

(By Elliot L. Richardson)

Social issues are often shrouded in myth and misconception. As an example, for too long it was popularly believed that fathers of welfare families irresponsibly abandoned their wives and children to live carefree, devil-may-care lives financed by the public's largesse. But careful analyses by social scientists revealed that, in fact, able-bodied men on welfare were often forced by the system to leave their families.

Health care in the United States is a current example of a vast social issue encrusted with a layer of invention and illusion. We all know there is something wrong with the current health care system, and it is commonly held that too few doctors, greedy insurance companies, and an apathetic government are at fault. But are these the real problems? Does such conventional "wisdom" mislead us to propose inadequate solutions to complex problems? Let us examine some of the nation's health myths in order to see the Administration's health proposals in light of the true problems behind them.

Myth: The United States is the only major industrial nation in the world that does not have a national health service or a program of nationalized health insurance. This claim was made last month on the floor of Congress, and the idea is widely shared, even among some health "experts." Those who hold this view seem to have in mind the British and Eastern European model in which services are paid for out of general tax revenues. But the British model is not the typical Western European model. In fact, continental health-insurance schemes are predominantly financed by employer-employe contributions and operate within the framework of national standards. This is basically the route the President has proposed that we travel—national health insurance, not nationalized health insurance.

Myth: There is a gross shortage of doctors in America. In fact, we have one of the highest ratios of doctors per capita in the world—and the number of physicians is growing at a rate faster than the population. The basic problem is maldistribution. There are too few doctors in the ghettoes, in rural America and in the primary care disciplines, such as general practice and pediatrics, while there is no real shortage of doctors in suburban practices or in certain specialties like surgery. To meet this paradox of scarcity amid plenitude, the Administration has proposed incentives to bring doctors to the areas and types of practice where they are most needed.

Myth: It is better doctoring that is making us a healthier nation. In fact, infant mortality rates have declined and longevity has increased due largely to better nutrition and sanitation, higher income, and improved education. For example, when we replaced the horse and buggy, the death rate of infants and children fell because of an accompanying decline in fatal diarrhea caused by animal filth. In recognition of these interrelationships, the Administration has proposed efforts to clean our environment, provide a basic income for poor families, provide adequate nutrition, and make education available to more people. In truth, the Administration is concerned about health and not only medical care. That is one reason why we feel that very expensive federally financed health insurance schemes may, in fact, pre-empt too large a share of Federal tax revenues for medical care, when a more balanced approach would better achieve health goals.

Myth: Insurance companies are getting fat on health insurance. In reality, these companies on the average have retained less than 6 per cent of premiums for administrative overhead and profit on group health insurance. The Administration's choice to build upon the present strengths of our system was based on a desire to reform, not dismantle, our health care institutions. We see no need to create another mammoth bureaucracy in response to the misconception that we are making the rich richer.

An Old Saying: "An ounce of prevention is worth a pound of cure." Not all ancient wisdom is myth. Prevention is a more satisfactory solution than cure. It can be demonstrated that significant improvements in our health status will come about more through prevention of accidents and chronic disease than through improvements in curative medicine. The President's proposed health education, accident prevention, and biomedical research programs are targeted at those areas of prevention where we can hope to have the greatest success.

With our health program we have attempted to eschew the simple, grant solution, which often turns out to be both expensive and misdirected. A hallmark of a responsible government is the ability to distinguish between sound reasoning and chimeras.

EDUCATION SPECIAL REVENUE SHARING

Mr. TAFT. Mr. President, I am honored to be a cosponsor of the education special revenue sharing measure which was introduced by my good friend the distinguished Senator from Vermont (Mr. PROUTY) on Thursday, April 29.

I believe that the sharing of Federal funds with our States and localities in the area of education will provide the opportunity for innovative educational programs designed to meet the individual needs of each community. Local educators and administrators are in the best position to initiate and to implement educational programs based on their understanding of local needs and potentials. Involvement of parents and educators as members of State advisory councils is an excellent way of making education more responsive to the people it serves.

The standards and formulas contained in this legislation will insure equitable distribution and use of these funds at the State and local levels. The areas of assistance to the States include education for the disadvantaged, education for the handicapped, vocational education, assistance to schools in federally affected areas, and supporting materials and services.

As a member of the Committee on Labor and Public Welfare, I look forward to the careful consideration of the education special revenue-sharing bill.

GOVERNOR MILLIKEN SUPPORTS REVENUE SHARING

Mr. GRIFFIN. Mr. President, I ask unanimous consent that a statement by Michigan's Gov. William G. Milliken on revenue sharing be printed in the RECORD.

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

REMARKS BY GOV. WILLIAM G. MILLIKEN, GOVERNOR'S CONFERENCE ON REVENUE-SHARING, LANSING, APRIL 2, 1971

Ladies and Gentlemen, my only purpose this morning is to welcome you to this conference, so my remarks will be brief. I do want to thank you for coming.

As local officials, it seems to me that you have a better understanding of the urban crisis than anyone in the State. For each of you, the urban crisis is not just a handy phrase that you can throw into speeches, but an everyday headache produced by the rising cost of services, by sinking tax bases, militant citizens, deteriorating neighborhoods, and proliferating crime.

None of us can say with certainty how this headache can be cured, but I know of one prescription that is absolutely useless—and that is despair.

Despair over the plight of the cities has grown phenomenally during the past few years. It has produced no solutions. If anything, it has only made a bad situation worse.

One can find examples of this despair wherever he looks. In the current issue of NEWSWEEK, Stewart Alsop quotes Henry Ford—the first Henry Ford—to the effect that the cities are finished. Mr. Alsop then goes on to spell out all the grim evidence that there is to support Mr. Ford's predictions. But the important fact, it seems to me, is that Mr. Ford made this prediction in 1920, and that half a century later, the cities are still surviving.

Surviving, but there is no use denying the fact that some of them are very sick. Yet, I for one, cannot believe that the current sickness of the cities is fatal.

I believe that President Nixon's revenue-sharing plan can play a very important role in curing the ailments of the cities. We should remember that the Administration's programs are not just creations of the President. They are the result of patient efforts by many organizations—and they reflect approaches that have been discussed nationally by both governors and mayors. The basic idea of revenue-sharing was first advanced in Congress in 1958. It has since been supported by Democrats and Republicans. I believe today all of us should support it.

Quite frankly, if state and local officials do not have a united front—if we are fragmented—we are not going to get what we all need from Congress.

I believe the President's basic approach is the best approach for Michigan because among other things, it is the best approach for the cities—and I believe it is the approach that has the best chance of Congressional passage.

I gather from the rhetoric of the current debate that many people wonder whether states and local units of government are ready to manage greater resources. There seems to be fear of incompetence, prejudice, and corruption. The truth is that no level of government has a monopoly on virtue or vice. But if we are to disarm our critics, we are going to have to bring antiquated state and city governments up-to-date.

Personally, I believe that Michigan's state government and most of the local governments of this state are as professional and progressive as any in the country. I believe we lack only the resources to provide truly

effective public service. I ask why we, who have worked hard to build an efficient administration, should be considered among the least advanced by critics who are not really very familiar with what we are doing. In any event, the way to improve our public institutions is to continually test and challenge them. If we simply ignore or by-pass them, they are going to stagnate.

There could be a two-pronged approach to this question. One would be to provide incentives for states and localities to improve their management. I believe this is already included in the expanded 100-million-dollar program to improve management and planning in the President's Urban Aid package.

In our common efforts to obtain badly needed financial support for the federal government, I believe it is important that we distinguish between the two versions of revenue-sharing being discussed in Washington—general revenue-sharing and special revenue-sharing. Special revenue-sharing is President Nixon's proposal to consolidate existing federal programs into six major areas of grants to state and local government. I am very sympathetic to this proposal because it will permit much greater flexibility for state government to utilize federal funds where they are needed in Michigan without going through extensive red tape with federal agencies. However, the entire special revenue-sharing legislative package has not been presented to the Congress, and I believe it therefore makes sense to fully assess the impact of this legislation upon local units of government before taking a final position.

The *general* revenue-sharing program is the version we must focus on if we are going to have fiscal relief this year. The general revenue-sharing legislation was worked out among the national organizations of state and local government and subsequently presented to the Congress by the President. General revenue-sharing provides $5 billion in *new* money to share among state and local governments. If we want fiscal relief this year, the general revenue-sharing legislation offers the best hope for immediate action.

It would be tragic if the President's program became simply a political football in this pre-election year. The crises of the states and the cities should not bear partisan labels.

While you in this audience represent both major parties, I hope you are united in your search for relief from the financial pressures which afflict our cities. I hope, too, that we can agree that the federal income tax is a dynamic source of future aid. I hope we can agree to work together for revenue-sharing this year.

We clearly face one of the most serious threats ever confronted by our federal system—a threat that can be eased by federal revenue-sharing. The states and cities share the *burdens*. They now must more equitably share the revenues they help produce. If we are to succeed, we need a strategy among and within the states. I hope such a strategy can evolve from our meeting today.

Most of all, I hope we can join together in an attack on despair—the most dangerous form of pollution affecting our cities today.

Thank you.

THE BRITISH AND FRENCH SST

Mr. ALLOTT. Mr. President, the British and the French are not being properly respectful of the U.S. Congress.

Congress recently decided that the SST is a cumbersome object whose time will never come. It proceeded to relegate it to a museum for inventions that never got off the ground. But while Congress has been busy relegating, the British and French Governments have been proceeding calmly with their SST project.

In this regard I invite the attention of the Senate to a newsstory published in the Washington Post of April 23. The article, filed from London, reports on the decision by the British and French Governments to proceed with the production of five more Concordes, bringing the total number of Concordes to 10. The report also says that the governments have authorized the purchase of materials necessary for producing number 11 through 16.

Mr. President, so that all Senators can consider this interesting story, I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

Obviously, Mr. President, the Concorde project is not without problems. No new technology is without problems. No new technology is without problems in the early stages of research and development. But the British and French leaders are proceeding on the assumption that these problems will yield to steady advanced work.

Thus it continues to appear increasingly likely that the age of commercial supersonic flight will soon be a reality. Thus it is imperative that the United States come to grips with the fact that, the United States, along with the rest of the world, must learn to live with the supersonic flight.

In this regard, I call the Senate's attention to an important column published in the New York Times of April 23. The author of the column is Mr. Najeeb E. Halaby, president of Pan American Airways. Mr. Halaby's call for international cooperation in dealing with issues relating to the SST is sensible.

Mr. President, so that all Senators may consider Mr. Halaby's wise counsel, I ask unanimous consent that his column be printed in the RECORD.

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

[From the Washington Post, Apr. 23, 1971]

CONCORDE MODELS GIVEN GO-AHEAD

(By Alfred Friendly)

LONDON, April 22.—Encouraged by the technological performance of the first two experimental models of the Concorde, Britain and France agreed today to authorize production of Concorde models 6 to 10.

In addition, they permitted the manufacturers to begin buying supplies for models 11 to 16—all, it is hoped, for ultimate commercial sale.

But, according to the French and British ministers who made the decision, they still are faced with the "very difficult" problems of the plane's noise—on takeoff, landing and in flight—and the uncertainty of what noise levels will be allowed over the countries and in the airports where the Concorde must operate if it is to be commercially viable.

At a press briefing, John Davies, British Minister for Trade and Industry, declined to say how the negotiators appraised the recent vote of the U.S. Congress to refuse more government money for construction of an American SST: Whether it offered a great sales opportunity for the Concorde or, alternatively, presaged an American decision to forbid any SST from operating from any airport in the United States.

Reports here said that France favored a price of about $24 million per plane while Britain thought it should be closer to $30 million.

A communique issued after today's meeting referred to "encouraging" technological progress and this could be taken as an "implicit vote of confidence" in the airplane, Davies said.

British Overseas Aircraft Corp. (BOAC) and Air France, both controlled by their respective governments, are considered likely to buy the supersonic jet. Just how many other airlines will follow suit remains unclear.

The two governments said they would meet at the end of the year to reconsider the project.

[From the New York Times, Apr. 23, 1971]

SST IS ALIVE AND WELL IN EUROPE

(By Najeeb E. Halaby)

Congress has, for the time being at least, grounded the American SST. It had concrete concerns about the SST, both ecological—that it might threaten the environment; and economic—that it might tax instead of benefit the people.

But the SST and the issues it has fomented remain with us. Indeed, the SST is alive and flying in England, France and the Soviet Union, and will soon be offered on the world markets.

So this is a time neither for gloating, as though the SST had vanished; nor for grieving, as though the SST had vanished. It is a time for measured reflection.

To face our responsibility to the future and to assure that whichever SST takes the eventual and inevitable dominant place in the world's long-range air fleets will be a sound and welcome one, I propose a two-part program:

First, that an international forum be convened to reach agreement on realistic airworthiness, safety and ecological standards for supersonic commercial flight, and to pool technology to meet such standards.

Second, that the airlines conduct a thorough "fly before buy" program of concentrated SST testing under actual airline conditions. to assure that any SST meets all these requirements—plus economic requirements—before being considered acceptable for commercial service.

(These proposals were first broached in a personal letter which I sent to Secretary of Transportation John A. Volpe on March 4, 1971.)

Setting the safety, efficiency and environmental standards for an SST is obviously beyond the province of a single nation, because the SST will affect many nations. And developing a machine to meet these exacting standards may also prove beyond the capability of a single nation.

Many local and highly vocal constituencies have proposed neighborhood noise laws to bar SST's from their airports. Aside from the dubious constitutionality of addressing local legislation to international problems, it must be patently preferable to establish uniform standards acceptable to all the neighborhoods of the world, and in fairness applicable to every new airplane, whether propeller, jet, SST, or nuclear-powered, for that matter.

The same logic applies even more strongly to concern about harm to the atmosphere, since the world is a unified organic system, and the air that swirls over Siberia today may fill the California skies tomorrow.

The United States should take the initiative in calling for such an international conference on supersonic flight. The nucleus might be the four nations already involved in SST technology, and an international agency like the U.N.'s Atomic Energy Agency, staffed by scientists and engineers of many nations, might grow from this nucleus.

The agency would espouse the principle of technological togetherness that has already enriched the world by sharing research and knowledge in outer space, in medicine, in the peaceful uses of atomic energy.

The second aspect of my proposal is that

even after an SST passes the muster of the international group, it undergo thorough prolonged tests under actual airline conditions.

It is one thing for a factory test pilot to put a new bird through its paces, to run it past all the red lines, to overload it, overstress it, subject it to abuse far more brutal than it will ever see in commercial service, and then to pronounce it sound. It is quite another thing to fly back and forth across the ocean every day on schedule in a new airplane.

We want, in effect, to take an advanced airplane and turn it into a routine transport, a completely familiar vehicle with no surprises or mysteries for crew, passengers, or society, and we want to accomplish this before we invite paying passengers aboard.

We know that worldwide supersonic flight will become as commonplace in the decades ahead as jet travel is today. And we know that Congress in voting against the American SST reflected the honest and strong reservations of a cautious citizenry.

The program I propose is a responsible one for reconciling the progress that is certain, and the caution that is essential.

POLISH CONSTITUTION DAY

Mr. TAFT. Mr. President, today, May 3, Poles everywhere, including citizens of Polish origin in the United States, celebrate a Polish national holiday—the Polish Third of May Constitution Day. This holiday will be observed throughout the month by Americans of Polish descent to pay tribute to the Polish nation and to remind fellow Americans that Poland was one of the first pioneers of individual freedom in Europe.

As was the case shortly after May 3, 1791, Poles again find their individual liberties stifled by outside intruders. Russia was one of the intruders in 1795, and Soviet Russia is again the culprit today.

Let all Americans join with the Poles this day in hopes that the principles of self-determination, freedom, and justice for all will be the right of the Poles and of all peoples throughout the world.

AWFUL INCREASE IN FEDERAL SPENDING

Mr. ALLOTT. Mr. President, all Senators and all Americans—at least those who did not enjoy their recent encounter with the Internal Revenue Service—owe a debt of gratitude to the distinguished junior Senator from Nebraska (Mr. CURTIS).

Senator CURTIS recently compiled a dramatic set of data regarding the awful increase in Federal spending. His presentation was well received in the Senate and has occasioned much comment elsewhere.

Today I invite attention to one journalist's response to Senator CURTIS' presentation. It is especially interesting because of what this journalist—Mr. Willard Edwards of the Chicago Tribune—has to say about the laxity of his fellow journalists when it comes to reporting vital information about runaway Federal spending.

Mr. President, so that all Senators can profit from this column, I ask unanimous consent that it be printed in the RECORD.

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

VAST SPENDING BILLS STUN SENATOR

(By Willard Edwards)

WASHINGTON.—Sen. Carl T. Curtis, [R., Nebr.], armed with charts and statistics, trudged up to the press gallery the other day to air an astounding analysis of new spending proposals in the first 60 days of the 92d Congress.

If the subject had been the Viet Nam War, the Calley trial or the alleged misdeeds of J. Edgar Hoover, Curtis would have drawn a capacity audience.

When reporters learned that he intended to discuss legislative extravagance, the customary group of 40 or 50 listeners dwindled to 11. Some were obviously bored and others hostile, accusing him of engaging in a "political" attack. Few bothered to take notes or file stories.

This neglect was, to phrase it mildly, unfortunate. Curtis had performed a remarkable research job and drawn conclusions with alarming implications for every taxpayer. He presented formidable data to support this finding.

In a period of inflation and yawning budgetary deficits, the spending fever in Congress is raging out of control. American taxpayers simply cannot survive the crushing burden contemplated in new domestic legislative proposals advanced as panaceas for national needs.

Curtis, a high-ranking member of the Senate Finance Committee, has long been disturbed by the propensity of many of his colleagues to regard huge appropriations as the easiest way to deal with any problem that might arise, particularly in the fields of health, welfare, education and the environment.

He was unprepared, however, for the shock encountered in a review of 85 House and Senate bills introduced up to March 15 which proposed staggering spending increases in addition to those submitted by President Nixon in an "expansionary" budget of $229 billion.

JUSTICE IN THE COAL FIELDS

Mr. McGOVERN. Mr. President, on Wednesday, April 28, U.S. District Court Judge Gerhard Gesell handed down a 45-page decision in which he removed W. A.—Tony—Boyle from his position as trustee of the United Mine Workers of America Welfare and Retirement Fund. Josephine Roche, another trustee, was similarly removed. The decision is one of far-reaching importance to this Nation's working and retired miners and their families. For the Nation's miners and their families the decision may mark the beginning of a new era.

The decision will come as no surprise to those who followed the investigation of the UMWA by the Senate Subcommittee on Labor, presided over by the Senator from New Jersey (Mr. WILLIAMS). Nor will it come as a surprise to those who noted the Government Accounting Office report pointing out that the retirement fund is approaching insolvency, or those who read the January 1971 issue of Fortune magazine which described it as "unquestionably one of the most poorly managed pension funds extant."

Most important, it will come as no surprise to the more than 50,000 miners who are estimated to have been arbitrarily denied pensions after paying into the fund throughout their working years. For the more than 70,000 miners who now receive some benefits, but who have found their hospitalization and other health benefits restricted, this decision can only mean good news.

As the court said:

No considerations of equity intervene to bar prospective remedies for mismanagement of the Fund by its trustees. The Fund has been seriously compromised. It has failed to develop a coherent investment policy geared to immediate or long-term goals. It has collaborated with the Union contrary to the trustees' fiduciary duties, and has left excessive sums of money on deposit with the Union's Bank in order to assist the Union. In their day-to-day decisions, the trustees have overlooked their exclusive obligation to the beneficiaries by improperly aiding the Union to collect back dues and by cutting off certain beneficiaries unfairly.

More than even this court decision is involved. Nearly 7 years ago, as a result of complaints by miners to the Secretary of Labor, the Secretary filed a legal action in the district court. That action concerned the fact that in 23 of the union's 27 U.S. districts, union members do not have the right to elect their own district leaders. The district leaders are appointed by the same Mr. Boyle who has just been required to step down as trustee of the union's welfare fund for actions which were harmful to the miner beneficiaries.

A second, more recent suit was filed in an attempt to invalidate the election which reinstated Mr. Boyle as president, and which was followed by the vicious murders of his opponent Jock Yablonski, Mrs. Yablonski, and their daughter. That second case is set for trial on May 17. In the event that a new election should be called, the Landrum-Griffin Act requires that it must be supervised by the Department of Labor.

But the prior issue, the matter of who controls the districts—and by implication the voting procedures and the polls will not have come to court. Perhaps the Department of Labor believes that it can effectively police every square mile of coal country throughout West Virginia, Kentucky, Illinois, Ohio, Pennsylvania, and elsewhere. The miners do not share their faith. As long as the issue of who controls the districts remains unsettled, that is what would be required to insure a free and safe election.

Because of that, I have been in correspondence with the Department of Labor and Justice in an attempt to learn why the case involving union autonomy in the districts could not come to court first. The extraordinary answer that the Department of Justice gives, is that they have the same lawyers prosecuting both cases, and they just do not have time. They have had responsibility for this case for some 76 months, most of which time preceded the suit to have the election set aside. Yet they cannot assign another lawyer(s). The Department of Justice says it is "obviously impossible" to act to bring the prior case to trial first.

The Department of Justice has failed to exert even the most rudimentary efforts on behalf of the miners' suit. The 76-month delay in making the judicial process available to the miners of Amer-

ica can only be described as the most extraordinary example of executive inaction. I have one object and one object only in releasing my correspondence and in making public these facts; to persuade the Department of Justice that equity cannot be served by inaction, that further delays, an unwillingness to assign the necessary lawyers, an inability to understand that every additional day of delay is intolerable, can only work to undermine the fabric of our system of justice.

Mr. Boyle has now been found to have acted irresponsibly with relation to his 110,000 UMWA members, and all retired miners. The courts will soon have an opportunity to determine whether his election as President of the union should be recalled as well. In this context I find its "obviously impossible" to understand how the Department of Justice can justify its conscious but unconscionable inaction. I call upon that Department to act immediately to bring the autonomy suit to court.

Mr. President, I ask unanimous consent that the Gesell court decision and my correspondence with the Department of Justice be printed in the RECORD.

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

MARCH 17, 1971.

Hon. JOHN N. MITCHELL,
Attorney General of the United States, Department of Justice, Washington, D.C.

DEAR MR. MITCHELL: As you must be aware, on December 6, 1964, the Secretary of Labor filed suit in the action now titled *Hodgson* v. *UMW* (U.S.D.C. for the District of Columbia, Civil Action No. 3071–64). No trial date had been set though nearly seven years have elapsed.

It is incredible to me that any suit should take this long to come to trial. During all this time some 170,000 miners have been denied the right to select their own District Officers and have been advised not to initiate further court action. After seven years of waiting for their case to be brought to trial, it would seem that serious questions might be raised—not whether their cause is meritorious or not, for that is clearly for the courts to decide—but whether the judicial process is available to them at all.

This is a matter of great interest to me and I look forward to your prompt reply regarding the exact status of this suit.

Sincerely,

GEORGE MCGOVERN.

DEPARTMENT OF JUSTICE,
Washington, D.C., March 25, 1971.

Hon. GEORGE MCGOVERN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCGOVERN: The Attorney General has asked me to reply to your letter of March 17, 1971, regarding the case of *Hodgson* v. *United Mine Workers of America, et al.*, Civil Action No. 3071–64 in the United States District Court for the District of Columbia.

This action to dissolve the trusteeships which had been imposed on a number of the Districts of the United Mine Workers was filed in December 1964 and an Amended Complaint to include District 17 was filed in August 1965. Great care had to be taken in developing the Government's case, mainly by deposing the officers of the Districts and of the International Union who were, of course, hostile witnesses. Forty-two depositions in all were taken in many parts of the country, the last of which was completed in November 1968.

The Labor Department completed a pretrial audit of the financial records of the Union on March 27, 1969, and on March 29, 1969, the Government filed with the Court its Certificate of Readiness indicating it was ready for trial. Despite opposition from the defendants, the case was placed on the ready calendar for August 1969.

On July 31, 1969, the defendants brought a motion to remove the case from the ready calendar. The motion was denied; however the Pretrial Examiner found that it would not be possible for the case to be reached for trial before the New Year, and on reference of the matter to Judge McGuire, the Court set the case down for trial on February 11, 1970.

In 1970 the Labor Department decided that an early (1962) legal position with respect to the question as to whether Districts 28 and 29 were in trusteeship was in error. The Labor Department, by letter of February 4, 1970 to the United Mine Workers, stated that it had been concluded that said Districts were in trusteeship. Although the two Districts mentioned were not party defendants in the suit, the actual defendants claimed surprise, alleging that they had relied on the previous position as a complete defense to the action, and moved for a postponement of the trial and for leave to pursue further pretrial proceedings in the light of the changed situation. Over the Government's vigorous opposition, Chief Judge Curran granted the motion and referred the case back to the Pretrial Examiner.

The defendants were permitted to take a number of depositions of officials of the Labor Department, and on July 7, 1970 the Government moved to end any further pretrial proceedings and for the setting of an immediate trial date. Judge Waddy, who was assigned as the Trial Judge for the case, denied the motion but specified that pretrial proceedings were to be concluded by January 15, 1971, after which the Pretrial Examiner was to issue a Pretrial Order for the Court.

A hearing before the Pretrial Examiner was scheduled for January 26, 1971; it was postponed by the Examiner to March 3 because defendants' counsel was actually engaged in the preliminary injunction hearing of the case which the Government had brought against the United Mine Workers to set aside the election of officers and to compel the keeping of records. On March 3, 1971, the Pretrial Examiner issued the required Pretrial Order and on March 5 the Government filed a motion for an immediate trial date. The motion is pending before Judge Waddy.

It is indeed unfortunate that this case did not go to trial on the date originally scheduled but it must be remembered that the delay was directed by order of the Court which, as mentioned above, the Government strongly opposed. Now that the supplemental pretrial proceedings ordered by the Court have been concluded, you can be assured that we are making every effort to have the case set down for trial at the earliest possible date.

Sincerely yours,

L. PATRICK GRAY III,
Assistant Attorney General.

U.S. DEPARTMENT OF LABOR,
Washington, D.C., April 1, 1971.

Hon. GEORGE MCGOVERN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCGOVERN: This is in reply to your letter dated March 17, 1971, requesting information regarding the status of *Hodgson* v. *United Mine Workers of America, et al.* (U.S.D.C., D.C., Civil Action No. 3071–64).

I share your concern over the fact that the members of the Districts involved in this suit are being denied the right to elect their own officers and the fact that, although pending in court since December 15, 1964, this case has not yet been tried. Within two and one-half months after this Administration took office the Government notified the court that it was ready for trial. As a result of our efforts trial was originally scheduled for February 11, 1970, but was postponed over the Government's objections to permit the United Mine Workers to conduct further pretrial proceedings. Since that time the United Mine Workers' attorneys have deposed six officials of this Department.

The pretrial proceedings were completed on March 3, 1971, when a final pretrial conference was held. Immediately following this conference the Government filed a motion requesting the court to give this matter preferential treatment by setting an immediate trial date. On or about March 11, 1971, the United Mine Workers filed an opposition to this motion. This matter has been referred to Judge Joseph C. Waddy and we are hopeful that he will set this case down for trial in the very near future.

Let me assure you that we will do everything possible to avoid any further delay in the resolution of the important issues involved in this case.

In your letter you state that Union members have been advised not to initiate further court action. There is no provision in the Labor-Management Reporting and Disclosure Act of 1959 which would preclude a member from challenging a trusteeship not involved in the suit filed by the Department of Labor. With respect to the trusteeships being challenged by the Government, however, section 306 of the Act provides that once the Secretary of Labor has filed suit "the jurisdiction of the district court over such trusteeship shall be exclusive and the final judgment shall be res judicata."

Sincerely,

J. D. HODGSON,
Secretary of Labor.

APRIL 12, 1971.

Hon. JOHN N. MITCHELL,
Attorney General of the United States,
Department of Justice,
Washington, D.C.

DEAR MR. MITCHELL: On March 17, 1971, I wrote both you and the Secretary of Labor concerning the more than six-year delay in the trial of *Hodgson* v. *United Mine Workers of America*, et al., CA #3071–64, in the U.S. District Court for the District of Columbia. That case, of course, is the Government's suit to lift trusteeship from various districts of the UMWA; it is through these district trusteeships that the union officers maintain their tight control over union operations and insure their own re-election.

I cannot say that either your response or that of Secretary Hodgson adequately explains or justifies the 76-month delay in bringing this suit to trial. Mr. Hodgson seeks to shift the blame to the predecessor administration and you appear to shift it to various judges of the District Court. Both of you, however, assert that the case is at long last ready for trial.

On this basis, I had my office check with your Mr. Orlikoff who is handling the case to get the exact trial date. Mr. Orlikoff indicated that no date had been set and that a motion for a date had been pending before Judge Waddy for over a month. When my office suggested that Mr. Orlikoff might appear before Judge Waddy as a preliminary matter any morning and try to get a specific date, Mr. Orlikoff indicated there is no warrant for such extraordinary action.

But is it really extraordinary action to appear before the Court and ask for a trial date in a case as ancient as this one? And can it conceivably be called extraordinary

action to plead for an immediate trial in light of the pending trial on May 17, 1971, of the Government suit to upset Mr. Boyle's election? If a new election is ordered without the trusteeships lifted, I am informed the challengers' role, always difficult, will be rendered well nigh impossible.

I am, therefore, constrained to write again. This time to ask why the Department does not appear before Judge Waddy and ask for an immediate trial date before the election case is tried on May 17. I must venture the thought that the failure to take such a routine step hardly evidences a real desire on the Department's part to end these trusteeships in time to make a fair re-election possible.

Sincerely,

GEORGE MCGOVERN.

DEPARTMENT OF JUSTICE,
Washington, D.C., April 26, 1971.

Hon. GEORGE MCGOVERN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCGOVERN: The Attorney General has asked me to reply to your letter of April 12, 1971, regarding the case of *Hodgson* v. *United Mine Workers of America, et al.*, Civil Action No. 3071–64 in the United States District Court for the District of Columbia.

As I advised you in my letter of March 25, 1971, the Pretrial Examiner issued an order terminating pretrial proceedings in the trusteeship case on March 3, 1971, and on March 5, 1971, the Government filed a motion for an immediate trial. The defendant had eight days, or until March 13, to respond. However, on March 11, Judge Bryant unexpectedly set the election case for trial on May 17, 1971.

Pretrial proceedings in the election case have not yet been completed; in fact, three depositions were taken in Abingdon, Virginia, on April 6, and there are other matters which must be accomplished to comply with Judge Bryant's orders. A vast amount of work is required to prepare the election case for trial, and considering the magnitude of the cases and the fact that the attorneys for the respective parties are the same in both actions, it is obviously impossible to cram the trial of the trusteeship case into the period before the election case is to begin.

With respect to your comment on the conduct of a possible new election, I wish to remind you that the Landrum-Griffin Act provides that if an election is declared void, the new election will be conducted under the supervision of the Secretary of Labor.

Sincerely yours,

L. PATRICK GRAY, III,
Assistant Attorney General.

[U.S. District Court for the District of Columbia, Civil Action No. 2186–69]

WILLIE RAY BLANKENSHIP, ET AL., PLAINTIFFS, *v.* W. A. (TONY) BOYLE, GEORGE TITLER, EDWARD L. CAREY, THE UNITED MINE WORKERS OF AMERICA, BITUMINOUS COAL OPERATORS' ASSOCIATION, THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, THE NATIONAL BANK OF WASHINGTON, C. W. DAVIS, JOSEPHINE ROCHE, GEORGE L. JUDY, HENRY S. SCHMIDT, WILMER J. WALLER, BARNUM L. COLTON, DEFENDANTS.

MEMORANDUM OPINION

This is a derivative class action brought on behalf of coal miners who have a present or future right to benefits as provided by the United Mine Workers of America Welfare and Retirement Fund of 1950. Plaintiffs have qualified under Rule 23.2 of the Federal Rules of Civil Procedure. Jurisdiction is founded on diversity and on the general jurisdiction of this Court, 11 D.C. Code § 521, in effect at the time suit was filed.

Defendants are the Fund and its present and certain past trustees; the United Mine Workers of America; and the National Bank of Washington and a former president of that Bank.[1]

Plaintiffs seek substantial equitable relief and compensatory and punitive damages for various alleged breaches of trust and conspiracy. Defendants oppose these claims on the merits and in addition interpose defenses of laches and the statute of limitations. The issues were specified at pretrial conferences, and after extensive discovery the case was tried to the Court without a jury. Following trial, the case was fully argued and detailed briefs were exchanged. This Opinion constitutes the Court's findings of fact and conclusions of law on the issues of liability and equitable relief.

I. BACKGROUND

A. Organization and Purpose of the Welfare Fund

The Fund was created by the terms of the National Bituminous Coal Wage Agreement of 1950, executed at Washington, D.C., March 5, 1950, between the Union and numerous coal operators. It is an irrevocable trust established pursuant to Section 302(c) of the Labor-Management Relations Act of 1947, 29 U.S.C. § 186(c), and has been continuously in operation with only slight modifications since its creation.

The Fund is administered by three trustees: one designated by the Union, one designated by the coal operators, and the third a "neutral party designated by the other two." The Union representative is named Chairman of the Board of Trustees by the terms of the trust. Each trustee, once selected, serves for the term of the Agreement subject only to resignation, death, or an inability or unwillingness to serve. The original trustees named in the Agreement were Charles A. Owen for the Operators, now deceased; John L. Lewis for the Union, now deceased; and Miss Josephine Roche. The present trustees are W. A. (Tony) Boyle, representing the Union; C. W. Davis, representing the operators; and Roche, who still serves.[2]

Each coal operator signatory to the Agreement (there are approximately fifty-five operator signatories) is required to pay a royalty (originally thirty cents, and now forty cents per ton of coal mined) into the Fund. These royalty payments represent in excess of ninety-seven percent of the total receipts of the Fund, the remainder being income from investments. In the year ending June 30, 1968, royalty receipts totalled $163.1 million and investment income totalled $4.7 million. Total benefit expenditures amounted to $152 million.

In general, the purpose of the Fund is to pay various benefits, "from principal or income or both," to employees of coal operators, their families and dependents. These benefits cover medical and hospital care, pensions, compensation for work-related injuries or illness, death or disability, wage losses, etc. The trustees have considerable discretion to determine the types and levels of benefits that will be recognized. While prior or present membership in the Union is not a prerequisite to receiving welfare payments, more than ninety-five percent of the beneficiaries were or are Union members.

The Fund has maintained a large staff based mainly in Washington, D.C., which carries out the day-to-day work under policies set by the trustees. Roche, the neutral trustee, is also Administrator of the Fund serving at an additional salary in this full-time position. Thomas Ryan, the Fund's Comptroller, is the senior staff member next in line.

The trustees hold irregular meetings, usually at the Fund's offices. Formal minutes are prepared and circulated for approval. In the past, a more detailed and revealing record of discussions among the trustees has been prepared and maintained in the files of the Fund by the Fund's counsel, who attended all meetings. The Fund is regularly audited, and a printed annual report summarizing the audit and other developments was published and widely disseminated to beneficiaries, Union representatives, and coal operators, as well as to interested persons in public life.

From the outset the trustees contemplated that the Fund would operate on a "pay-as-you-go" basis—that is, that the various benefits would be paid out largely from royalty receipts rather than solely from income earned on accumulated capital. Always extremely liquid, the Fund invested some of its growing funds in United States Government securities and purchased certificates of deposit. It also purchased a few public utility common stocks, and in very recent years invested some amounts in tax-free municipal securities. The chart attached as Appendix A reflects in a general way the growth of the Fund's assets and its investment history until June 30, 1969.

From its creation in 1950, the Fund has done all of its banking business with the National Bank of Washington. In fact, for more than twenty years it has been the Bank's largest customer. When this lawsuit was brought, the Fund had about $28 million in checking accounts and $50 million in time deposits in the Bank. The Bank was at all times owned and controlled by the Union which presently holds 74 percent of the voting stock. Several Union officials serve on the Board of Directors of the Bank, and the Union and many of its locals also carry substantial accounts there. Boyle, President of the Union, is also Chairman of the Board of Trustees of the Fund and until recently was a Director of the Bank.[3] Representatives of the Fund have also served as Directors of the Bank, including the Fund's house counsel and its Comptroller. The Fund occupies office space rented from the Union for a nominal amount, located in close proximity to the Union's offices.

B. The responsibilities of the trustees

The precise duties and obligations of the trustees are not specified in any of the operative documents creating the Fund and are only suggested by the designation of the Fund as an "irrevocable trust." There appears to have been an initial recognition by the trustees of the implications of this term. Lewis, who was by far the dominant factor in the development and administration of the Fund, stated at Board meetings that neither the Union's nor the Operators' representative was responsible to any special interest except that of the beneficiaries. He declared that each trustee should act solely in the best interests of the Fund, that the day-to-day affairs of he Fund were to be kept confidential by the trustees, that minutes were not to be circulated outside the Fund, and that the Fund should be soundly and conservatively managed with the long-term best interests of the beneficiaries as the exclusive objective. While he ignored these strictures on a number of occasions, as will appear, his view is still accepted by counsel for the Fund in this action, who took the position at oral argument that the duties of the trustees are equivalent to the duties of a trustee under a testamentary trust. Counsel stated, "You can't be just a little bit loyal. Once you are a trustee, you are a trustee and you cannot consider what is good for the Union, what is good for the operators, what is good for the Bank, anybody but the trust." (Tr. 2590).

This view, which corresponds with plaintiffs' position, is not accepted by all parties. While acknowledging that a trustee must be "punctilious," counsel for some of the par-

Footnotes at end of article.

ties urge that trustees as representatives of labor or management may properly operate the Fund so as to give their special interests collateral advantages (*e.g.*, managing trust funds so as to increase tonnage of Union-mined coal), and that this is not inconsistent with fiduciary responsibility since such actions ultimately assist beneficiaries by raising royalty income. But there is nothing in the Labor-Management Relations Act or other federal statutes or in their legislative history which can be said to alleviate the otherwise strict common-law fiduciary responsibilities of trustees appointed for employee welfare or pension funds developed by collective bargaining. Indeed, the statute under which the 1950 Fund is organized was designed expressly to isolate such welfare funds from labor-management politics. In *Lewis* v. *Seanor Coal Co.*, 382 F. 2d 437, 442 (3d Cir. 1967), the court indicated that Congress was motivated by the example of the UMWA's pre-1950 Fund:

"This provision was written into the statute because of the special concern of Congress over the welfare fund of the United Mine Workers of America, which already was in existence and which Senator Taft described as administered without restriction by the union so that "practically the fund became a war chest . . .for the union." '

See also United States v. *Ryan*, 350 U.S. 299, 304–05 (1956).

It is true that trustees are allowed considerable discretion in administering a trust as large and complex as the Fund. In determining the nature and levels of benefits that will be paid by a welfare fund and the rules governing eligibility for benefits, the trustees must make decisions of major importance to the coal industry as well as to the beneficiaries, and their actions are valid unless arbitrary or capricious. *E.g.*, *Roark* v. *Lewis*, 130 U.S. App. D.C. 360, 401 F.2d 425, 426 (1968); *Kosty* v. *Lewis*, 115 U.S. App. D.C. 343, 319 F.2d 744, 747 (1963). On these matters, trustee representatives of the Union and the Operators may have honest differences in judgment as to what is best for the beneficiaries. Congress anticipated such differences in enacting § 302(c) of the Labor-Management Relations Act, and sought to tamper them by the anticipated neutrality of the third trustee. The congressional scheme was thus designed not to alter, but to reinforce "the most fundamental duty owed by the trustee": the duty of undivided loyalty to the beneficiaries. 2 *Scott on Trusts* § 170 (3d ed. 1967). This is the duty to which defendant trustees in this case must be held.

C. *Conduct of the Trustees*

Before dealing in detail with the specific breaches of trust alleged, a general comment concerning the conduct of the trustees is appropriate to place the instances of alleged misfeasance into proper context. It has already been noted that the trustees did not hold regular meetings but only met subject to the call of the Chairman. There was, accordingly, no set pattern for deciding policy questions, and often matters of considerable import were resolved between meetings by Roche and Lewis without even consulting the Operator trustee.

The Fund's affairs were dominated by Lewis until his death in 1969. Roche never once disagreed with him. Over a period of years, primarily at Lewis' urging, the Fund became entangled with Union policies and practices in ways that undermined the independence of the trustees. This resulted in working arrangements between the Fund and the Union that served the Union to the disadvantage of the beneficiaries. Conflicts of interest were openly tolerated and their implications generally ignored.[4] Not only was all the money of the Fund placed in the Union's Bank without any consideration of alternative banking services and facilities that might be available, but Lewis felt no scruple in recommending that the Fund invest in securities in which the Union and Lewis, as trustee for the Union's investments, had an interest. Personnel of the Fund went on the Bank's board without hindrance, thus affiliating themselves with a Union business venture. In short, the Fund proceeded without any clear understanding of the trustees' exclusive duty to the beneficiaries, and its affairs were so loosely controlled that abuses, mistakes and inattention to detail occurred.

II. ACCUMULATION OF EXCESSIVE CASH

A. The breach of trust

The major breach of trust of which plaintiffs complain is the Fund's accumulation of excessive amounts of cash. A basic duty of trustees is to invest trust funds so that they will be productive of income. *E.g.*, *Barney* v. *Saunders*, 57 U.S. (16 How.) 535, 542 (1853); *Spruill* v. *Ballard*, 36 F. Supp. 729, 730 (D.D.C. 1941); *In re Hubbell's Will*, 302 N.Y. 246, 97 N.E. 2d 888, 892 (1951); 2 *Scott on Trusts* § 181 (3d ed. 1967). It is contended that the trustees failed to invest cash that was available to generate income for the beneficiaries, and in total disregard of their duty allowed large sums to remain in checking accounts at the Bank without interest. It is further claimed that this breach of trust was carried out pursuant to a conspiracy among certain trustees, the Union, and the Bank through its President, and that all these parties are jointly liable for the Fund's loss of income resulting from the failure to invest.

That enormous cash balances were accumulated and held at the Bank over the twenty-year period is not disputed. The following figures are representative.

Fiscal year	Amount of cash in demand deposits at end of year	Percentage of cash to the fund's total resources
1951	$29,000,000	29
1956	30,000,000	23
1961	14,000,000	14
1966	50,000,000	34
1967	75,000,000	44
1968	70,000,000	39
1969	32,000,000	18

The significance of these huge sums has greater import when two factors are considered.

First, not only did the trustees have a duty to invest but the early minutes of the Fund clearly reflect the trustees' knowledge that income could be earned by investment in Government securities without sacrificing desired liquidity. The safety and practicality of using excess cash in this manner were also fully appreciated. Yet the money remained at the Bank on demand to the Bank's advantage but earning nothing for the Fund. This practice continued in spite of suggestions from successive Operator trustees that the money should be used to earn income for the beneficiaries.

Second, the Fund could easily have met its obligations with only a fraction of the cash maintained in its checking accounts, as the most cursory examination of its accounts clearly shows. The income and outgo were constant and unusual demands on the Fund could in any event always be anticipated sufficiently to liquidate Government securities should this have been unexpectedly necessary. Over the years the Fund paid out monthly approximately $10 million to $14 million for medical and pension benefits and administrative expenses. Against these obligations the Fund had a predictable steady income in the form of monthly royalty payments which, for each month in the years 1967, 1968 and to the date of the complaint in 1969, always totaled from $10 million to $14 million. In addition, there was regular, predictable investment income in the range of $2 million to $3 million per annum. Plaintiff's Exhibit No. 1627, annexed hereto as Appendix B, charts the cash which was held in the General, Pension and Administrative checking accounts by month from 1953 to June 1969, and reflects the regularity of the Fund's income and outgo. tI will be immediately noted that cash balances greatly in excess of the Fund's day-to-day needs were permitted to accumulate from the outset. Even the formula of having two to two-and-one-half times monthly expenditures in cash, a formula urged by the trustees as appropriate but without apparent justification, was ignored in practice.

The beneficiaries were in no way assisted by these cash accumulations, while the Union and the Bank profited; and in view of the fiduciary obligation to maximize the trust income by prudent investment, the burden of justifying the conduct is clearly on the trustees. *Cf. Pepper* v. *Litton*, 308 U.S. 295, 306 (1939).

Three explanations were seriously presented in justification of the cash accumulations: the trustees' general concern as to the future course of labor relations and other developments in the coal industry which might make it necessary to have money readily at hand on short notice; tax factors; and what was characterized as inadvertence or accident. None of these explanations will withstand analysis.

(a) *Uncertainty about the future.* Prior to 1950, strikes and labor disputes had caused mine shutdowns, placing heavy demands on the then-existing welfare programs. Any repetition of these or similar conditions would have shut off royalty payments, perhaps for a considerable period. While this factor could therefore justify the trustees in maintaining a substantial, highly liquid reserve, it affords no justification for the failure of the trustees to put the large accumulations of excess cash to work for the beneficiaries. Roche testified that she favored maintaining an amount equal to several months' expenditures in cash, because "that is the only way you can be sure." Such naivete by a trustee is unacceptable, particularly in light of the trustees' knowledge that short-term Government securities, which the evidence showed were redeemable on one-half hour notice, for example, were readily available and would have generated substantial income for the Fund while still assuring maximum liquidity.

This reliance on future uncertainty must also be weighed in the light of conditions existing in the coal industry in the latter years of the Fund's history under review. These were succinctly epitomized by a Union economist at the trial. In brief, it appears that beginning around 1960 the industry was profitable and increasingly stable, with encouraging prospects for the future, all of which was reflected in the increasing amount of coal mined and the favorable progress of the Union in its effort to organize increasing numbers of miners for work at the Union scale. Prosperous conditions made any reoccurrence of the pre-1950 experience far less likely.

(b) *Tax considerations.* The Fund has from the beginning been competently advised by experienced outside tax counsel. Naturally its return was examined by field audit from time to time. The Fund first sought an exemption from income tax as a charitable trust. This was denied in 1954, after a long delay while the requested ruling was being processed at the Treasury Department. This negative ruling was prospective, and thereafter the Fund understood that it would have to pay taxes on any amount of

Footnotes at end of article.

investment income that exceeded its administrative expenses. In fact, investment income never exceeded administrative expense and indeed was usually well below. In one year the spread was $2.4 million. It was obvious that even if income exceeded expenses and taxes became due on the excess, the Fund would have profited to the extent of its after-tax income.

An additional latent worry was apparently the possibility that royalties would be treated by the Internal Revenue Service as income, which would have been disastrous for the Fund. Tax counsel advised that royalties were not income, and they were so reported. The Internal Revenue Service agents conducting audits seemed interested in the point, but took no action. The Fund never asked for a ruling, preferring to let the Internal Revenue Service make the first move. When the question arose as to another welfare fund, the Anthracite Fund, the IRS eventually ruled that royalties were not income. Significantly, the Fund's representatives, although familiar with the Anthracite Fund's problem, were not sufficiently concerned even to inquire as to the final ruling of the IRS in the matter.

Thus none of these tax considerations can justify the trustees' failure to invest.

(c) *Accident or inadvertence.* There was no proof to support this desperate theory which the Fund itself does not advance and which in any event is in effect an admission of failure to adhere to minimum fiduciary standards of care and skill in administering the trust. 2 *Scott on Trusts* § 174 (3d ed. 1967). The Fund's Comptroller stoutly denies accident or inadvertence, and the proof shows that the trustee well knew at all times that cash was steadily accumulating.

Under the most charitable view, this accident theory can help to account only for the staggering accumulations of cash in the period 1966 to 1968, when Lewis was in failing health and the trustees met infrequently. However, as is clear from the discussion of the conspiracy aspects of this case, *infra*, these accumulations were only an extension of a conscious, longstanding policy of the trustees.

The following testimony by Roche is revealing:

"Mr. Lewis felt very strongly, sir, the necessity of having a good deal beyond what we could invest without raising the taxation problem, keeping it very much in a situation where we could get at it at once. He did not feel enthusiastic for a long time over tax-exempt securities such as municipals.

"I talked to him frequently about it personally, aside from the general discussions we had. And I finally in '67–'68 realized how strongly I probably had been mistaken myself on anything that had to do with minute fiscal things. And I said, you know, Tom Ryan we both have the utmost confidence in, and he feels we ought to get some of this money out, make it earn money. Now let's think again about municipals. And he did. . . . And finally he definitely agreed in '68, he said, Yes, we better go ahead, go ahead.

* * * * *

"So it was really a long-delayed decision which really probably, and I know completely from the point of view of a financial expert, that there is no excuse perhaps for it at all. To us who had felt that need, too, but felt these other things so terribly imminent, it is not the brightest chapter that we have, but we did some other things that perhaps made up for it a little bit.

* * * * *

"[T]he fiscal requirements certainly didn't justify what we had on deposit. I know that perfectly well." (Transcript pp. 957–60.)

Considering this testimony, and the enormous cash balances which existed in 1966 through 1968, the following excerpt from "A Statement by United Mine Workers of America Welfare and Retirement Fund," printed in the United Mine Workers Journal on May 1, 1969, in answer to growing criticism of the trustees' policies, takes on special significance:

"*The criticism:* "Large" bank deposits drawing no interest.

"*The record:* At most times during our existence, our bank balances were not nearly so high as we would like to have them in relation to our monthly expenditures.

"In January of 1965 the Trustees made substantial improvements in the benefit programs which had the effect of increasing our expenditures by over $45 million annually. As a consequence, as income permitted, our cash balance was allowed to build up somewhat. Our cash balance on June 30, 1968, was actually no greater in relation to our monthly and annual expenditures than it had been at times in the past when expenditures were at a lower level.

"With the conclusion of negotiations for a new three-year contract between the Union and the operators in October, 1968, the potential need for cash reserves has lessened and these balances have been reduced considerably."

This statement was signed by Roche, Ryan, and Welly K. Hopkins, General Counsel of the Fund. It is not only lacking in candor, as was much of Ryan's testimony at trial, but actually misleads.

The trustees well knew that cash deposits at the Bank were unjustified. It was a continuous and serious violation of the trustees' fiduciary obligation for them to permit these accumulations of cash to remain uninvested. It remains to be determined whether the Union, the Bank, or certain individual defendants are also responsible for the breach of trust.

B. The conspiracy as to cash deposits

Plaintiffs contend that the Union and the Bank conspired with the trustees to maintain the excessive cash at the Bank for their respective benefit. On this phase of the case the applicable law is well established and need here only be briefly summarized.

A conspiracy is an agreement between one or more persons to accomplish an unlawful object or to accomplish a lawful object in an unlawful manner. *American Tobacco Co.* v. *United States*, 328 U.S. 781, 809 (1946); *Edwards* v. *James Stewart & Co.*, 82 U.S. App. D.C. 123, 160 F.2d 935, 937 (1947). The gist of a civil conspiracy, however, is not the agreement itself, but the civil wrong alleged to have been done pursuant to the agreement; the allegation of conspiracy bears only upon evidentiary and other formal matters. *Edwards* v. *James Stewart & Co., supra; Ewald* v. *Lane*, 70 App. D.C. 89, 90, 104 F.2d 222, 223 (1939); *Martin* v. *Ebert*, 245 Wis. 341, 13 N.W. 2d 907, 908 (1944). The civil wrong here is a breach of trust; and it is settled that where a third person "has knowingly assisted the trustee in committing a breach of trust, he is liable for participation in the breach of trust." 4 *Scott on Trusts* § 326 (3d ed. 1967); *see Jackson* v. *Smith*, 254 U.S. 586 (1921). If the third person's participation in or inducement of the breach is pursuant to an agreement with one or more of the trustees, he is liable as a conspirator.

That there was opportunity to conspire as to the cash balances cannot be doubted. There is, however, no direct evidence of an agreement, no unguarded admissions of conscious impropriety. Lewis, the dominant actor in these events, is dead and the named individual defendants contest charges of conspiratorial participation. Plaintiffs rely on documents, circumstantial evidence and inference to support the claim.

Despite the denials, there is clear and convincing proof that there was an agreement among Lewis, Roche, and Colton made contemporaneously with the creation of the Fund and the Union's acquisition of a controlling interest in the Bank, to use the Bank as the sole depository of Fund moneys and to maintain large sums in interest-free accounts at the Bank without regard to the Fund's needs. Late in 1949, Lewis, through an agent, solicited Colton to become president of the Union's newly acquired Bank. At their second meeting, Lewis discussed with Colton the transfer of both the Union and the Fund accounts from previous depositories to the National Bank of Washington. As early as April 30, 1950, the Fund had over $36 million on deposit in checking accounts at the Bank, and the balance remained near or above this level for more than a year thereafter. Over the next twenty years the trustees' decision to leave cash in the Bank without interest greatly benefited the Bank and the Union as the Bank's majority shareholder. At all times these sums well exceeded the immediate cash needs of the Fund, as the previous discussion has shown.

This banking arrangement met strong objection from the Operators' trustee, Owen, who at a trustees' meeting as early as August, 1950, demanded that all moneys of the Fund be withdrawn from the National Bank of Washington. He stated:

"It is undoubtedly the law that a trustee should not deposit trust funds in a bank which he controls or in which he has a substantial participation. Amongst other criticism, he may cause the dividends upon his stock to be enhanced by the Bank's use of a large deposit of his trust's funds for loan purposes. Also, conflicting interests may arise; or losses may occur."

The trustees' minutes through 1950 and 1951 reflect that Lewis and Roche, rather than replying to Owen's repeated complaints on this score, ignored his protests altogether and Lewis even equivocated as to his interest as a trustee holding bank stock for the Union.[5] In March of 1951, Owen included the Fund's relationship with the Bank as one of four matters on which he believed his proposals had been rejected, "utterly without justification," by Lewis and Roche "acting jointly."

The formal minutes of the Fund reflect practically none of this crucial discussion held at trustee meetings. Mitch, the Fund's attorney, attended the meetings, however, and thereafter prepared what he designated a stenographic draft of the proceedings based on copious contemporary notes. The stenographic drafts are in evidence. These were reviewed by Roche and possibly others and a truncated, far less informative formal minute was developed. Roche struck out most of the informative detail. No satisfactory explanation was offered as to why this was done, and the inference is unavoilable that Lewis and Roche had a conscious desire to conceal the actual embarrassing discussions that had taken place.

Lewis and Roche chose, without taking legal advice in the face of strong objection to the legality of their actions, to advance the interests of the Union and the Bank in disregard of the paramount interest of the beneficiaries who were entitled to receive the benefit of prudent investment of their funds.

The Union urges that Lewis kept his own conscience, acted solely as a trustee and after 1960, when he became President Emeritus, an honorary position, was wholly removed from any executive authority in the Union's affairs. Hence, it is claimed, the Union cannot be held responsible for Lewis' actions, neither prior to nor especially after 1960. This position cannot be squared with the facts. Lewis totally dominated the Union both before 1960 and to a large extent thereafter, especially as to financial matters, including the Fund. Other Union officers knew of Lewis' actions with regard to the Fund and the Bank, but uttered not a word of

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protest. While Boyle, in the period after 1960, often suggested that Lewis raise pensions, which would have had the effect of reducing the Fund's bank balances, neither Boyle nor any other officer sought to break the long-standing practice of retaining Fund moneys in non-interest-bearing checking accounts at the Bank rather than in investments. When the Welfare Fund agreement was renegotiated in 1964, 1966 and 1968, the Union could have designated another representative to act as trustee, had it been unwilling to accept the benefits of the course that Lewis had so obviously set.

The inference is also unavoidable that Lewis made more than a mistake of judgment as a trustee. He acted to benefit the Bank and to enhance its prestige and indirectly the prestige of the Union, not simply to keep money needed by the Fund in a safe place. The minutes show that he knew the large demand deposits were unnecessary for any legitimate purpose of the Fund. Moreover, he was not lacking in financial sophistication. He had been president of a bank himself and the record shows his many financial dealings and the manner in which, as President of the Union, he utilized the considerable financial resources of the Union for the Union's benefit. The conclusion is clear that Lewis, in concert with Roche, used the Fund's resources to benefit the Union's Bank and to enhance the Union's economic power in disregard of the paramount and exclusive needs of the beneficiaries which he was charged as Chairman of the Board of Trustees to protect.

Lewis acted for the Union when he entered into the conspiracy.[6] A conspiracy once formed is presumed to continue; to escape continuing liability, a party must affirmatively withdraw from the conspiracy and seek to avoid its effects. *See Hyde* v. *United States*, 225 U.S. 347, 369 (1912); *South-East Coal Co.* v. *Consolidation Coal Co.*, 434 F.2d 767, 784 (6th Cir. 1970). The Union did not withdraw from the conspiracy; it had full power to end this breach of trust, yet it knowingly perpetuated the breach and continued to reap the benefits thereof.

Any doubt as to Lewis motivation is fully dissipated by other evidence showing respects in which the Fund was used to benefit the Union during Lewis' chairmanship, to be discussed later. There is no suggestion that Lewis personally benefited, but he allowed his dedication to the Union's future and penchant for financial manipulation to lead him and through him the Union into conduct that denied the beneficiaries the maximum benefits of the Fund. A finding of conspiracy to maintain excessive cash at the Bank, justifying an award of damages against the Union in favor of the beneficiaries, is required.

The Bank, for its part, contends it played no conscious role in these arrangements and that it merely acted as a responsible banker handling the Fund's business in accordance with sound conservative banking practice. To be sure, the Bank did not overreach in any manner. It treated the Fund fairly. It performed extensive services for the Fund free of charge. There is no showing that the Bank conducted its business on the premise that the cash would not be summarily withdrawn. It was always highly liquid—indeed more liquid than other comparable banking institutions. Moreover, it did not receive any pressure from the Union to increase dividends for the Union's benefit, and dividend levels were in accord with the general parsimony that conservative bankers usually display toward shareholders at dividend time. There is no evidence that the Union or anyone connected with the Fund ever required the Bank to loan money to a friend or associate without adequate security and no such loans were made. Nor did the Bank show any favoritism toward the Union or the Fund contrary to proper banking standards.

While the measure of the benefits the Bank received from this relationship is unclear, and certainly not as monumental as the size of the deposits suggests, the Bank was in a position to make money on the Fund's large demand deposits and in fact did just that. The deposits enhanced the Bank's earnings and its prestige and position in the banking community.

It is likely that the initial agreement among the Union (acting through Lewis), Roche, and the Bank (acting through Colton), to maintain trust accounts in a bank substantially owned by a Union whose president was a trustee, and the losses of income to the beneficiaries caused thereby, are sufficient without more to hold the Bank liable in conspiracy for damages under the special circumstances of this case.[7] This was not the theory on which plaintiffs proceeded, however, and the Court need not make such a finding.

The Bank recognizes, as does the Court, that the above facts, plus a showing of actual knowledge on its part that the funds maintained by the trustees in non-interest-bearing accounts were substantially in excess of the Fund's need for cash, will render it liable. The Bank vigorously denies that any such actual knowledge may be inferred from the facts established at trial. A review of those facts leads the Court to a contrary conclusion.

The Bank knew, from the time of the 1950 meeting between Lewis and Colton, that the accounts came to the Bank without solicitation at the initiative of the Chairman of the Board of Trustees of the Fund who was also President of the controlling shareholder of the Bank. The Bank knew that these were trust accounts, and from its own extensive experience in acting as trustee knew of the high standards governing the conduct of trustees. The Bank knew the actual dollar amounts in the Fund's various interest-free accounts, and the percentage of the Fund's total assets that these accounts represented. The offices of the Bank, the Union, and the Fund were in close physical proximity. There were a number of interlocking relationships among the Union, the Bank, and the Fund throughout the twenty-year period.[8] Colton, the President of the Bank, was well aware of the propensity of the Union to use the Bank for Union objectives, as witnessed by his remarkable personal financial dealings with the Union, the Bank's loans to coal operators backed by Union collateral, and the unusual financial relationships between the Union and Cyrus Eaton, which the Bank aided.

The Bank strongly urges that it was ignorant of the terms of the trust agreement, the needs of the Fund for liquidity, or the possible tax consequences of enlarging the Fund's investment income, and hence that it had no way of knowing whether or not the obvious failure of the trustees to invest constituted a breach of trust.[9] Any inquiry into these matters would, of course, have revealed their total irrelevance to the startling size of the cash deposits continuously maintained by the trustees over almost twenty years. In the face of its full knowledge as to the size of the deposits and the relationship between the Union and the Fund, the Bank could hardly have assumed that the deposits were justified by any such possibilities. Its lack of inquiry into these suspicious matters is only further evidence of the Bank's awareness of the real reason for the deposit benefits it was receiving year after year.

Never in this entire period, Colton testified, did he ever discuss the Fund's accounts with anyone, inquire as to the Fund's needs or plans, or question the propriety of what was taking place. Not even casual inquiries were addressed to the interlocking directors and the nature or future prospects of the account were never mentioned at a single Board meeting. Since the Fund's business with the Bank accounted for over twenty percent of the Bank's time deposits, and grew to over thirty percent of its demand deposits, this disinterest in the Bank's principal account is indeed more than remarkable. Perhaps this may be accounted for by incompetence, but Colton did not exhibit this characteristic on the stand. His explanations are unacceptable. In the light of all the facts and circumstances this silence and disinterest buttress the sole inference permissible on the totality of all the facts: that the Bank knowingly accepted and participated in a continuing breach of trust that redounded substantially to its own benefit.

This conclusion draws strong support from the cases which hold that where a bank enters into a transaction with a trustee, with actual or constructive knowledge that the transaction is in breach of the trustee's fiduciary duty, the bank may be held liable for the resulting loss to the trustee. *See, e.g., Union Stock Yards Bank* v. *Gillespie*, 137 U.S. 411, 416 (1890); *Anacostia Bank* v. *United States Fidelity & Guaranty Co.*, 73 U.S. App. D.C. 388, 119 F. 2d 455 (1941); *American Surety Co.* v. *First National Bank*, 141 F.2d 411 (4th Cir. 1944); *Restatement of Restitution* § 138 (1937); 4 *Scott on Trusts* §§ 324 et seq. (3d ed. 1967). It is true, as the Bank suggests, that the Uniform Fiduciaries Act, 21 D.C. Code § 1701 et seq., modifies the law in this jurisdiction to limit a bank's liability for transactions with a trustee to cases in which the bank has actual knowledge of a breach of trust or knowledge of such facts that its action amounts to bad faith. In *Colby* v. *Riggs National Bank*, 67 U.S. App. D.C. 259, 92 F.2d 183 (1937), the Act was construed to require "actual knowledge of misappropriation," and misappropriation was taken to mean "wrong appropriation, or the use of a fund to a different purpose from that for which it was created; but not necessarily a dishonest purpose." 67 App. D.C. 259, 270. As the foregoing discussion demonstrates, the Bank knew that the money deposited in the Fund's checking accounts was being used for an improper course over a twenty-year period.

The Bank and the Union seek support from *United States* v. *Falcone*, 311 U.S. 205 (1940), and *Direct Sales Co.* v. *United States*, 319 U.S. 703 (1943). Both those cases dealt with the sufficiency of the evidence to support an inference of conspiracy. The decisions stand, at the most, for the proposition that the act of selling morphine in large quantities to a doctor known to be selling drugs illegally is sufficient to support a finding of conspiracy to violate the narcotics acts; while the act of selling sugar in large quantities to a known bootlegger is not necessarily sufficient to support a finding of conspiracy to violate the alcoholic beverages acts. This distinction, which counsel for the Union correctly labeled "a question of how bad the fish smell," is irrelevant in this case; for it is not only the nature and size of the deposits involved, but also the close and interlocking relationships among the Fund, the Union, and the Bank, the evidence of the original understanding between Lewis and Colton, and the long course of dealing to mutual advantage that irresistibly support a clear inference of conspiracy here.[10]

To summarize this aspect of the case, the Court finds: an agreement among Lewis, Colton and Roche to maintain on deposit at the Bank substantial sums in interest-free accounts, without relation to the real needs of the Fund for liquidity or otherwise, for the benefit of the Union and the Bank and in

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disregard of the best interests of the beneficiaries; knowing participation in the breach of trust by the Union and the Bank, beginning in 1950 and continuing at least until this lawsuit was filed; and resulting injury to the beneficiaries measured by the loss of income on funds wrongfully maintained in interest-free accounts.

III. OTHER BREACHES OF TRUST

Plaintiffs specified at pretrial six categories of conduct, in addition to the excessive cash balances, allegedly constituting breaches of trust and claimed that as to each the Union, the Bank, and the individual defendants conspired. Some of these claims were abandoned in whole or in part as proof developed in the course of the trial, and only those fiduciary issues remaining at the end of trial need to be considered in this opinion. The Court is satisfied that plaintiffs have by clear and convincing evidence established conduct which violates the trustees' fiduciary duty to the beneficiaries in all respects still urged, except with regard to the claim that the trustees failed to collect or properly to determine delinquent royalty payments. The Bank and Colton are not shown to have conspired as to any of these breaches, and no participation by the Union was proved except as hereinafter indicated.

A. Withholding health cards

The proof on this issue reflects a serious impropriety by the then-trustees of the Fund which has now apparently been rectified. Coal miners entitled to benefits are issued health cards which are used to obtain appropriate medical and hospital services directly from local physicians. When certain marginal coal operators in some sections of the country failed to account properly for royalties, and hence were in flagrant violation, the health cards of miners employed by those operators were revoked by the trustees, apparently on the theory that this action would lead the operators to pay up to avoid wildcat strikes. This practice was highly improper, for the benefits owed the miners as qualified beneficiaries could not, under the terms of the Fund, be cancelled solely because their particular employer was in default on his royalty payments. This policy was of limited duration. Initiated in 1962, it was terminated by 1966 and affected some 7,000 card holders. It was arbitrary and capricious, and hence constituted a breach of trust. There is no proof, however, that this action was taken by the trustees to assist the Union in the conduct of labor disputes, nor is there any other proof of conspiracy on this aspect of the case.

B. Use of misleading application forms

The proof showed that the Fund called on Union locals to assist beneficiaries and potential beneficiaries of the Fund in preparing pension applications, and to carry out other administrative functions. It should be understood that the Fund as a practical matter is required to work through the locals in processing applications. The expense of establishing field offices exclusively for the Fund would be enormous, and in any event information from Union records may be required as a cross-check on the applicant's representations. This arrangement, however, has been seriously abused, and the trustees must be held at least partially responsible.

The trustees sponsored an application form which incorrectly implies that Union membership and Union approval is necessary before an application will be processed. The Application for Pension, for example, carries at its foot a space for certification by the local and by the district that the applicant "is currently a member of Local Union No. —" and 'is a member of District No. —." There is ample documentary and testimonial evidence that applicants were improperly led by this form and by the locals to believe that Union membership was a prerequisite for eligibility, and were often forced to make substantial payments, sometimes running into hundreds of dollars, as "back dues" to reinstate their Union membership. The full extent of illegal collection of back dues by the Union through this device is unknown.

There is no proof that the trustees had actual knowledge of these improper practices by Union locals. In delegating certain functions to the Union local and district offices, however, they should have recognized the potential for abuse of the benefit application process where non-Union member beneficiaries were concerned. In continuing to use patently misleading forms which encouraged applicants to believe that a paid-up Union membership was a prerequisite to receiving benefits, the trustees were grossly negligent, to an extent that constitutes breach of trust. The trustees have apparently not acted decisively even to this date to terminate use of these misleading forms.

No cause of action was pleaded against the Union for fraud in collecting back dues from individual beneficiaries. Although the Union knowingly used the trustees' neglect to its own advantage, damages are recoverable only by individual beneficiaries who were defrauded, not by the trust itself. Since this action is only derivative, relief on this aspect of the case will be limited to an injunction to terminate the improper use of application forms in the future.

C. Investment in utility stocks

This issue relates to the Fund's purchase of stock of certain electric utility companies, principally Cleveland Electric Illuminating Company and Kansas City Power & Light Company. While these stocks are on the list approved for trustees, the propriety of these investments is challenged on the ground that they were made primarily for the purpose of benefiting the Union and the operators, and assisting them in their efforts to force public utilities to burn Union-mined coal. The investments have declined in value and are said to have been in violation of the trustees' duty of undivided loyalty to the beneficiaries.

In the late 1950's and early 1960's, the Union was engaged in a vigorous campaign to force public utility companies to purchase Union-mined coal. Public relations and organizational campaigns to this end were pressed vigorously in several cities. Lewis, then a trustee, worked closely with Cyrus S. Eaton, a Cleveland businessman. It is undisputed that between February and April 1955 the Fund purchased 30,000 shares of Cleveland Electric, and in March of that year the Union loaned Eaton money to enable him to buy an additonal 20,000 shares. Eaton then went on the Board of Directors of Cleveland Electric. Similarly, between January and March 1955 the Fund purchased 55,000 shares of Kansas City Power & Light, and in June of the same year the Union loaned Eaton money to buy an additional 27,000 shares. In each of the years from 1956 to 1965 the Fund gave a general proxy for all of its shares in Cleveland Electric and Kansas City Power & Light to Eaton. The Union and Eaton were pressing the managements of each company to force them to buy Union-mined coal. The Fund purchased both Cleveland Electric and Kansas City Power & Light stock on the recommendation of Lewis, who was then fully familiar with the Union's activities affecting these companies and proxies were given to the Union by the Fund at Lewis' request.

Schmidt, who became a trustee of the Fund in 1958, was president of the principal coal operator standing to benefit from Cleveland Electric's additional purchases of Union-mined coal. He was acquainted with the activities of the Fund and of the Union with respect to Cleveland Electric, and actively encouraged them. When the Union's campaign to push Union-mined coal focused on Cleveland Electric in 1962 and 1963, the Fund purchased an additional 90,000 shares, with the hearty approval of Schmidt.

Further indication that these particular challenged stock purchases were made primarily for the collateral benefits they gave the Union is found in a general course of conduct. Lewis and Widman, the Union men spearheading the efforts to force utilities to buy Union-mined coal, discussed some seventeen utility companies on the Fund's investment list, looking toward the possibility of obtaining proxies from fifteen. Proxies were in fact given the Union by the Fund not only on Cleveland Electric and Kansas City Power & Light, but on the shares the Fund held in Union Electric, Ohio Edison, West Penn Electric, Southern Company and Consolidated Edison. The intimate relationship between the Union's financial and organizing activities and the utility investment activities of the trustees demonstrates that the Fund was acting primarily for the collateral benefit of the Union and the signatory operators in making most of its utility stock acquisitions. These activities present a clear case of self-dealing on the part of trustees Lewis and Schmidt, and constituted a breach of trust. Roche knowingly consented to the investments, and must also be held liable. The Union is likewise liable for conspiring to effectuate and benefit by this breach of trust.

D. Collection of royalties

The Fund followed a set routine to make sure royalties were current and fully paid. Reports filed by operators with state and federal authorities were carefully checked and correlated with any information available from the Union. Delinquency notices were sent to any operator in arrears, and if payments were not brought into line the matter was referred to counsel. Numerous suits were filed when the controversies could not be resolved by negotiation. Collection techniques were vigorous and persistent.

It was inevitable over a twenty-year period that some operators would fail to pay royalties on time. This was particularly likely in the case of marginal operators confronting financial difficulties of one kind of another, but occasionally larger operators were also in default. Some delinquencies reflected honest differences as to the amount owing. There was never a time, however, when overdue royalty payments represented more than a small fraction of the operators' royalty obligations. Royalties were delinquent in amounts ranging from $5 million to a high of $9 million per annum. These figures contrast with annual royalty receipts in the range of $170 million to $185 million. Moreover, collection efforts were in progress on many of these delinquencies.

Two specific situations were highlighted by the proof. Plaintiffs leveled particular criticism at arrangements made by the trustees to collect royalties from some small operators by dealing with associations representing those operators, and also at the Fund's failure promptly to collect royalties from West Kentucky Coal Co., a large operator controlled by the Union in conjunction with Cyrus Eaton and defendant Colton, then President of the Bank. Admittedly the trustees had to make difficult business judgments in each of these situations, but the evidence of breach of trust is not clear. In the first instance the actions of certain locals [11] and the inadequacy of available records of coal mined made effective collection impractical. The cost of pursuing some of these small operators would undoubtedly have exceeded the royalty sums, if any, that would by legal or other means ultimately have been collected.

In the instance of West Kentucky, a substantial dollar delinquency, as high as $700,000 in 1961, was tolerated over a period of time. This company, a large but margi-

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nal operator, in 1963 eventually made its royalty payments current with aid of an ear-marked loan from the Union, and its royalty payments to the Fund eventually exceeded $40 million. Difficult judgments had to be made by the Fund's representatives during the period of deficiency, but these were made honestly and the decision temporarily to tolerate substantial non-payment ultimately redounded to the benefit of the Fund.

The Union's heavy stock interest in West Kentucky (acquired as early as 1954) should have disqualified Lewis from any participation as a trustee in decisions involving royalty collections from that company. He wholly ignored the conflict of interest. The Fund was placed in an indefensible position of having to deal with a Union-controlled operator. The royalties were eventually paid, however, and no substantial dispensations were granted West Kentucky which were not granted other flagrantly delinquent operators. Thus the West Kentucky episode reflects the loose standards of fiduciary responsibility which governed Lewis' conduct rather than a breach of trust by any other trustee.

E. Pension increase

One of the principal subjects of inquiry at the trial involved the circumstances under which monthly pensions were raised from $115 to $150 on June 24, 1969. This $35 increase was not without consequences, since it involved an additional annual disbursement from the Fund of approximately $30 million. Plaintiffs do not seek a rollback of the pension increase, but assert that the motives for which it was made, and the manner in which it was made, are grounds for removal of Boyle as a trustee, and for monetary relief from Boyle, Judy, and the Union for any injuries the Fund may suffer as a result of the action. A full discussion of the incident is required.

Roche broke her hip early in June, 1969, and for most of that month was recuperating at the Washington Hospital Center. She was nonetheless in frequent contact with her office by telephone and although immobile was otherwise fully functional. Lewis, still a trustee, was at home in Alexandria where he had remained more or less continuously for many months. He was alert but his health was failing. No trustee meeting had been held since February, 1969. Schmidt, the Operator trustee, had resigned on that date and a vacancy existed. On June 4, 1969, defendant Judy was installed as Schmidt's successor at a brief semi-social meeting held at Lewis' home. Roche, already hospitalized, knew of the meeting and approved of Judy's designation, but could not attend.

Lewis died on June 11, 1969, and Boyle, who had been president of the Union since 1963, was designated as the Union's trustee representative, and hence Chairman of the Board of Trustees of the Fund, at a meeting of Union officials on June 23. Boyle had received some general information concerning the Fund's operations which led him to feel that a sizable pension increase could be financed. As an energetic Union leader, he was confident that if additional money were needed, the operators could be forced to increase their royalty payments when the next collective bargaining agreement was negotiated. He felt the unexpended balance of the Fund was far too large, and that a pension increase was long overdue. Indeed, at Union meetings and elsewhere he had promised that if he ever had anything to do with the matter he would increase pensions at the earliest possible opportunity. Boyle had urged Lewis to raise the amount of the pension but Lewis had refused to act.

When Lewis died and Boyle was named trustee, an election contest for presidency of the Union was looming.[12] Boyle undoubtedly recognized that if he delivered on his pension promises to the rank and file, his position would be strengthened in the campaign. These election considerations account for the timing of his actions, but they were not the primary factor motivating Boyle. He genuinely believed that a pension increase should be made in the interests of the miner beneficiaries. Boyle knew that Roche was opposed to a pension increase, but with her hospitalized he was in a position to force the issue with Operator trustee Judy, and undoubtedly felt that the end—that is, the increase in pensions—justified the means. Even if Judy refused to go along, the Union's position in subsequent bargaining would be strengthened. Thus, Boyle decided to see if he could bully it through. As soon as he was designated trustee, Boyle called a meeting of the trustees for the next day at his offices at the Union.

Judy approved the increase in a private session with Boyle immediately before the formal meeting, under circumstances which will be mentioned later. The increase was formally approved a few minutes later and an announcement was thereafter sent out over Boyle's name to all pensioners and potential beneficiaries.

This action was taken in unnecessary haste. The trustees did not adequately consider the implications of their action, and while the increase was not wholly irresponsible it was not approached with adequate regard for the trustees' fiduciary obligations. Roche was not consulted or even advised of the action in advance, and in fact continued vigorously to oppose the pension increase. No detailed projections of the Fund's long-term ability to pay were made, nor were possible alternative changes in benefit payments considered.[13] The trustees took no contemporaneous steps partially to offset the added payout by eliminating unnecessary administrative expenses or by investing cash in income-producing securities. In short, the increase was handled as an arrangement between labor and management with little recognition of its fiscal and fiduciary aspects.

Prior to June 24, Judy had never attended a meeting of the trustees except for the pro forma session at Lewis' home earlier that month. He was president of the BCOA and well familiar with the negative attitudes of some operators towards higher benefits. He had some general knowledge of the Fund's fiscal position. Before he entered the meeting he had been warned by the Association's lawyer that matters of substance might be raised by Boyle, and it had been suggested he not act without further consultation. He failed to call Roche for her views or to question Boyle as to his representations, and after making some hasty mental calculations proceeded on the basis of his own generally favorable attitude. At the trial he took the position that money to support a pension increase was available, that the miners deserved the increase, and that he approved of it on the merits. He testified that he had no obligation to consult the operators, pointing out that his predecessor had never consulted them.

After the action had been taken, however, he was called on the carpet by the operators, some of whom violently opposed the pension increase. He made little, if any, effort to justify his action on the merits. He rather argued that he had simply been placed in an impossible position at the meeting because Boyle had advised him that he, Boyle, had Roche's proxy and that the neutral trustee was in Boyle's pocket.

Thus two explanations are suggested for Judy's conduct: that he voted to increase pensions because he believed it was the correct thing to do, and that he voted for the increase because he was led to believe Boyle and Roche were for it.

While Judy undoubtedly felt that the miners needed a pension increase and that there was money available to pay it, this was not solely why he acted. Judy would not have voted for the increased pensions at the June 24 meeting on the spur of the moment, without advance warning, against the advice of counsel, knowing that the royalty payments of the coal operators might be affected, if he had not been falsely led to believe by Boyle that Boyle had Roche's proxy. It was a serious error of judgment for Judy to have accepted Boyle's representations and for Judy not to have checked with Roche, at least by telephone. While Judy was forced to resign under pressure a few days later when the operators learned that Boyle did not have Roche's proxy, and while he was but a passing participant, his conduct fell below the standard of care and skill required of a trustee. He acted hastily and without taking the normal precautions requisite for responsible fiduciary actions.

Boyle of course also proceeded without regard to his fiduciary obligations in pushing through the pension increase. He failed even to notify the neutral trustee of the meeting or of the contemplated pension increase, which was itself in neglect of the duty of a co-trustee. *See Wilmington Trust Co.* v. *Coulter*, 41 Del. Ch. 548, 200 A.2d 441, 451 (1964); Bogert, *Trusts & Trustees* § 554 (2d ed. 1960). He brought about the action by a hasty power play, fortifying his position by falsely indicating that Roche supported his proposal. Unlike Judy, Boyle remains a trustee. It has been shown by testimony and by Boyle's demeanor at the trial that he considers the fund in effect the property of the Union to be used in whatever manner the immediate and long-term objectives of the Union warrant. As Boyle's conduct in this instance demonstrates, such compulsions of militant Union leadership are inconsistent with the dictates of prudent trusteeship.

The most revealing document in this entire episode is the full text of the press release which the Fund's public relations man issued on the day of the pension increase. It reads as follows:

"WASHINGTON, D.C.—W. A. "Tony" Boyle, President of the United Mine Workers of America, succeeded John L. Lewis today as the Chief Executive Officer and Trustee of the Union's Welfare and Retirement Fund, and immediately boosted the pension of retired soft coal miners from $115 to $150 monthly.

"The new pension rate will be effective August 1. It was voted at the first session of the Trustees attended by the Union chief. He was chosen trustee at a meeting of the International Executive Board yesterday, and as chief executive officer of the Fund, as set forth under the UMWA contract with the bituminous coal industry, called a meeting of the trustees, and the pension boost was adopted. Other trustees are George Judy, for the coal operators, and Josephine Roche, also director of the Fund, as the neutral.

"Pensions now are going to approximately 70,000 retired soft coal miners. Last year, the Fund paid out $96 millions in this benefit alone. Other benefits are complete hospital care for miners and their families, and death benefits to widows and survivors.

"Chairman Boyle also called for an immediate in-depth study of all benefits of the 23-year-old Fund, with complete analysis of the entire program for miners, their widows and families. He has received scores of suggestions for possibly improving the benefits at a series of rallies in the coal fields of West Virginia, Pennsylvania and Illinois in recent months.

"The new chief executive of the Fund, like his predecessor, will accept no pay for serving as Trustee."

Nothing could more blatantly expose the realities of what had occurred in this instance and had been occurring for some time. However correct or incorrect the pension increase decision may have been, it reflected the Un-

Footnotes at end of article.

ion's influence over Fund policy and the loss of independence that the Fund's continuous deferences to the Union's self-interest had by this time achieved.

IV. THE INDIVIDUAL DEFENDANTS

Before considering the involvement of each of the named individual defendants, a brief statement of the applicable legal standards is required. The elements of conspiracy or participation in breach of trust discussed earlier with respect to the Union and the Bank are equally applicable to the individual defendants. An officer of a corporation or other entity found to have participated in a breach of trust is not liable simply by reason of his officership, but an officer is liable if he personally knows of the breach of trust and participates therein or fails to take action to correct it. *See Strauss* v. *United States Fidelity & Guaranty Co.*, 63 F.2d 174 (4th Cir. 1933); 4 *Scott on Trusts* § 326.3 (3d ed. 1967). It is not necessary to prove that the individual personally profited from the transaction. And one who knowingly joins a conspiracy "even at a later date takes the conspiracy as he finds it, with or without knowledge of what has gone on before." *Myzel* v. *Fields*, 386 F.2d 718, 738 n. 12 (8th Cir. 1967), *cert. denied*, 390 U.S. 951 (1968).

Josephine Roche. Roche had a distinguished public career before joining the Fund, and she has played a unique role in the affairs of the Fund since its inception. She has been both the neutral trustee and the Administrator, a full-time salaried position. While she has had a long interest and commitment to the welfare objectives of the Fund and has contributed substantially to many of its unique welfare successes, her business experience was more limited. She did not profit personally in any way by any of the actions taken. She idolized John L. Lewis and felt entirely confident to follow his leadership in financial matters, apparently without independent inquiry. She was an active participant in each breach of trust except the pension increase. Indeed, without her affirmative approval they probably would not have occurred. She accepted without question the accumulations of excessive cash at the Union's Bank even when the propriety of depositing these balances was raised at trustee meetings, and in the face of advice that the cash could be invested without impairing the liquidity of the Fund. Perhaps she failed wholly to recognize the full implications of her actions, but naiveté and inattention cannot excuse her conduct. She violated her duty as trustee in all the respects previously discussed, and she must be said to have knowingly furthered the conspiracies as to the cash and the utility company investments.

W. A. (Tony) Boyle: Boyle was not a party to the original conspiracy, and never adopted its ends. He was not responsible for the accumulation of excessive cash at the Bank, although he knew about it. From the moment he became President of the Union in 1963, and indeed earlier, he sought to persuade Lewis to have the Fund pay out larger benefits, which would have had the effect of reducing cash balances. Boyle also insisted that various loans and other financial involvements engineered on behalf of the Union by Lewis in cooperation with the Fund and the Bank be terminated, and this was done. This did not disentangle the Union from the conspiracy as to the cash balances, but it is action inconsistent with individual participation by Boyle in any conspiracy. The failure of the Union to supplant Lewis after Boyle became president cannot, on the evidence before the Court be considered sufficient to hold Boyle as an individual conspirator although the agreement was renegotiated after 1963 and Lewis could have been removed.

Boyle, however, violated his duty as trustee in several particulars. His actions in forcing through the pension increase, partly by misrepresentation, in haste and without consulting the neutral trustee, reflect an insensitivity to fiduciary standards. In addition, he continued to serve as director of the Bank and member of its Executive Committee after becoming trustee, a relationship which conflicted with that degree of independence required of a trustee under the circumstances of this case. He took only limited action to modify the inappropriate application forms that encouraged improper cash levies by the Union on applicants as a condition precedent to receiving pension benefits.

George L. Judy: Judy is guilty of poor judgment but not of conduct that violated his duty as trustee. He should have consulted the independent trustee before acting hastily at Boyle's insistence and without adequate information in approving a pension increase which had substantial effect upon the long-term operations of the Fund. No relief is required as to Judy, since he is no longer a trustee and there is no likelihood he will be one in the future. He was a trustee for only six weeks, and did not participate in any conspiracy. The case as to him is dismissed.

Barnum L. Colton: Colton was a party to the original conspiratorial agreement to place excessive cash in the Bank, and as the chief executive of the Bank he participated in carrying out that breach of trust. His collaboration with the Union was far more than that which followed merely from his office.

C. W. Davis: Davis, the trustee representative of the Operators, is a nominal defendant named to assure proper implementation of any equitable relief against the Fund. He is not shown to have engaged in any improper conduct. All the events here reviewed occurred prior to his designation as trustee.

V. RELIEF

All defendants contend that the doctrine of laches bars any relief for the claimed breaches of trust, and alternatively that the statute of limitations bars any claim for damages by reason of events occurring more than three years prior to the filing of this suit. Plaintiffs assert that laches, not the statute of limitations, is applicable to all causes of action herein, and urge that they have not been guilty of any unreasonable delay which would bar relief.

It is clear that an action to redress a breach of trust sounds in equity, and that the statute of limitations is inapplicable to such a suit in the District of Columbia. *See Naselli* v. *Millholland*, 88 App. D.C. 237, 188 F. 2d 1005 (1951); *Haliday* v. *Haliday*, 56 App. D.C. 179, 11 F.2d 565, 569 (1926); *Nedd* v. *Thomas*, 316 F. Supp. 74, 77 (M.D Pa. 1970) 3 *Scott on Trusts* § 219 (3d ed. 1967). Nor is the statute of limitations strictly applicable to the cause of action against the Union or the Bank, for it is the breach of trust they conspired to carry out, not the conspiracy itself, which is the gist of the action. See cases cited page *supra; Restatement of Trusts* 2d § 327 (a), Comment k. It is true that courts customarily follow the statute of limitations even in equity cases where essentially legal relief, such as damages or an accounting, is sought. *Columbian University* v. *Taylor*, 25 App. D.C. 124, 131 (1905). This rule, however, is not strictly followed in this jurisdiction. *Haliday* v. *Haliday, supra*, 56 App. D.C. 179, 11 F.2d 565, 569 (1926). The guiding principle is that "laches is not like limitation, a mere matter of time; but principally a question of the inequity of permitting the claim to be enforced. . . ." *Holmberg* v. *Armbrecht*, 327 U.S. 392, 396 (1946).

The Court is mindful of several factors which bear upon the equity of awarding damages for the excessive cash accumulations at the Bank going back to 1950. The actual size of the deposits was never concealed, but was regularly reported in the annual reports of the Fund which were widely distributed. The relationships of the Union and the Fund with the Bank were mentioned on numerous occasions in the Mine Workers Journal and elsewhere. Certainly by reasonable diligence most, though not all, of the relevant facts as to the cash deposits could have been readily ascertained. The delay has prejudiced the defendants in that some of the major participants in these events are now dead, and if damages were assessed for the Fund's loss of investment income over the full twenty years, both the Union and the Bank, whose resources will necessarily feel the major impact of the judgment, would be seriously injured. In assessing the reasonableness of the delay, however, the Court must consider the impecunious nature of the beneficiaries, the obstacles of Union discipline which could well have intervened, the fact that the class of beneficiaries was continually changing, and the fact that as late as May, 1969, the Fund through a statement in the Union newspaper disingenuously represented that the large cash balances were necessary for the operation of the Fund. Thus the delay is not inexcusable, but it must be taken into account in determining the period for which damages will be assessed.

Moreover, the Court notes that while the beneficiaries have suffered as a result of the Fund's loss of investment income, they have benefited to some extent from the Union's activities over the past twenty years. In the longer view of matters, the Union's strength protects the interests of the beneficiaries, past and prospective; the Union should not be weakened to a point where its stance at the bargaining table will be substantially impaired.

Balancing these factors, and recognizing the similarity between this action in equity and one at law for damages, the Court will adopt the three-year limitation provided by 12 D.C. Code § 301(8) as to the damages aspect of this case.

No considerations of equity intervene to bar prospective remedies for mismanagement of the Fund by its trustees. The Fund has been seriously compromised. It has failed to develop a coherent investment policy geared to immediate or long-term goals. It has collaborated with the Union contrary to the trustees' fiduciary duties, and has left excessive sums of money on deposit with the Union's Bank in order to assist the Union. In their day-to-day decisions, the trustees have overlooked their exclusive obligation to the beneficiaries by improperly aiding the Union to collect back dues and by cutting off certain beneficiaries unfairly.

Alongside these serious deficiencies must be placed the pioneer role of the Fund, which by constant effort has led in the development of a board program of welfare benefits for a distressed segment of the working population. The many beneficial and well-motivated actions cannot, however, excuse the serious lapses which have resulted in obvious detriments to many beneficiaries. There is an urgent need for reformation of policies and practices which only changes in the composition of the Board of Trustees, an adjustment of its banking relationship, and other equitable relief can accomplish.

Further proceedings must be conducted on the measure of damages, but as the Court indicated before trial it is desirable at this stage to establish the nature of equitable relief which must be taken for the protection of the beneficiaries. Equitable relief shall take the following form.

Neither Boyle nor Roche shall continue to serve as a trustee. Each shall be replaced by June 30, 1971, under the following procedures. A new trustee must first be named by the Union. Consonant with the provisions of the Agreement, the new Union trustee and

the existing trustee representing the Operators shall then select a new neutral trustee. The neutral trustee shall be designated on or before June 15, 1971, and the designation will then be submitted for approval by this Court before the new trustee takes office on June 30.

The newly constituted Board of Trustees selected as required by the decree shall then immediately determine whether or not Roche shall continue as Administrator of the Fund. No trustee shall serve as Administrator after June 30, 1971.

Upon the selection of a replacement for Boyle and the neutral trustee, the newly constituted Board of Trustees shall be required to obtain independent professional advice to assist them in developing an investment policy for creating maximum income consistent with the prudent investment of the Fund's assets, and such a program shall be promptly put into effect.

The Fund shall by June 30, 1971, cease maintaining banking accounts with or doing any further business of any kind with the National Bank of Washington. Following termination of this relationship, the Fund shall not have any account in a bank in which either the Union, any coal operator or any trustee has controlling or substantial stock interest. No employee, representative or trustee of the Fund shall have any official connection with the bank or banks used by the Fund after June 30, 1971. The Fund shall not maintain non-interest-bearing accounts in any bank or other depository which are in excess of the amount reasonably necessary to cover immediate administrative expenses and to pay required taxes and benefits on a current basis.

A general injunction shall be framed enjoining the trustees from the practices here found to be breaches of trust and generally prohibiting the trustees from operating the Fund in a manner designed in whole or in part to afford collateral advantages to the Union or the operators.

Counsel are directed to confer and prepare a proposed form of decree carrying out the equitable relief here specified. This proposed decree shall be presented to the Court and any disagreements as to form settled on May 13, 1971, at 4:00 p.m. On May 21, 1971, plaintiffs shall furnish the Court and defendants with a precise statement of the amounts of compensatory damages and attorneys' fees and expenses claimed in light of this Opinion, a statement of the method used to compute the claims, and a list of witnesses to be called at the damage phase of this proceeding. No punitive damages will be awarded. A hearing as to compensatory damages is set for June 21, 1971, at 9:30 a.m.

GERHARD A. GAULL,
U.S. District Judge.

APRIL 28, 1971.

FOOTNOTES

[1] The Bituminous Coal Operators Association and two individuals named defendants, Carey and Titler, were dismissed at the close of plaintiffs' case for lack of proof. Schmidt and Waller were not served.

[2] Lewis and Boyle have been the only Union trustees. There has been a succession of Operator trustees. Owen served until 1957, followed in sequence by Henry Schmidt, George Judy, Guy Farmer and C. W. Davis.

[3] Boyle resigned from the Bank board after the record in this case was closed and following his indictment for other alleged misconduct.

[4] In one instance, Roche was momentarily troubled by Ryan's going on the Bank board but when she took this up hesitantly with Lewis he "just smiled," and Roche let the matter drop.

[5] The stock of the Bank owned by the Union was held by the three Union officers named trustees for the Union. Lewis and later Boyle were each a trustee during their respective service as President of the Union.

[6] The Union claims that it cannot be held liable for the acts of Lewis except upon "clear proof" that the membership of the Union actually participated in, authorized, or ratified his actions. This position is based upon Section 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106. Section 6, however, applies only to actions taken in the course of a labor dispute. By no view of the facts in this case can the management of the Welfare Fund by its trustees be termed a "labor dispute" as that phrase is defined in 29 U.S.C. § 113(c). See Columbia River Packers Ass'n v. Hinton, 315 U.S. 143, 146–47 (1942).

[7] This theory of the case would present the question whether it was a breach of trust for the trustees to deposit any money whatsoever in the Union's bank. There is a conflict among the cases as to whether a trustee may under any circumstances deposit trust funds in a bank in which he has a substantial interest. See the full discussion in 2 Scott on Trusts §§ 170.18, 170.19 (3d ed. 1967); *compare* Caldwell v. Hicks, 15 F. Supp. 46 (S.D. Ga. 1946) (deposit improper), with In re Sexton, 61 Misc. 569, 115 N.Y.S. 973 (1908) (deposit proper). It is universally held however, that any such deposits will be subjected to the closest scrutiny for signs of self-dealing or negligence where the bank fails or the funds are left on deposit uninvested for an excessive period of time. *See, e.g.,* In re Culhane's Estate, 269 Mich. 68, 256 N.W. 807, 811 (1934). And where the bank has notice that the trustee is acting in breach of trust in allowing such deposits to be made, it is liable along with the trustee for losses to the trust. *See* Olin Cemetery Ass'n v. Citizens Savings Bank, 222 Iowa 1053, 270 N.W. 455, 459 (1936). Where the initial deposits are upwards of thirty million dollars and form a substantial percentage of the bank's business, as in the case of the Fund, it would be an extreme principle which would absolve the bank from any responsibility for resulting losses to the trust.

[8] In considering the interlocks between the Bank and the Fund, two individuals involved occupied positions of special significance. Ryan, the Fund's comptroller, knew full well that the cash deposits were excessive and, in effect, at one stage had so advised the trustees. He was named to the Advisory Board at the Bank in 1963, and became director in 1965. He was also an honorary member of the Union. Hopkins, initially inside general counsel of the Union and later inside general counsel of the Fund, was a director of the Bank and of course fully familiar with the provisions of the Trust and the legal responsibilities of the trustees. He attended trustee and Bank meetings. The knowledge of Ryan and Hopkins, insofar as it arose from their duties at the Fund, is not strictly imputable to the Bank. *See* Arlington Brewing Co. v. Bluethenthal & Bickart, 36 App. D.C. 209 (1916); 3 Fletcher, Cyclopedia of Corporations §§ 793, 808 (Rev. ed. 1965). Their knowledge was, however, continuously available to the Bank throughout the period.

[9] The only reference in the testimony to any communication on these matters between Lewis and the Bank is the following, from the cross-examination of Colton:

Q: Did Mr. Lewis ever tell you anything about the need of substantial balances in the fund accounts?

A: It seems to me that in the early '50s they had some difficulties and Mr. Lewis made the statement to me in one of our meetings that he would like to feel that the fund always had sufficient funds on hand to protect several monthly payments to miners so they shouldn't be in the position of being short of money. [Transcript p. 197.]

[10] The finding of an agreement between Lewis and Colton in 1950 is not an essential element of the cause of action against the Bank and Colton as to the later years of the period under review. For whatever the nature of the understanding at the time the account was opened, the continuous maintenance of huge sums of money in demand deposits over the years was more than sufficient to convey to Colton and the Bank knowledge that the Bank was benefiting from a breach of trust.

[11] In the period 1959–1964, the trustees were hobbled in collecting royalties from some 16 to 18 small operators because Union organizers had told the mines they didn't have to pay full royalties. This practice by the Union organizers was improper, but the evidence failed to show complicity by the trustees of the Fund.

[12] Joseph Yablonski had announced his candidacy on May 29, 1969. Boyle had relieved him of his position with the Union's Nonpartisan League on June 9.

[13] The range of alternative increases in benefits was indicated by Ryan in a report to the Union's Executive Board on March 14, 1968. Besides a pension hike, Ryan noted that the following changes were among those being urged on the trustees: broadening eligibility for pensions to include totally disabled miners with ten years' service, regardless of age; making miners' widows eligible for medical care benefits until the age of 65; providing additional medical benefits for incapacitated children of miners; paying Medicare premium for beneficiaries over the age of 65; extending benefits for unemployed or disabled miners; and increasing widows' and survivors' benefits. According to Ryan's estimates, the additional cost of these modifications would eventually amount to over $35 million annually.

CITIZEN-SOLDIERS AND THE ALL-VOLUNTEER ARMY

Mr. KENNEDY. Mr. President, the Gates Commission and advocates of an all-volunteer army persistently have derided the question of whether there would be less civilian responsiveness in an all-volunteer force.

The Commission report stated:

> In either a mixed or volunteer force, the attitudes of the officer corps are the preponderant factor in the psychology of the military; and with or without the draft, professional officers are recruited voluntarily from a variety of regional socioeconomic backgrounds. It is hard to believe that substituting a true volunteer for a draftee or a draft-induced volunteer in one of every six positions will so alter the military as to threaten the tradition of civilian control, which is embodied in the Constitution and deeply felt by the public.

While I do not believe that an all-volunteer army will lead to a military coup or to complete dissolution of civilian control, a paid professional military raises serious questions for a democracy.

Thus, the Association of State Universities and Land-Grant Colleges stated:

> The continued presence in substantial numbers in the Armed Forces of officers from a wide variety of civilian educational institutions and backgrounds is one of the best guarantees against the establishment in this country of a military caste or clique. . . .

I invite the attention of Senators to a commentary in the spring issue of Foreign Policy entitled "ROTC, Mylai, and the Volunteer Army." The authors carried out an attitude questionnaire of randomly selected service academy, ROTC, and non-ROTC students and surveyed the existing literature concerning officer attitudes. The authors concluded that ROTC officer candidates, and particularly humanities majors—those

least likely to enter the military in an all-volunteer system—were: less willing to obey immoral orders, least willing to use nuclear weapons, least capable of imagining a situation in which a military takeover of the U.S. Government would be justified, most critical of the size of the military budget.

The authors argued that the citizen officer should represent the noblest attitudes and values in American society—values which we maintain would include a refusal to obey immoral orders, a reluctance to sling nuclear weapons around, and a strong disinclination for any military coup or other invasion of the political process.

They also concluded:

If you don't like the way the military functions, you can't expect it to improve by insulating yourself from it.

Their final statement is of importance to those who see the need for internal reform in the military as well as in our other institutions.

A volunteer army of "pros", void of citizen officers coming in out of the draft, *would* be dangerous. As Peter Barnes recently put it: ". . . an end to the draft would shield the army from the influx of citizen-soldiers who are the yeast of internal change. The army *needs* Yosarians, Ronald Ridenhous, independent-minded ROTC junior officers and J.A.G. lawyers—soldiers who do their jobs . . . whose loyalties are to civilian, not careerist values."

Much of the preceding analysis rests on the premise that an all-volunteer Army would result in a sharp reduction of ROTC officers particularly among the brightest students.

For those who might question that premise, I would recommend a January 1971 Naval War College Review article entitled "The Officer Corps in an All-Volunteer Force: Will College Men Serve?"

The conclusion of the authors were almost diametrically opposite to the Gates Commission which stated that the "estimated supply will be more than adequate to meet anticipated accession requirements to meet the Army officer corps in a 2.5 million man force without the draft."

After a survey of ROTC professors at 28 colleges and universities and an attitude questionnaire of some 2,400 Army and Air Force ROTC students and 1,200 Navy, Air Force, and Marine Corps OCS candidates, the authors concluded:

During the pre-Vietnam period of 1961–65, conscription was required to maintain the officer corps in a 2.6 million man force. Given the current attitudes of college youth, return to this approximate force level on an all-volunteer basis is not considered feasible. Consequently, it is concluded that in the current environment, minimum officer needs for the Air Force may be marginally obtainable, but Army, Marine Corps, and Navy officer requirements will be unattainable except at the expense of quality.

The study found that 64 percent of the Navy OCS students would not have enrolled in the officer program in the absence of a draft. Similarly 47 percent of Army ROTC, 43 percent of Air Force OTC, 32 percent of Marine Corps OCS, and 29 percent of Air Force ROTC students also would not have entered these programs. In each of these programs an additional 15 to 18 percent of the students were undecided. What is particularly noteworthy is that only 30 percent of the Army and Air Force ROTC seniors and graduates stated they would have enrolled in the absence of the draft.

These studies raise serious questions for the Gates Commission conclusions of the feasibility and desirability of shifting to all-volunteer force. Mr. President, I ask unanimous consent that the articles be printed in the RECORD.

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

ROTC, MYLAI, AND THE VOLUNTEER ARMY

(By Ed Berger, Larry Flatly, John Frisch, Mayda Gottlieb, Judy Haisley, Peter Karsten, Larry Pexton, and William Worrest)

Voluntary professionals may replace citizen-soldiers in the American armed forces of the 1970's. Apart from the question of draft reform and plans to end conscription entirely after Vietnam, widely discussed in Washington today, the Reserve Officers Training Corps (ROTC) is under attack on many of the nation's campuses. ROTC has been asked to leave a number of universities, while falling enrollments, broken windows, burned-out offices and a hostile student environment have led each of the three armed services to cancel some of their programs. Still, ROTC currently provides a majority of the career officers in the military services as well as the reserve system.

ROTC has made an inviting target for critics of the Vietnam war. Those seeking ROTC's demise have also made much of the indoctrinary nature of its curriculum, the presence of external, government control of the program, and the militarization they feel that the ROTC student experiences—all occurring within an academic setting with the contrary goal of liberating and stimulating the students' powers of inquiry.

Defenders of ROTC have warned that its removal from the nation's campuses would severely injure the efficiency of a military that has increasingly come to depend on the technical and managerial skills that the ROTC graduate can offer. Such an argument is not a very telling blow to the case of the critics. Indeed, many of these critics are quite satisfied with an arrangement which may weaken the ability of the government to prosecute its policies in Southeast Asia, at the same time that it rids the campuses of an alien spirit. But several ROTC defenders have offered an argument that does alarm some of the critics.

ROTC VS. THE PROS

These defenders have argued that dismantling ROTC would result in an increase in the number of officers recruited from the enlisted ranks and in the size or number of the service academies. In the former case—recruitment from the ranks—tests have established that the average enlisted man, with less than a college education, scores higher on psychological attitude scales measuring authoritarianism, acceptance of military ideology, and aggression than does the average college-bred officer candidate.[1] These same ROTC defenders have then claimed (without verifying the claim) that the latter case—an increase in the number of service academy graduates—would have the same effect. The average West Pointer or Annapolis graduate, they argue, is less flexible and able to think for himself than the average ROTC or Officer Candidate School (OCS) officer. Thus ROTC and OCS officers may provide a desirable "leavening," a counterbalance to the more aggressive values of academy graduates and "rankers." The Association of State Universities and Land-Grant Colleges put it this way in a recent report: "The continued presence in substantial numbers in the Armed Forces of officers from a wide variety of civilian educational institutions and backgrounds is one of the best guarantees against the establishment in this country of a military caste or clique. . . ."[2]

For those critical of the presence of formally accredited ROTC programs on campus, the suggestion that the death of ROTC would result in expansion of service academies and enlisted-oriented OCS programs should provoke serious reflection. If the citizen-officer defenders are correct, any changes in present recruitment that would result in a significant increase in the flow of professional soldiers from the enlisted and academy ranks might be counterproductive. That is, the demise of ROTC would only temporarily dislocate military leadership plans. And any increase in the percentage of authoritarian, aggressive "leaders" would, we submit, be undesirable. But are the citizen-officer defenders correct?

The question concerns the nature of citizen-officers—ROTC and college-grad OCS types who serve for two or three years as platoon and company grade officers or pilots and then either stay on as careerists or (in most cases) resign. Some citizen-officers rise to high command, but all, whether they stay on or not, may be faced as lieutenants, due to the nature of modern, dispersed military deployment, with awesome on-the-spot decisions. For the inhabitants of many a Vietnamese hamlet or river village, survival may well depend on the attitude of the platoon leader, gunboat skipper, or helicopter gunship pilot approaching, guns trained, on their homes.

We know that the average ROTC or college grad OCS student scores lower on F-scale (authoritarianism) psychological measurements than the average enlisted man or non-college peer.[3] Thus, for those concerned about the attitudes and values of individuals placed in positions of military authority and responsibility, the ROTC or college grad OCS officer would appear to be a safer bet than one acquiring his commission without first acquiring a college degree. It is probably not simply the fact of the college experience that makes the difference. Less advantaged youths, after all, receive a different moral education in their environments than do the college-bound, suburban children of the middle and upper-middle classes. But, for whatever reasons, the difference between the two potential military leader groups is a known, significant quantity.

What is unknown is just how such ROTC students compare with their service academy counterparts. Are the ROTC types more "flexible" than the academy types, as claimed? One leader of the anti-ROTC movement at Harvard thinks not: "An officer trained at Princeton kills on orders as quickly as an officer trained at the Point."[4] Is there any significant attitudinal distinction between the two types at all?

MEASURING ATTITUDES

The best way of answering such a question would be to measure the attitudes of the two groups in the field, a year or two after graduation or commissioning. But the Defense Department does not appear ever to have conducted such an investigation; and our own research capacities did not allow for such an analysis. We had to be satisfied with administering an attitude questionnaire (with a near 100 percent response) in the spring and fall of 1970, to 90 randomly selected service academy (Annapolis) students, 177 ROTC students (110 Air Force and Army ROTC students from the University of Pittsburgh and 67 Naval ROTC students from

Footnotes at end of article.

Ohio State University), and 117 male non-ROTC college undergraduates.[5] Such a comparison may be of limited value if earlier researchers are correct when they claim that ROTC graduates quickly adjust and adapt to the codes and mores of the professional military. But such a claim is highly moot, and even if a certain amount of adjustment and adaptation does occur, if significant differences between ROTC and academy types exist upon entry into the officer corps, it seems reasonable to expect that *some* of those differences would persist.[6]

Over the years, a number of studies have made using attitude questionnaires to analyze service academy students, and to compare ROTC undergrads to non-ROTC undergrads. But to the best of our knowledge service academy and ROTC students have never been systematically compared. C. J. Lammers has compared the development of values and attitudes, i.e., the "socialization," of Royal Netherlands Naval College midshipmen and Candidate Reserve Officers, but the circumstances of that socialization process are not altogether the same as those we are dealing with. And furthermore Lammers was concerned only with "the socialization process," not with attitudes. John Lovell, in his study of "the professional socialization of the West Point Cadet," compared West Pointers to a sampling of Dartmouth students, 82 percent of whom expected to perform military service upon graduation, but the samples did not appear to be exclusively composed of ROTC students, and Lovell did not pursue the attitudinal comparison very far. R. W. Gage and William A. Lucas have compared the attitudes of ROTC and non-ROTC students, and both have concluded that ROTC students are significantly more accepting of authority and military ideology than non-ROTC students; but neither study included a[7] sampling of service academy students. Thus the need for our own study.

THREE GROUPS

Our three sample groups do not spring from precisely the same social background. In terms of family income, parents' level of education, and father's occupation, our Annapolis respondents come from families with slightly higher incomes, better educated parents, and more professional fathers than either the non-ROTC students, who were next, or the ROTC students, whose social origins were slightly more humble than either of the other groups. But these differences in social origins are not relevant to the differences we found in the attitudes of members of our three groups—that is, *there was no difference in the response of representatives of one level of social origin from those of any other level.*

This surprised us, since one would expect lower class respondents to be somewhat more authoritarian than those whose parents were college graduates and professional people. And this would probably have been the case if our respondents had been sampled at random from the public at large. But Annapolis students were overrepresented in the upper economic echelons. And since these same Annapolis students were consistently more authoritarian, absolutistic, and militaristic than either of the other two groups, the "class differentials" were neutralized.

R. W. Gage, in his earlier study, found that ROTC students were more "patriotic" and accepting of military discipline than non-ROTC college students,[8] and we found that ranking to apply with every aspect of aggressiveness, absolutism, "patriotism," and military discipline tested for. *But our service academy students were consistently more aggressive and absolutistic than our ROTC sample.* When asked what their reaction might be if, while walking with their girl friend, someone were to make "a vulgar, obscene comment about her," nearly half (49 percent) of our sample of Annapolis officers-and-gentlemen-to-be indicated that they would offer some form of physical response, typically: "I'd kick his teeth in." Only 31 percent of the ROTC sample, and only 23 percent of the non-ROTC group, gave similar responses (see Table 1). No less than 60 of the 90 Annapolis respondents indicated that, if given the choice, they would prefer to serve in a "combat" capacity, while only 32 percent of ROTC students preferred "combat" duty to the alternatives offered: administrative or technical work. The question was more hypothetical for the non-ROTC male undergraduates, many of whom will see no service at all, but, for what it is worth, predictably, only 8 percent indicated that they would prefer combat service to the other less belligerent options.

TABLE 1

[Percent and (number)]

	Offer physical response to insult to girl friend	Offer verbal response or ignore insult	Prefer combat duty	Prefer administrative or technical service
Annapolis (90)	49.9 (44)	16.1 (29)	66.7 (60)	25.5 (23)
ROTC (177)	31.6 (56)	57.6 (102)	32 (57)	64 (113)
Non-ROTC control group (117)	23 (27)	62.4 (73)	7.7 (9)	69 (81)

Note: Figures do not always total 100 percent because some respondents had no opinion or no preference.

John Lovell long ago noted that West Point students "tend to be more 'absolutistic' in their strategic perspectives than their Dartmouth peers."[9] Our study revealed the same distinction between our Annapolis and our Pittsburgh-Ohio State sample (see Table 2). Seventy-seven percent of the Annapolis sample agreed with the statement, "war is the inevitable result of man's nature," while only 55.3 percent of the ROTC, and 39 percent of the non-ROTC samples agreed. And twice as many Annapolis students (24 percent) agreed *strongly* with that statement as their Pittsburgh-Ohio State peers. No less than one in every three midshipmen could conceive of circumstances in which a takeover of the U.S. government by the military would be justified, while only 19.5 percent of ROTC, and 18 percent of non-ROTC students, were of the same mind. Only 8 percent of the non-ROTC "control" sample felt that the U.S. should ever use nuclear weapons in situations other than retaliation. A larger percentage (16 percent) of ROTC students, and a still larger percentage (28 percent) of Annapolis students were "first-strikers."

MY COUNTRY, RIGHT OR WRONG

While only 39 percent of our *combined* sample of academy and ROTC officer candidates indicated that they would obey orders morally repugnant to them (see Table 3), nearly half (48 percent) of all our officer candidates who indicated a preference for combat duty, and 44 percent of those who indicated that they would offer physical violence to one who insulted their girlfriend, would obey such orders. The same positive correlation between aggressive propensities and what we regard as undesirable behavior exists with regard to our questions about the use of nuclear weapons. Less than one in every five (19.5 percent) of our *combined* samples of officer candidates felt that the U.S. should ever strike first with nuclear weapons. But 27.3 percent of those showing a preference for combat duty, and 28 percent of our "physical force" group, were nuclear "first-strikers."

TABLE 2

[Percent and (number)]

	Agree that "war is the inevitable result of man's nature."	Disagree	Military takeover might be justified	Regard "first-strike" use as acceptable
Annapolis	77 (68)	22 (20)	33.3 (30)	28 (25)
ROTC	55.3 (98)	37 (65)	19.5 (34)	16 (28)
Non-ROTC "control" group	39 (46)	47.8 (56)	18 (20)	8 (10)

Our heroic fighter sample were not the only ones to correlate positively to "first-strikers." We asked our subjects whether or not they agreed that "the practice of war is a science best left to professionals." Of those who agreed, 28 percent were also "first-strikers" (Table 3). One West Point cadet may have spoken for this group when he recently observed that "small tac nukes" could be of considerable value in suppressing revolution in Latin America: "Well, you have got to hold the spread of Communism [which he defined as 'sedition, and so forth'] down, and keep whoever is in government there. That's what's important." Lieutenant William Calley says that he went to Vietnam "with the absolute philosophy that the U.S.A.'s right. And there was no grey . . . there was just black or white." In another interview he told John Sack: "I'll do as I'm told to do. I won't revolt. I'll put the will of America above my own conscience, always.'[10]

Footnotes at end of article.

TABLE 3

[Percent and (number)]

	Percent who would obey morally repugnant orders	Percent who consider "first strike" to be acceptable	Percent who agree with "My country right or wrong"
Combined officer candidates (267)	39 (105)	19.5 (52)	52 (138)
Officer candidates preferring combat (117)	48 (56)	27.3 (32)	63.2 (74)
Officer candidates offering physical force response (100)	44 (44)	28 (28)	69 (69)
Officer candidates feeling war a science for professionals (125)	53.6 (67)	28 (35)	67.2 (84)
Annapolis sample (90)	41 (67)	28 (25)	74 (67)
			[1] 40 (71)
			[2] 19.5 (23)

[1] ROTC. [2] Non-ROTC.

Moreover, as in the case of our fighter group, no less than 53.6 percent of those who agreed that war was a science best left to the control of pros indicated that they would obey morally repugnant orders. Over half (51.7 percent) of all officer candidates agreed with that pre-Nuremberg canon of the ardent statist, "My country, right or wrong," but no less than 67.2 percent of those feeling war to be a science best left to professionals, and approximately the same percentage of "fighter" types found this conscience-evading dogma attractive.

For one familiar with Morris Janowitz's distinction between "heroic" and "managerial" professional military officers,[11] this high correlation between "fighters," "professionals," service academy students (see Table 3), and undesirable propensities may be somewhat surprising, unless one is also familiar with John Lovell's research. Lovell could find no statistically significant difference at West Point between "heroic" fighter types and "managerial" types (our "pros") in terms of absolutism.[12] "Pros" are just as dangerous to have around as "fighters."

The Science of War

How did our three categories of students like the "pro" and "statist" tenets? No less than 72 percent of Annapolis respondents agreed with the remark that war was a science best left to professionals (with 33.3 percent agreeing *strongly*), whereas only 47.5 percent of our ROTC "citizen" officer candidates, and only 18 percent of the non-ROTC "control" group, agreed. And the same pattern held for the dogma found to be so attractive to our "pros." Almost three of every four Annapolis students sampled (74 percent) found the adage of Captain Stephen Decatur, U.S.N., "My country, right or wrong," to be attractive, whereas only 40 percent of the ROTC and 19.5 percent of the non-ROTC students approved of this pre-Nuremberg code of conduct.

These attitudinal distinctions occurred again when our subjects were asked their opinions about the military budget and the war in Vietnam. Only a few non-ROTC students and only a handful of the ROTC sample felt the military budget was too small (Table 4), but 39 percent of the Annapolis sample thought the budget inadequate. On questions relating to the Vietnam war, however, ROTC students were closer to their fellow officer-candidates than they were to their non-officer-bound peers. Four of every five non-ROTC students objected to the war in Vietnam, while only 36.7 percent of ROTC, and 28 percent of Annapolis students found the war objectionable. Only 10 percent of our sample of non-ROTC students expressed a willingness to volunteer for service in Vietnam, while 40 percent of the ROTC, and 60 percent of the Annapolis samples indicated they would volunteer for that war. Only one of every four non-officer candidate respondents imagined that he would obey a direct order morally repugnant to him; no less than 38 percent of the ROTC sample and 41 percent of the Annapolis sample indicated that they would obey such an order. Only 18.7 percent of non-ROTC students felt that the atrocities committed at Mylai were "extremely rare" in Vietnam, but the same percentage (38 percent) of the ROTC and Annapolis samples considered Mylai "extremely rare."

TABLE 4

[Percent and (number)]

	Military budget too small	Object to presence of U.S. troops in Vietnam	Would volunteer for Vietnam	Consider Mylai "extremely rare"
Annapolis	39 (35)	28 (25)	60 (54)	37 (32)
ROTC	10 (18)	36.7 (65)	40 (71)	37 (67)
Non-ROTC "control" group	4 (5)	78.5 (92)	10 (12)	18.7 (22)

It could be argued that our officer candidate groups, having once committed themselves to military service, find Vietnam tolerable and Mylai exceptional largely because they recognize that they must live with a decision to serve that may one day thrust them into a Southeast Asian rice paddy or river delta. They may have come to accept the validity of "morally repugnant orders" as a result of their introduction to the military's traditions, mores, and missions—the military's point of view.

However, we think it more likely that they were *always* more positive toward the war and the military than those who avoided the officer candidate programs. We suspect that the reasons for the persistent attitudinal differences between those who are officer candidates and those who are not lie primarily in the process of self-recruitment by which means they selected military futures in the first place, and less in the process of military "socialization" taking place as they prepare for command. Our reasons are twofold, having to do with (1) self-selection and (2) the impotence of "militarization."

The research of William Lucas and C. J. Lammers shows that there is a self-selection process at work in both the American ROTC and the Dutch naval officer corps. "Militaristic" young men elect at age 17 or 18 to pursue a course that will make them officers.[13] Moreover, Lammers notes that the regular academy midshipmen, many the sons of naval officers, are considerably more accepting of military ideology than their reserve officer candidate counterparts.[14] That seems to be the case with our service academy and ROTC samples, and the reason may well be related to the reasons they gave for selecting Annapolis or ROTC. Nearly half of the Annapolis sample (48 percent) indicated that one of their reasons for seeking appointment was a desire to "be a career officer." Only 17 percent of the ROTC sample indicated that such ambitions had motivated them (Table 5). Nearly three in every four (73 percent) of the ROTC sample confessed that a prime motive for joining the program was a "preference to serve as an officer versus an enlisted man" (a few wrote in "to dodge the draft"). Slightly more Annapolis (26 percent) than ROTC (19.2 percent) students indicated that an important reason for joining was a "belief in military traditions and methods." Conversely, nearly half (47.5 percent) of the ROTC sample said that an important reason for seeking a commission was a desire to secure "training for assuming positions of responsibility in civilian life," while only 36.5 percent of career-bound Annapolis midshipmen gave a similar response. In short, the ROTC students appear to have a more limited and "practical" reason for service than the professional-minded middies. As one anonymous Annapolis ditty puts it:

Footnotes at end of article.

TABLE 5.—REASONS IMPORTANT IN DECISION TO SEEK COMMISSION

[Percent and (number)]

	Desire to make a career of military	Due to belief in military traditions and methods	Desire training for responsibilities in future civilian life	Prefer to be officer rather than enlisted man
Annapolis	48 (43)	26 (23)	36.5 (31)	56 (49)
ROTC	17 (29)	19.2 (34)	47.5 (84)	73 (130)

Some join for the love of the Service,
Some join for the love of the Sea,
But I know a guy who's in Rotcie;
He joined for a college degree.

Similarly, just as Lammers found disproportionate numbers of naval officers' parents in his sample of Royal Netherlands Naval College midshipmen, we found that the fathers of 33.3 percent of our Annapolis, 12.4 percent of our ROTC, and only 2.3 percent of our non-ROTC samples had been commissioned officers. Moreover, when we added those whose fathers had served in a non-commissioned status we got similar results (see Table 6). Apparently many of the sons of military officers seek programs that will allow them to emulate their fathers.

TABLE 6

[Percent and (number)]

	Father a commissioned officer	Father served in military in some capacity
Annapolis	33.3 (30)	89 (80)
ROTC	12.4 (22)	81.7 (145)
Non-ROTC control group	2.3 (3)	68.2 (80)

THE IMPOTENCE OF MILITARIZATION

Once in the programs, a buttressing of prejudgments, values, and goals may occur. C. J. Lammers and William Lucas both maintain that officer candidates "socialize" one another over time, and Lammers hypothesizes that where initial motivation is low, such "socialization" may actually serve to drive the student out of the program.[15] But when we asked respondents to recall views held on entering college, or created an *erstaz* time-lapse by comparing various school years, *we did not find evidence of any significant shifts on the part of either officer candidate group in a direction away from that non-officer candidate group might be taking.* All three groups, for example, showed a slight increase, from freshmen to seniors, in opposition to the war in Vietnam, a slight shift from conservative to moderate, or from moderate to liberal views, and a slight move toward a more critical view of the size of the military budget. In the case of immoral orders, to offer one illustration (see Table 7), fewer and fewer officer candidates indicated a willingness to obey immoral orders with each succeeding class. Not all of these differences were statistically significant, but they all point in the same direction as John Lovell's study of West Pointers, the Feldman-Newcomb study of college undergrads, and the Campbell-McCormack study of Air Force Academy classes.[16] Thus we feel that while there may be some reinforcing of previously held values taking place within the officer candidate programs that we did not detect, we doubt that there are many new values being created. Surely some traditions, mores, attitudes are "learned" by officer candidates—particularly by those at the "closed-circuit" service academies—but our data leads us to claim that the differences between our three subject samples are less a function of in-house "militarization" or "humanization" than they are a function of a self-selection (or joint-selection) process occurring when young men of 17 decide whether to seek a professional military career, or a program that offers leadership training for future civilian life and a chance to serve as an officer rather than an enlisted man, or no voluntary military service at all. It is this decision that separates the fighters" and "pros" from the "citizen soldiers" and "civilian types."

Footnotes at end of article.

TABLE 7

[Percent and (number)]

	Would obey orders morally repugnant
Combined officer candidate:	
Freshmen (78)	48.5 (38)
Sophomores (55)	42 (23)
Juniors (62)	35.5 (22)
Seniors (70)	30 (21)

The liberal arts environment of academe may have *something* to do with the fact that ROTC students are less absolutistic, less aggressive, less militaristic than service academy students, but *our* data could not prove it. Furthermore *if ROTC units on campus do not significantly "militarize" any of those who volunteer to take their programs, neither do we find any evidence suggesting that the "liberal arts" environment of academe does any "liberalizing" of ROTC students.* The responses of freshmen ROTC students fall between those of their Annapolis and non-ROTC peers, and so do those of sophomores, juniors, and seniors. College education, four years of relative insulation from the school of hard knocks, apparently "humanizes" *all three* groups at approximately the same pace. If pre-college self-recruitment is the key factor, then the *particular* college environment may make very little difference, since our evidence, as well as the Lovell and Campbell-McCormack studies, suggest that there may be a progressive softening of many of the "hard-line" views held as freshmen by members of all three groups.

THE MYLAI MENTALITY

In the spring of 1969, Ronald Ridenhour, a college-bound Vietnam veteran, precipitated an investigation into the March, 1968 massacre of the villagers of Mylai. Before the dust had settled, two generals, three colonels, nine other officers, and six enlisted personnel faced courts-martial.

Of the 20 men (14 officers and six enlisted men) involved, facing charges ranging from mass murder to suppressing evidence, one (Major General Samuel Koster) was a West Pointer. One (Brigadier General George Young) was a graduate of Columbia Military Academy and The Citadel ("the West Point of the South"). Twelve, including six of the officers, had entered the Army as enlisted personnel with high school educations. These included Captain Ernest Medina (charged with murder), Captain Eugene Kotouc (charged with murder), Captain Kenneth Boatman, Captain Dennis Johnson, Major Robert McKnight, Colonel Robert Luper (all charged with suppressing evidence or making false official statements), and six enlisted personnel, four of whom were charged with murder. Of the remaining six officers all had attended colleges in the South, several for only a year or two. These were First Lieutenant William Calley (charged with murder), who had attended one year of junior college, Captain Thomas Willingham (charged with murder), a graduate of Murray State College, Kentucky, Major Charles Calhoun, a Clemson graduate, Lieutenant Colonel William Guinn, who had attended the University of Tennessee and the University of Alabama, Lieutenant Colonel David Gavin, a graduate of Mississippi Southern College, and Colonel Oran Henderson, who attended military base extension centers of the University of Maryland and George Washington University. Captain Willingham, the Murray State graduate, was the only one of the eight charged as principals in the massacre who was a college graduate.

Members of one platoon, Lieutenant Calley's, were accused of committing the vast majority of the murders. The platoon appears to have developed the impression (as one of its members put it) that "if they wanted to do something wrong, it was always all right with Calley. He didn't try to stop them." Calley impressed one soldier as "a kid trying to play war."

A few weeks before Mylai, Calley ordered one of his men, PFC Michael Bernhardt, to shoot a woman running from them. Bernhardt called in Vietnamese for the woman to stop, but did not fire on her when she continued to run. Bernhardt was convinced that the woman was a noncombatant, but Calley was furious. Thereafter, Bernhardt explained, "I would just fire and miss on purpose. . . ." Bernhardt had been a junior and an ROTC honor student at the University of Miami before he enlisted "to test [his] courage under fire." Consequently he was only a private when his platoon entered Mylai. Bernhardt was the last of his platoon to enter the village. He was appalled by the indiscriminate killing going on. When he spoke of reporting the massacre to his congressman, Captain Medina warned him to keep silent. Bernhardt was the key source of Ronald Ridenhour's information about Mylai, and was a willing witness before the two non-West Pointers, Colonel William Wilson and General William Peers, who pressed home to overdue investigation.

When it appeared possible that the White House or the Army was prepared to allow Lieutenant Calley to leave the service before being formally charged with any crime, Captain William Hill, a reservist and thoroughly "civilianist" legal officer at Fort Benning (to which post Calley had been transferred during the course of the investigation), urged his careerist superior to overcome his reluctance to offend higher-ups and "to go ahead with the trial even if he had to defy the Pentagon [or the White House]." Hill was instrumental in precipitating the lodging of formal charges against Calley a day before Calley's separation from the service would have withdrawn him from the Army's jurisdiction.

When word reached West Point of the charges against General Koster, head of the Americal in 1968, and Superintendent of the Academy in 1969, the Corps of Cadets were assembled to hear Koster tell them that "throughout my military career the cherished principles of [our Academy's] motto—Duty, Honor, Country—have served as a constant guide to me." The Corps gave Koster a 90-second ovation. As one plebe put it, "everybody [here] seemed to sympathize with the general."[17]

Simultaneous with news of Koster's implication came word of the first recorded case of a West Point graduate ever to request a discharge on the basis of selective conscientious objection to a war. First Lieutenant Louis Font, 23, had been attending Harvard Graduate School in Government at the time.[18]

While our first data were being assembled, in late May, 1970, the Army charged two officers, Captain Vincent Hartmann and First Lieutenant Robert G. Lee, Jr., with attempted murder and manslaughter for ordering their men to conduct "target practice" on a number of Vietnamese huts in 1969. One woman eventually died of wounds inflicted during this "target practice"; her nephew was wounded. Neither officer had ever attended college.[19]

In early 1968 Lieutenant Commander Marcus Aurelius Arnheiter, a graduate of the Naval Academy, was relieved of command of the U.S.S. *Vance*. Several junior officers of Arnheiter's command, Lieutenant (j.g.) William Generous (an ROTC honor graduate, Phi Beta Kappa, from Brown University), Lieutenant (j.g.) Edward Mason (an OCS college graduate), and Ensign Luis Belmonte (another OCS college grad), had complained

that Arnheiter had hazarded his vessel, falsified its location while entering prohibited areas, sought to draw enemy fire on his ship, and generally taken the vessel, as Arnheiter put it, "where the action is."

At one point, the junior officers claimed, he ordered Lieutenant (j.g.) Mason, in an armed motor whaleboat, to fire at a number of Vietnamese ashore. Mason refused. "I can't see shooting a bunch of civilians or even shooting at them," he told Arnheiter. Mason says he feared that Arnheiter would "interpret my shooting as somebody else's shooting and start shooting himself." The Vietnamese turned out to be refugees from a coastal village bombed out by American air strikes. As one crewman put it, "that kind of guy [Arnheiter] could start World War III."

Arnheiter's executive officer, Lieutenant Ray Hardy, another product of the Naval Academy, remained loyal to his chief and enforced Arnheiter's often bizarre orders. (Hardy acquired an ulcer in the process.) All of those who came to Arnheiter's defense (Rear Admiral Walter Baumberger, Rear Admiral Daniel Gallery, and Captain Richard Alexander) were Academy graduates. Admiral Gallery referred to the non-Annapolis critics of our veritable Captain Queeg as "oddball officers who should have been wearing beads and picketing the White House." Arnheiter himself called them a "bunch of dissident malcontents . . . a Berkeley-campus type of Vietnik/beatnik [20]

Would that there had been a Mason at Mylai.

THE RESPONSIBILITIES OF "HARVARD BASTARDS"

What are the lessons of our experiment in attitude-behavior analysis and our excursion into the backgrounds of officers involved in "alleged misconduct" in Vietnam?

Certainly one conclusion is that *those critics of ROTC who have suggested that "an officer trained at Princeton kills as quickly on orders as an officer trained at the Point" are probably incorrect.* ROTC (and probably college-grad OCS officers) appear to be less belligerent and less militaristic than either non-college or service academy officers. (Indeed, one Ohio State NROTC student went so far as to note that he had joined ROTC to "work constructively to 'pacify' the military. . . . ") This is not to say that the ROTC student is the ideal officer candidate. We would prefer officers from a still more humanistic mold, but we are not likely to get a lottery drafting of college graduates for Officers Candidate School for some time, and meanwhile the apparent contrast of service academy and ROTC student values suggested by our analysis ought to provoke those intent on driving ROTC from the liberal arts campus to some serious second thoughts.

We do not feel it proper that there be any formal relationship between the military and the academic community. ROTC, like OCS and the Marine Corps' summer training program for officer candidates, could well go "off campus." But it should be allowed—indeed, it should be encouraged—to "stick around." Since we are of the opinion that the military is going to be with us in the U.S. for some time, we feel that any "reform" that makes it difficult for a Princeton English major or a Pittsburgh philosophy major to become an officer is most undesirable. Major William Muhlenfeld recently put it nicely when he argued that it was

". . . of utmost importance that [our] armies be led by just and compassionate men—men who understand that as leaders they are also public servants who have a profound responsibility to minister to the welfare of those they command, to serve with. . . the wisdom to see beyond their actions to the effects their actions wreak. This kind of leadership must come from the university. . . The paradox is that we must wait for the professors to learn."

One senior officer was more explicit: "[Lieutenant] Calley never would have become an officer if we were not so short-handed. Why are we short-handed? Because the bastards at Harvard wouldn't . . . step up to their responsibilities." [21]

Our own notion of the "responsibilities" of "Harvard bastards" may differ somewhat from the Army's, but, in any event, for the benefit of the American GI, as well as the Vietnamese villager, we hope that college graduates continue to serve as officers.

THE HUMANIST AS OFFICER?

Which leads us to our second conclusion. We feel that English, philosophy, "humanities" majors should be encouraged to become military officers (and probably, for that matter, policemen, social workers, and government officials as well). Why humanities majors? Because these were the types who consistently gave the "best" responses to our questionnaire. Those who indicated that they were humanities majors [22] were *less* willing to obey immoral orders than were social science, natural science, or engineering majors (Table 8). They were the *least* willing to use nuclear weapons; they were the *least* likely to respond physically to insult; they were the *least* capable of imagining a situation in which a military takeover of the U.S. government would be justified; they were the *least* interested in endorsing "My country, right or wrong"; and they were the *most* critical of the size of the military budget.[23]

TABLE 8

[In percent]

College major	Willing to obey morally repugnant order	Willing to respond physically to insult to girl	Willing to use nuclear weapons	Military takeover might be justified some day	Agree with "My country, right or wrong"	Disagreed with "My country, right or wrong"	Felt military budget too high	Felt military budget too low	Feel military "most dangerous" to U.S. Government
Humanities (29)	14	14	37	14	14	72.5	72.5	6.7	55
Social Science (100)	30	33	65	23	39	46	51	16	14
Natural Science (102)	37	40	75	26	37	43	41	19	8
Engineering (117)	42.5	30.5	76	22	48	38.5	24	17	2

The trouble is that humanities majors do not seem very enthusiastic about joining the military, nor are they the bemedalled recruiting officer's dream-come-true. Isabella Williams has found them to be less interested than any of the other majors in joining ROTC, and more insistent than others on "the right of the soldier to criticize his superior officer and/or government policies without facing sanctions for his dissent." [24] Very few (less than 5 percent) of our ROTC sample were humanities majors. But they were disproportionately represented in that group of respondents who feel that the military, as an organization, constitutes one of the "most dangerous" threats to the American system of government (see Table 8).

Many military men, concerned as they are with "leadership," body counts, power, and discipline, are probably quite satisfied with any system that allows Yosarians, Pete Seegers, and Staughton Lynds to stay clear of the military. The advocates of a volunteer professional army argue the virtues of such a self-selection process. We are not as convinced of the advantages of any system that can do without the citizen officer or, for that matter, the citizen soldier.

THE CITIZEN-OFFICER

Which brings us to our third conclusion. *If you don't like the way the military functions, you can't expect it to improve by insulating yourself from it.* William Lucas feels that ROTC is undesirable because it "does not reflect the composition and attitudes of society," [25] and thus serves as no check on service academy Arnheiters and "up-through-the-ranks" Medinas. But Lucas did not *compare* ROTC people to the other types of officer candidates. Had he done so, we feel that he would have discovered significant differences. Moreover, we are a little uneasy with the way Lucas has phrased his hypothesis. We are not at all certain that officers *should* reflect the "attitudes of society," as society is presently structured. The "up-through-the-ranks" and service academy officers probably *do* reflect such attitudes. What Lucas may have intended to say and, in any event, what we feel ourselves, is that the citizen officer should represent the noblest attitudes and values in American society—values which we maintain would include a refusal to obey immoral orders, a reluctance to sling nuclear weapons around, and a strong disinclination for any military coup or other invasion of the political process.

Some will say that we are naive—that one officer is as powerless as the next to effect any significant check on the ways of a military which, after all, takes its orders from civilians in Washington. We admit that having "good" officers does not mean that they will receive "good" orders. We concede that if a sensitive officer distinguishes between combatants and non-combatants, moral and immoral orders, he may still kill the combatants, may still obey the "moral" orders. But we have seen infantry lieutenants in Cambodia wearing peace symbols on the TV news, telling reporters of how they had deliberately led their men clear of the combat zone. We have seen young Army doctors refusing to collaborate, young Army lawyers demanding justice, and young junior officers protesting the war. A volunteer army would end all of that.

It is true that the most significant changes must occur higher up the ladder of authority (which is why we suggested politics and government service for humanities majors). But the vicissitudes of the antiwar movement have demonstrated the difficulties that dissenters will have in penetrating the political process. The military and the police are more accessible. We must all work towards the day when war and inequity no longer exist, but in the meantime, for the villagers at Mylai and those under the guns of Arnheiter, Mason, and the *Vance*, the presence of a "good" officer counts.

Which is why we were chagrined to find that 84 percent (31 of 37) of those who felt the military is "most dangerous," also favored a volunteer army! A volunteer army of "pros," void of citizen officers coming in out of the draft, would be dangerous. As Peter Barnes recently put it: [26]

". . . an end to the draft would shield the army from the influx of citizen-soldiers who are the yeast of internal change. The army *needs* Yosarians, Ronald Ridenhours, inde-

Footnotes at end of article.

pendent-minded ROTC junior officers and J.A.G. lawyers—soldiers who do their jobs but who are not committed to the cover-you——— system, whose loyalties are to civilian, not careerist values."

Critics of ROTC, ironically, the Army needs you!

FOOTNOTES

[1] R. W. Gage, "Patriotism and Military Discipline as a Function of the Degree of Military Training," Journal of Social Psychology, LXIV (1964), pp. 101–111; E. G. French and R. R. Ernst. "The Relationship between Authoritarianism and the Acceptance of Military Ideology," Journal of Personality, XXIV (1955), pp. 181–191; William A. Lucas, "The American Lieutenant: An Empirical Investigation of Normative Theories of Civil-Military Relations," unpublished Ph.D. thesis, University of North Carolina, 1967, passim.

[2] Cited in Harvard Bulletin (May 25, 1970), p. 26.

[3] i.e. Gage, loc. cit.

[4] Harvard Bulletin (May 25, 1970), p. 29.

[5] We asked West Point and the Air Force Academy for permission to survey random samples of their cadets, but neither academy authorized the study.

[6] The "earlier researchers" are Gene Lyons and John Masland, Education and Military Leadership: A Study of ROTC (Princeton, 1959), p. 169.

[7] C. J. Lammers, "Midshipmen and Candidate Reserve Officers at the Royal Netherlands Naval College: A Comprehensive Study of a Socialization Process," Sociologia Neerlandica, II (1965), pp. 98–122; John Lovell, "The Professional Socialization of the West Point Cadet," in Morris Janowitz, ed., The New Military (New York: Norton, 1946); Gage, op. cit.; Lucas, op. cit.

[8] Gage, op. cit., pp. 101–111.

[9] Lovell, op. cit., p. 129.

[10] Cited in Ward Just, "Soldiers." Atlantic (October 1970), p. 66; Calley, interviewed by Sack, "The Confessions of Lieutenant Calley," Esquire (November 1970), p. 229.

[11] Morris Janowitz. The Professional Soldier (Glencoe, Ill., 1960); "Changing Patterns of Organizational Authority: The Military Establishment." Administrative Science Quarterly, III (March, 1959), pp. 473–493.

[12] Lovell, op. cit.

[13] Lucas, op. cit. p. 53; Lammers, op. cit., p. 109.

[14] Lammers, op. cit., p. 106.

[15] Lammers. op. cit., p. 119; Lucas, op. cit., pp. 75–77, 120–127.

[16] Lovell, op. cit., p. 129; Kenneth Feldman and Theodore Newcomb. The Impact of College on Students (San Francisco, 1969). I. p. 31; Donald Campbell and Thelma McCormack, "Military Experience and Attitudes Toward Authority," American Journal of Sociology, LXII (1957).

[17] New York Times, Nov. 25, 1969, p. 16, and March 18, 1970, p. 1 ff; U.S., Dept. of Army, U.S. Army Register, Vol. II (G.P.O., 1969), pp. 157, 742, passim; Seymour Hersh, Mylai 4 (New York: Random House, 1970), 20, 26, 32, 124, passim; Joseph Lelyveld, "The Story of a Soldier Who Refused to Fire at Songmy," New York Times Magazine (December 14, 1969), 32ff.

[18] New York Times, March 18, 1970, p. 17.

[19] New York Times, May 29, 1970, p. 1.

[20] New York Times, May 8, 1968, p. 12; May 10, 1968, p. 1 ff; U.S. Dept. of Navy, Register of Commissioned Officers (NavPers, 1966); Neil Sheehan, "The 99 Days of Captain Arnheiter," New York Times Magazine, Aug. 11, 1968, pp. 7–9, 69–75.

[21] Muhlenfeld, "Our Embattled ROTC," Army (February, 1969), p. 28; Atlantic, (Nov. 1970), p. 83.

[22] There was no statistically significant difference among choice of major in our universe of respondents on grounds of family income, father's level of education, or any other criteria.

[23] Cf. Feldman and Newcomb, Impact, I, p. 167.

[24] Isabella Williams, "The Other West Points," unpublished term paper, August, 1969, in possession of Prof. Peter Karsten, History Dept., University of Pittsburgh.

[25] Lucas, op. cit., p. 52, but see his more recent views in "Anticipatory Professional Military Socialization and the ROTC," in Charles Moskos, ed., Armed Forces and Society, forthcoming, 1971.

[26] Peter Barnes, "All-Volunteer Army?" New Republic (May 9, 1970), p. 23. See also Peter Karsten, "The American Citizen Soldier: Triumph or Disaster?" Military Affairs, XXX (1966), pp. 34–40.

THE OFFICER CORPS IN AN ALL-VOLUNTEER FORCE: WILL COLLEGE MEN SERVE?

(By Col. Robert L. Nichols, U.S. Marine Corps; Capt. Alfred R. Saeger, Jr., CHC, U.S. Navy; Col. Hans H. Driessnack, U.S. Air Force; Lt. Col. LeRoy House, U.S. Army; Comdr. Richard G. Reid, U.S. Navy)

(NOTE.—In order to determine the feasibility of an all-volunteer officer corps in the absence of a draft, a group research project at the Naval War College examined the attitudes of college youth toward military service. They concluded that the draft provides the major incentive for first-term officer volunteers in all services and that without a draft it will not be feasible to obtain a sufficient supply of qualified officers to maintain a 2.5 million man force.)

For those interested and involved with national security, it is a critical period in time. The whole issue of national defense requirement—how much, what kind, and how much will it cost—has been caught up in the larger issue of the type of society this country sees for itself in the decade ahead. The American public has been made keenly aware of such problems as increased crime rates, deterioration of cities, pollution of air and water, and the continuing unrest on college campuses. A national debate has evolved over the priority national defense should enjoy in relationship to society's social and environmental needs. The war in Vietnam and the operation of the draft have brought into question our existing military manpower procurement policies. These policies have been challenged as archaic and inequitable, and the proposition has been made that the Nation should abandon conscription in favor of voluntary recruitment.

Conscription was introduced to this country during the Civil War—the first conflict that called for the use of large bodies of men over a sustained period of time. It was reintroduced in World War I. With the threat of America's involvement in World War II, Congress enacted the first national peacetime draft on 6 September 1940. This act subsequently resulted in the induction of over 16 million men during the 5-year period of hostilities. At the time of its passage, opposition in the Congress was considerable, and renewal of the act in August 1941 was accomplished by the narrow margin of one vote.

In the post-World War II period the United States for the first time found itself in a significantly different international role. National security requirements and worldwide commitments demanded the largest peacetime military force in the history of the Nation. The administration requested Congress to extend the Military Training and Selective Service Act of 1940. The legislation was extended to 31 March 1947, but upon the recommendation of President Harry S. Truman, Congress permitted the act to expire.

During this period, from March 1947 to March 1948, the United States experienced its only true volunteer armed force in an environment of extensive peacetime military commitments. Attention was directed to enhancing the image of the Armed Forces and making service life more attractive to the youth of the country. Innovative steps were taken to improve the living, working, and training conditions of men in service. The Army spent $20.5 million for recruiting in an effort to induce eligible young men to volunteer. Despite these concerted efforts, the Army fell more than 20 percent below minimum manpower goals. President Truman ended the experiment on 17 March 1948 and asked Congress to enact universal military training and to reenact Selective Service. Congress rejected the request for universal military training but acceded to his desire for the selective draft. This action culminated in passage of the Universal Military Training and Service Act of 1951 which has been the basis in law for maintaining U.S. military strength for the past two decades.

In 1966 the President and Congress again reviewed the operation of the Nation's conscription laws. The Marshall Commission, appointed by President Johnson, while finding certain inequities in the Selective Service System, rejected the idea that the Nation adopt a voluntary system of manpower procurement because of its inflexibility in times of crises. It is interesting to note that some of the provisions suggested by this earlier commission were the use of lottery-type selection system, the draft of 19-year olds, and the tightening of student and occupational deferments. Similarly, the Clark Panel, appointed by the Congress that same year, also rejected the all-volunteer concept on the grounds of inflexibility, expense, and lack of a unifying influence on the Nation.[1]

On 27 March 1969 President Nixon announced the creation of an Advisory Commission to develop a comprehensive plan for eliminating conscription and moving toward an all-volunteer armed force as soon as the reduced manpower requirements in Vietnam would permit. The 15-member commission, chaired by former Secretary of Defense Thomas S. Gates, Jr., submitted its report to the President on 21 February 1970. The Commission recommended that the present Selective Service System should be replaced by an all-volunteer force by 30 June 1971, when the present draft law expires. A standby draft system would be required in the event of national emergencies, and that system would be invoked only by resolution of Congress at the request of the President.[2]

A key element to the effectiveness of any military establishment is the procurement and composition of its officer corps, and it is this subject which shall be examined in some depth. Noteworthy is the fact that in recent years the major portion of the officer corps has been recruited from the ranks of college graduates. While it is important to continue to attract college-graduate officers, it is generally acknowledged that without a draft a college-graduate officer corps will be more difficult to recruit. Consequently, crucial to determining the feasibility of the all-volunteer force concept is an examination of the college-trained officer procurement programs currently in being. By far the largest single source of newly commissioned officers for the Army is the Reserve Officer Training Corps (ROTC) located on college campuses across the country. The Navy relies on its Officer Candidate School (OCS) for the majority of its new officers. In the Air Force, the ROTC and Officer Training School (OTS) programs share equally as the major sources of commissioned officers. Both the Navy OCS program and the Air Force OTS program are composed of college graduates.

During the last few years, a number of schools have either ended their ROTC programs or indicated they planned to phase

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Footnotes at end of article.

them out in the future. It is not clear whether these are isolated incidents or the beginning of a trend. However, with advancing weapon systems technology and the complexity of the roles required of officers, it is important that the majority of new officers continue to come from the college campuses. Consequently, the campus-centered ROTC and college-graduate OCS/OTS programs will continue to be the major source of new officers for years to come.

While this may be so, one needs only to read the daily newspapers to be aware of the fact that a social change has been underway on college campuses over the past several years. Campus unrest and disorders have resulted in such acts as the physical takeover of administration buildings and the burning of ROTC offices. These actions are not confined to any particular section of the country, but appear to be widespread. They occur at both large and small colleges, both public and private schools, and involve some of the most prestigious universities in the country.

Much of the unrest and the resulting physical violence have been attributed to youth's hostility toward existing authority, typified by the draft, and sparked by revulsion against the war in Vietnam. Another element that is contributing to campus unrest, and will continue to do so for the next few years, is described by academic officials as a "new breed" of youngsters to whom the traditional campus seems wholly outdated. Dr. Kenneth Hoffman, professor of mathematics and chairman of the commission studying the future of education at the Massachusetts Institute of Technology, conceded: "The change in students during the 1960's was tremendous—yet you wonder what is going to come in the 1970's when you see the pace of change as reflected in our entering freshmen and the unrest in high schools." [3]

While studies have been conducted by various groups concerning the development of a voluntary armed force, they tend to pose the question of professional officer motivation primarily in economic terms. Little has been done by way of measuring the attitudes of college youth toward military service. The question that presents itself is, How deep do these antimilitary feelings run, and how will they affect officer procurement efforts in the future? Specifically, given the current attitudes of college youth toward the military, can the United States expect to maintain an adequate number of college-trained officers in the Armed Forces under an all-volunteer force concept? To answer this question a research project was developed, and a national survey was conducted at the college level.

The President's budget message of April 1969 suggested that active duty force levels would eventually return to pre-Vietnam levels which, for the period FY 61–65, averaged 2.6 million men. The Secretary of Defense gave some indication of postwar force levels in January 1970 when he reported that U.S. treaty obligations will not permit reduction of the Armed Forces below 2.4 million men without a considerable expenditure to maintain a large and modern reserve force.[4] Based on these factors, the study group assumed 2.5 million men to be a reasonable force level approximation upon which to develop officer's strength estimates.

Pre-Vietnam experience indicates that such a force would include approximately 320,000 officers, representing 12.7 percent of the total active duty force. This total would be distributed by service as indicated in table 1. Also shown is the estimated officer accessions required during the 1970's to maintain the officer corps strength. These estimates are based on continuation of Selective Service and are computed from anticipated loss rates for all reasons, both voluntary and involuntary.

Footnotes at end of article.

TABLE I.—OFFICER DISTRIBUTION FOR 2,500,000 FORCE AND PROJECTED AVERAGE ACCESSIONS REQUIRED FOR 1971–80 BY SERVICE

Service	Number of officers	Percent of total corps	Average annual accessions 1971–80
Army	101,690	32	10,800
Navy	69,795	22	7,300
Marine Corps	16,605	5	2,000
Air Force	131,602	41	8,200
DOD Total	319,692	100	28,300

Source: Office of the Secretary of Defense, Directorate for tatistical Services, "Selected Manpower Statistics," Apr. 15, 1969, p. 19–24; Center for Naval Analysis, "Computation of Officer Accessions 1971–80," Working Paper (Washington: February 1970).

These data represent requirements which officer procurement programs must satisfy. The projections indicate the Armed Forces will need approximately 28,300 first-term officers annually in order to support a 2.5 million man force. The primary source for meeting this need is the male college graduate.

Officer procurement programs have traditionally emphasized the baccalaureate degree as a desirable requirement for a commission, although each of the services has commissioned officers with less than this level of academic education during periods of mobilization in order to meet minimum officer needs. Approximately 25 percent of the present officer corps are not college graduates (the majority of these officers are products of older programs which required only 2 years of college or in some instances no college at all). The emphasis on college-trained men is reflected by the increasing proportion of officers who are college graduates as demonstrated in table II.

TABLE II.—ESTIMATED EDUCATIONAL LEVEL OF COMMISSIONED OFFICERS ON ACTIVE DUTY BY SELECTED YEARS, 1956–67

[In percent]

Educational level	1956	1960	1963	1967
College graduate	55	57	69	73
Some college	84	90	93	91
High School graduate	98	99	99+	99+

Source: Office of the Secretary of Defense, Directorate for Statistical Services, "Selected Manpower Statistics," Apr. 15, 1969, p. 37.

The accelerated rate of change in weapons technology, coupled with the many options available for their deployment, has carried with it the demand for increased numbers of technically and managerially qualified commissioned officers. The impact of battlefield mobility tactics and small-unit independent actions in unconventional ground warfare has created new demands for tactical and technical leadership skills among junior officers. Several analysts have emphasized that military officers must not only possess the traditional military attributes and skills, but must thoroughly appreciate the many aspects of our national, political, economic, and social life. They must have technical competence as well as a broad outlook, judgment, and wisdom.[5]

The demand for highly skilled military officers coincides with the increased complexity of the American economy. The armed services must compete for talent in a highly competitive labor market and must continue to tap those social groups most likely to predispose young men toward a military career. College graduates represent the primary source within American society for providing the quality demanded by the officer corps. It has been estimated that during the 1970's approximately 400,000 male students annually will earn baccalaureate degrees.[6] The ability to attract sufficient numbers of these young men to military service is a prerequisite to an all-volunteer force.

Most officers enter active duty at the ensign or second lieutenant level and receive their initial commission as a result of one of the service-sponsored officer training programs. A brief description of the three primary programs—service academies, ROTC (Reserve Officer Training Corps), and OCS (Officer Candidate School)—is necessary for subsequent analysis.

The U.S. Military Academy, the U.S. Naval Academy, and the U.S. Air Force Academy all conduct 4-year courses combining academic and military education and all award a bachelor's degree. The services are currently experiencing a career retention rate of approximately 75 percent among Academy graduates after the initial 4 or 5 years of obligated service have been completed.

For the Army, the ROTC is a major source of new officers each year. There are both 2- and 4-year programs leading to Reserve commissions, although outstanding graduates may qualify for the Regular Army. Navy ROTC is unique in that a distinct part of its "Regular" program provides a sizable number of scholarship-assisted graduates for the Regular Navy. The "contract" programs of NROTC compare to the Army's standard ROTC program. The Marine Corps participates to a limited degree in the Navy ROTC program. Air Force ROTC offers two principal programs. One sponsors academic preparation leading to flying duties as a rated officer, while the other program sponsors students desiring a nonflying duty assignment.

The Army's minimum active duty requirement varies from 2 years for Reserve officers to 4 years for full scholarship holders. The overall career retention rate for Army ROTC graduates averages approximately 25 percent. The Navy requires 3 years' active duty for contract Reserve officers and 4 years for Regular ROTC graduates. Average career retention is approximately 7 percent and 27 percent respectively. The Air Force has the longest active duty requirement, demanding 4 years active duty for nonflying officers and 6 years of service for pilots and navigators. The average career retention rate for Air Force ROTC officers is approximately 50 percent.

Army OCS is a prime source of second lieutenants during expansion periods. Candidates are chosen from warrant officer and enlisted applicants who possess at least a high school education. College graduates may enlist for the Army OCS but are required to complete basic and advanced individual training before entering OCS training. The majority of Army OCS graduates are commissioned as Reserve officers. All candidates for the Navy OCS program must have a college degree except for a limited number of meritorious enlisted men. With minor exceptions, the Navy program awards a Reserve commission. The Air Force Officer Training School (OTS) limits its input to college graduates only, including those enlisted men who are in the Airmen Education and Commissioning Program (AECP). Distinguished graduates may qualify for Regular Air Force commissions. The Marine Corps OCS is used to fill unprogramed Marine officer requirements, and the selection criteria vary yearly. The Marine Platoon Leader Course (PLC) is a college source program conducted during the summer months. Army OCS demands a minimum active duty commitment of 2 years and currently achieves a career retention level of 75 percent. Air Force OTS requires a 4- and 6-year service obligation, the longer term being for flight trainees, and OTS achieves a career retention rate of approximately 48 percent. The Navy and Marine programs all have minimum service requirements of 3 years for Reserve and 4 years for Regular appointees. These programs are experiencing retention rates of approximately

15 percent for Navy OCS, 50 percent for Marine OCS, and 30 percent for Marine PLC.

The contribution to officer accessions by the various procurement programs during the period FY 61–65 is shown in table III.[7] It can be seen from this table that during the pre-Vietnam period the United States obtained the majority (64 percent) of its first-term officers through the OCS and ROTC programs. Further, it should be noted that, excluding the direct appointees and special category officers from the 5-year totals, the ROTC and OCS programs have provided 90 percent of the first-term officer accessions. This group is obviously vital to the maintenance of a viable and well-qualified professional officer corps.

TABLE III—PERCENTAGE OF TOTAL ANNUAL OFFICER ACCESSIONS BY SOURCE FOR FISCAL YEARS 1961-65

[In percent]

Service	OCS/OTS [1]	ROTC	ROC/PLC [2]	Academy	Other [3]
Army	8	[4] 63	----	3	26
Navy	[4] 41	17	2	7	33
Marine Corps	[4] 31	12	33	4	20
Air Force	[4] 31	[4] 32	----	4	33

[1] Includes Navy AOC, Marine OCC, Air Force OCS, and AECP.
[2] Although a significant source of Marine Corps officers, this group assembles for training during the summer months only and was unavailable to this study group.
[3] Includes direct appointments, medical, dental, nurses, chaplains, lawyers, women officers, interservice transfers, NESEP, Navy Limited Duty Officers, and recalled retired and Reserve officers.
[4] Program included in Naval War College Survey, March 1970.
Source: Alan E. Fechter, "The Supply of First-Term Military Officers" (Institute for Defense Analysis, Alexandria, Va.: 1967), p. 55.

One reason for suspecting that an adequate supply of volunteer officers could prove difficult to obtain is that the center of current dissent is the college campus. The most vocal and physical manifestations of opposition to the Vietnam war, to the draft, and to ROTC units on campus are found among college youth. As previously discussed, the primary source of officers is this same college youth, and the direct results of their protests have been significant. During the 1968–69 academic year, student pressures caused four ROTC units to be "invited" to leave campus. During the same period, student groups at 49 universities convinced the administration that compulsory ROTC should be discontinued.[8] This general disaffection with the military resulted in a dramatic 35 percent decline in the Army and Air Force first-year ROTC enrollments and a 25 percent decline overall during the 1969–70 academic year.[9]

While the Vietnam war has undoubtedly accelerated and amplified youth's dissatisfaction with the military, these attitudes are not just a recent phenomenon. The change in attitudes began in the early 1960's and is manifested in the ROTC enrollment data portrayed in figure I. Student pressure over the years has been the major factor in the sharp decline in the number of compulsory ROTC units. The related decline in MS–I enrollment is clearly evident. The only aberrations in the enrollment curve are the 1961–62 Berlin buildup and the 1965–66 Vietnam build-up.

Essentially, production from this vital source of college trained youth is supported by draft pressures. Figure 2 displays the close parallel between production and draft calls when the lag time between increased draft pressure and the 2- to 4-year production lag is taken into account. A slight decline in production was experienced in the early 1960's, but this was rescued by the combined effect of the 1964 ROTC Vitalization Act and the 1966 jump in draft calls. The study group forces that with a continued reduction in draft calls, the ROTC production curve will assume a slope similar to the MS-1 enrollment curve in Figure 1. In any event, these data clearly indicate that a significant downward trend in attitudes was established before the war became a major issue.

Another supporting hypothesis is that economic incentive at or below comparability with the civilian sector will be inadequate to attract college graduates in sufficient numbers to satisfy requirements. There is substantial evidence that, although significant, the pay of officers is not the prime inducement for service.[10] There is also a finite limit to monetary incentives which are politically feasible. The possibility of the President and the Congress approving monetary incentives which would raise officer salaries above comparability is unlikely. Historically, officer salary increases have lagged behind civilian raises, and basic scales have remained below the level of comparability.[11] There is another important aspect to the monetary considerations of an all-volunteer concept. Assuming the legislative and executive branches did agree on salary increases adequate to initiate a volunteer system, the political feasibility of maintaining comparative rates on a continuing basis is a moot question. The costs of such a system during periods of mobilization would be astronomical and must be considered by the Congress in making their initial decision. Consequently, the feasibility of a volunteer system based primarily on monetary incentives appears questionable.

Research Design. The central problem and the subordinate notions just presented describe the basic framework and direction of the research effort. A review of prior investigations reveals that considerable research has been accomplished in the general area of attitudes toward military service. Although not current, these earlier efforts have been particularly useful in the formulation stage of the study and have been invaluable throughout the study in comparative and trend analysis.

The principal deficiencies in available data are lack of timeliness and lack of information related specifically to potential officers. The increased pitch of campus dissent and the ominous drop in ROTC enrollments this year established a clear requirement for current data directly from this primary source of officers. Other research on this subject has concentrated on active duty junior officers and enlisted inductees or enlistees. Since no current data on the attitudes of potential officers toward military service could be located, an original research effort was considered mandatory.

Before specific methods of collection were established, it was necessary to formulate the exact information that would be required to support the central problem. Answers to the following questions were deemed essential: What are the current attitudes toward military service among prospective officers (namely ROTC and OCS candidates)? What percent of these officers would have volunteered for a commissioning program if there had been no draft? What is the strength of realistic monetary incentives? Has the image of being a military officer deteriorated in the eyes of prospective officers? What has been the impact of the Vietnam war on current attitudes toward a military career? Are there quality differences between those who indicate they would volunteer and those who admit they are definitely draft motivated? Current information on these points should lead to a confirmation or denial of the downward trend in attitudes of college youth toward military service and permit a realistic appraisal of the central problem—the supply of officers under an all-volunteer force system. Critical questions concerning anticipated officer requirements under an all-volunteer force concept generated a need for a variety of quantitative data regarding force levels, annual accessions, and retention rates. These data were taken almost exclusively from Department of Defense (DOD) sources. Over 20 direct interviews and telephone conversations were conducted by members of the study group with key DOD manpower officials, high ranking military officers, social scientists at several universities, and with four of the key research associates who worked for the Presidential Commission on the All-Volunteer Force.

The groups of prospective officers whose attitudes were required are described in the previous section on officer resources. The large size and geographical dispersion of these groups dictated two features of research. Since it was impossible to conduct sufficient personal interviews to approach any degree of representativeness, the questionnaire was selected as the primary data-gathering instrument.

The ROTC sample was stratified to insure representatives by service (Army and Air Force) and by year of school (freshman through senior). The sample size was established by using the standard error of the proportion to insure an accuracy of plus or minus 6 percent at a .05 probability level on the key draft motivation question.[12] Sufficient universities were purposefully selected (from among those having voluntary ROTC programs only) to insure adequate representation along geographic, size, and school sponsorship lines. At the universities selected, approximately 20 percent of the ROTC enrollment in each school year was surveyed.[13] A total of 3,000 questionnaires were mailed to 29 universities. Of these, 2,400 were returned from 23 universities. This represents a 1.7 percent sample of the total Army and Air Force 1969–70 ROTC population of 145,000 students.

The samples of the Navy OCS, the Air Force OTS, and the Marine Corps OCS were taken from a total of 10 different classes which were in session during February 1970. A total of 1,250 questionnaires were sent to these schools, and 1,197 were returned, which yields a 12 percent sample of the programed FY-70 output of 9,800 officers from these sources.

The basic questionnaire was designed to secure essential information in three general areas: biographical data, extent of draft motivation, and attitudes toward a variety of military-related subjects. The ROTC questionnaire was pretested by administration to 117 students representing 4 class years at a nearby university. This pretest was accomplished by the study group to afford the opportunity to gain firsthand the reactions and suggestions of the students. As a result of this effort, several questions were eliminated and others were extensively revised. None of the pretest responses are included in the final data. The NOCS, AFOTS, and MCOCS questionnaires required only minor adaptations (primarily in the biographical section) to the basic ROTC questionnaire.

A special questionnaire was designed to obtain information from Professors of Military Science and Aerospace Studies, pertaining to the overall ROTC program. The insights provided by these senior officers from their vantage points proved extremely valuable in the interpretation of the basic data.

All questionnaires were mailed to the school military faculty for administration. The inherent danger of sponsorship bias was recognized; however, steps were taken to minimize these effects. First, individual envelopes were attached to each questionnaire with specific instructions for the respondent to seal his reply in the envelope provided. Second, at no point were respondents asked for their names or other identifying information. In this way the anonymity of the respondent was assured thus minimizing bias and encouraging frank answers. The frequency of voluntary write-in comments and the high percentage of responses to sensitive questions (e.g., as to father's income; over 90 percent responded) indicate the objective of these sarfeguards were realized.

Analysis of the Survey Data. The officer corps of the U.S. Armed Forces is composed primarily of volunteers. That is, officers have

Footnotes at end of article.

entered military service as a voluntary action and not as a result of being conscripted. It has been argued that since the officer corps is currently composed of volunteers, there is little reason to believe that it would be difficult to recruit sufficient numbers of officers under all-volunteer armed force concept.

Realistically, it should be recognized that a given percentage of the current officer corps was motivated to volunteer by the pressures of the existing draft laws. Many of these officers were "reluctant volunteers" at first, but after experiencing service life they decided to remain on active duty. The question that comes to mind is, What percentage of the current officer corps do they represent? There is evidence to indicate that it is substantial.[14] While the overall size of this particular group is unknown, one may conclude that many present career officers would not now be in the service had it not been for the initial exposure to service life induced by the draft.

In considering an all-volunteer armed force, two groups of more immediate concern are the college students and the recent graduates who enroll in officer procurement programs. These represent the primary source of future officers. What is their attitude toward military service? Would they volunteer in sufficient numbers to maintain required force levels in the absence of a draft?

There is ample evidence to conclude that during the last decade the attitudes of youth toward military service have indeed changed. While the United States may eventually withdraw its combat troops from Vietnam and the armed services may be reduced to pre-Vietnam levels, world conditions will never return to 1965 nor will the attitudes of college youth reflect those of 1965. Consequently, while some earlier data are available, any forecast of volunteer officer accessions in the absence of a draft would be deceiving if developed by using the attitude data generated during this earlier period. For these reasons it was considered essential that current data be obtained for a meaningful analysis.

Earlier studies, which were based on a 1964 DOD survey, implied a substantial draft effect on the procurement of first-term officers.[15] A comparison of the current attitudes of college youth toward military service with these earlier studies is appropriate. Therefore, the 1970 Naval War College survey posed the same question to current officer candidates concerning draft motivation that was asked of first-term commissioned officers in earlier DOD surveys. A comparison of the responses reveals that the negative trend toward voluntary service evident in 1968 continues in 1970. More complete appreciation of this decline is obtained by a review of the principal procurement programs.

In the 1964 survey, 46 percent of the first-term officers who entered military service from an OCS program indicated that they would have volunteered without the draft. This percentage dropped to 31 percent of the officer candidates currently enrolled in the Navy OCS and Air Force OTS programs.

The 1964 DOD survey data indicated that 52 percent of the first-term officers who entered military service through an ROTC program would have done so without the draft. The current study shows that of the college students now enrolled in Army and Air Force ROTC programs, only 46 percent would have joined these programs in the absence of a draft.

Figure 3 reflects the relative degree of volunteerism and draft motivation by program and service. It is obvious that a wide disparity exists among the various programs. Surprisingly, only 20 percent of the Navy, ACS candidates indicate they would have volunteered in the absence of the draft. The fact that the Navy currently receives far more applicants than it can accept for this program is evidence of the impetus provided to other service programs by the Army draft. Another partial explanation of the differences in volunteerism among programs is the difference in obligatory service associated with each. Those selective programs which require the longer obligatory service commitment tend to attract a higher percentage of career motivated individuals. In this example, the Navy OCS program carries a 3-year commitment, while the Air Force ROTC program requires 6 years obligatory service for rated (flying) officers and 4 years for nonrated officers. Another factor influencing the relatively high degree of volunteerism in the Air Force programs is the attraction provided by the opportunity for flight training. Additionally, Air Force ROTC candidates are at least partially screened for career motivation. By contrast, this is not a requirement for Army ROTC. The high percentage of volunteerism displayed in the Marine Corps OCS program is probably due to the large number of noncollege graduates (16 percent) and the high percentage of prior enlisted personnel (20 percent).

Figure 4 represents the relative "interest in a military career" among the candidates of the various programs. These results are consistent with and provide further evidence of the significant differences observed in figure 3.

It is important to note that the overall percentage of true volunteers (46 percent) in the Army and Air Force ROTC includes all participants, freshmen through seniors. While the students enrolled in ROTC III and IV (primarily juniors and seniors) must commit themselves by contract to serve on active duty upon graduation, this is not the case for those students enrolled in ROTC I and II (primarily freshmen and sophomores). On those campuses where no compulsory ROTC program exists (over 80 percent), students may enroll in ROTC I and II as an elective for academic credit without committing themselves for any further ROTC training or subsequent military service. Upperclassmen, on the other hand, have arrived at a hard decision point. If they become eligible for the draft at the end of their senior year, they can either be conscripted in the Army enlisted ranks or enter one of the officer procurement programs. Since the underclassmen are still several years away from having to face that decision, the pressure of the draft is considerably less.

Table IV provides an indication of the degree of volunteerism associated with each college class year group. Since it is the ROTC senior and not the freshman that becomes the first-term officer, the relatively low percentage of seniors who would be in the program without benefit of the draft is significant. On this particular question there exists a high degree of consistency between responses of the ROTC seniors and those of the new college graduates in the OCS/OTS programs. This indicated reduction in productivity in the absence of the draft may, in fact, make it uneconomical to continue the ROTC program at many institutions under an all-volunteer force scheme.

TABLE IV.—ARMY AND AIR FORCE ROTC RESPONSE TO THE DRAFT MOTIVATION QUESTION[1] BY CLASS YEAR

Class year	Percent responding "Yes"[2] (percent)	Number of respondents
Freshman	54	724
Sophomore	45	529
Junior	40	453
Senior/graduate	30	741
All classes	46	2,447

[1] The question asked, "If there had been no draft and you had no military obligation, would you have enrolled in ROTC?"
[2] Those responding "Yes, definitely" or "Yes, probably." These data proportionately adjusted for relative program size and population distribution by class.

Note: A chi-square test of the class year differences in volunteerism was statistically significant at the .01 probability level.

Source: Naval War College Survey, March 1970.

Previous studies have suggested that geographic source, marital status, academic achievement, and socioeconomic background are among the factors which may be predictors of attitudes toward military service. Examination of the Naval War College Survey data permits the following observations concerning these factors.

The Naval War College Survey compared the percentage of total respondents by geographical region who indicated they would have volunteered for their respective officer programs in the absence of a draft. Currently, officer procurement programs oriented toward college graduates draw heavily from the South. Approximately 50 percent of the Army and Air Force ROTC members are from colleges in this area. In the absence of a draft, the existing area imbalances would be amplified somewhat by virtue of the indicated higher percentage volunteerism in the South (45 percent) and the significantly lower percentage in the Northeast (31 percent).

The survey data also indicate an inverse relationship between academic achievement and the propensity for military service. It is observed that the volunteers in all the officer programs sampled fell below their draft motivated counterparts in academic achievement. These findings are consistent with those of previous studies which measured the relationship of career motivation to educational attainment.[16] Significantly, of the 71 advanced degree members included in the OCS/OTS sample, only nine indicate voluntary enrollment in the absence of the draft and only two indicate they are motivated toward a military career. Similarly, of the 87 candidates for advanced degrees included in the ROTC sample, only seven are true volunteers and only two of these are career motivated. This inverse relationship of academic achievement and propensity for military service may be evidence of the relatively better earning opportunities the academic achiever perceives in civilian pursuits. It may also be associated with the general aversion of persons with higher academic achievement toward the military environment.

Survey data indicate that over 40 percent of the candidates enrolled in college oriented procurement programs are confined to two academic disciplines—engineering and business administration. It appears that except for select fields, such as medicine and law, the services have not identified their needs by academic specialty. Generally, officer candidates are enrolled regardless of their academic majors and are assigned to duty in accordance with service needs. Career retention studies demonstrate that failure to recognize first-term officers' education, training, and personal interests is at the root of dissatisfaction with assignments during the first tour of active duty and is a prime influence in their decision to reject a service career.

The expected inverse relationship between father's income and the degree of volunteerism is confirmed by the survey data. A similar comparison between father's occupation and volunteerism reveals that an inverse relationship also exists but is not statistically significant in all programs. As might be expected, of the 192 sons of military fathers in the survey, a high percentage (72 percent) indicate they would volunteer for service in the absence of a draft.

Married candidates represent a large segment in the OCS/OTS sample (41 percent), while the percentage of married students in the ROTC sample is comparatively small (10 percent). The study group anticipated that the married group would reflect a larger degree of draft motivation than the single group. In the OCS/OTS sample, single candidates were found to be somewhat more favorably disposed (36 percent) toward volunteering for a commissioning program than were married candidates (34 percent). However, this small margin is reversed in their response to an expressed interest in a military career (married—16 percent vs. single—

Footnotes at end of article.

11 percent). This indicates that an almost equal response to voluntary service may be expected from these two groups in the absence of a draft.

Based on the responses to the Naval War College questionnaire, the typical officer candidate currently enrolled in the officer programs surveyed feels rather strongly that he could obtain a good position in civilian life at a much better salary than he will be receiving as a newly commissioned officer. However, having entered the program, the officer candidate believes that military service as an officer, in the career field of his choice, will clearly enhance his potential for a rewarding position when he returns to civilian life.

Generally, the officer candidate strongly supports the concept that every able-bodied male citizen has an obligation to serve his country in some kind of *national* service. However, he does not feel that such service should necessarily be in the *military*. In fact, he is inclined to believe that during peacetime, military service should be on a voluntary basis. This negative attitude toward military service is influenced by the U.S. involvement in the Vietnam war, but this factor is only one of several that frame this general attitude. Interestingly enough, while this negative attitude toward required military service is rather strong, an equally firm conviction is expressed that a strong military force is essential to U.S. world leadership.

Becoming a commissioned officer in the Armed Forces of the United States is considered a distinct achievement. However, becoming an officer in the Armed Forces is not what the new college graduate prefers for himself upon graduation. In fact, were it not for the threat of the draft, less than half of the officer candidates would voluntarily have entered the officer programs. Despite the other attitudes expressed, it is this latter fact that must be recognized and realistically assessed before an all-volunteer armed force can be considered feasible.

Clearly, the threat of the draft is the strongest motivating factor currently influencing college youth to volunteer for officer training programs. In recent years the increased draft calls resulting from requirements for Vietnam have prompted greater numbers of college trained youth to volunteer for military service. Consequently, certain officer procurement programs (most notably the Navy OCS and Air Force OTS) received an abundant supply of applicants and became more selective. This selectivity is typical of the behavior of employers in a loose labor market. With the draft stimulating more potential officers to seek commissions than otherwise, the labor market for newly commissioned officers has been predominately a buyers' market. In some programs available positions are, in effect, rationed by establishing high educational and other standards. This procedure is apparent in the Navy OCS program (which displayed the highest percentage of draft motivation) where the grade point average is 3.1 on an adjusted 4.0 scale and where 13 percent of the candidates possess advanced degrees. The Air Force OTS program has also enjoyed sufficient applicants to afford considerable selectivity.

It has been argued that with decreasing military manpower requirements and the increasing population, there will be sufficient numbers of college graduates to satisfy officer requirements. However, the data indicate that the magnitude of the officer procurement problem in the absence of the draft will pose serious difficulties for those programs surveyed.

One surprising fact revealed during the course of this study was the large percentage of the sample population that did not answer positively for or against many of the questions. There was some concern during the pilot testing of the questionnaire that the undecided group was larger than should be expected. However, discussions with students in the pilot sample revealed that while the questions were clear, they simply had not formed an opinion on some of the topics addressed.

Economic Incentives. The analysis thus far has examined the capability to man the officer corps of the Armed Forces in the absence of a draft and without the application of other inducements. Earlier studies implied that an all-volunteer officer corps was feasible, providing the basic pay of first-term officers was increased substantially (28 percent). In an effort to determine the effect monetary incentives might have for enticing the currently "reluctant volunteer" to become a "true volunteer" in the absence of a draft, the following question was asked: "If you did *not* indicate that you would have enrolled in the ROTC/OCS/OTS program in the absence of a draft, would you have enrolled in the program under any of the following conditions?"

If the service agreed to pay my college expenses at the school of my choice in return for an equivalent number of years of active duty (e.g., 3 years college for 3 years active duty).

If the service provided a $100 monthly allowance during each of 4 college years in exchange for a 2-year military obligation.

If the initial pay and allowances offered by the service were comparable to or greater than the initial salary of the civilian occupation I intend to pursue upon graduation.

In a "no draft" situation I would not have considered volunteering for ROTC/OCS/OTS under any of the above conditions.

Recognizing that these data apply only to the nonvolunteer group, a comparison of the responses received showed that 34 percent of the total would favorably respond to financial assistance while in college in exchange for military service. Another 32 percent would favorably respond if the pay of first-term officers was comparable to the initial salary of the civilian occupation they intended to pursue. A disturbing fact is that in the absence of the draft, 34 percent of the nonvolunteer group would not volunteer under any of the incentive conditions posed in the questionnaire. Most notable, in the Army ROTC program 47 percent of the nonvolunteers did not respond favorably to the range of incentives offered.

An integral part of this study is a survey of Army Professors of Military Science (PMS) and Air Force Professors of Aerospace Studies (PAS). A questionnaire was designed to obtain a personal appraisal of student attitudes toward the ROTC program and military service from responsible individuals living in the campus environment and associated with college students on a daily basis. Of the 28 colleges and universities surveyed, 21 ROTC unit commanders responded.

A review of these responses reveals the following assessment. All but two respondents report a generally negative attitude of college youth toward the ROTC program and toward military service in general. Influence of the Vietnam war on the attitudes of campus youth toward the ROTC program is described by the respondents as being substantial. Significantly, the comments of the military professors ascribe a greater impact of the Vietnam war on campus attitudes than do the student questionnaire responses.

Most respondents indicated that the ROTC program had incurred losses following the draft lottery; however, few were able to relate the losses directly to the lottery itself. Two respondents indicated that an approximately equal number of withdrawals by low lottery risk members had been replaced by applications from high lottery risk students. The nature of the responses does not permit a definitive conclusion as to the effect of this first draft lottery on the ROTC program. However, it does demonstrate the importance of the selection of a meaningful date to conduct the draft lottery so as to minimize the disruptive effect it may have during the class year. Otherwise, a degree of turbulence in ROTC membership can be expected following the draft lottery each year.

Judgment of the respondents reflects a unanimous opinion that the ROTC program would suffer a severe reduction in membership in the event of an all-volunteer force. Many expressed the view that continuation of an ROTC program on their particular campus would be of questionable value given the small number of volunteers who would be attracted to the program. The majority indicated that currently less than 12 percent of the ROTC membership is career motivated, although a few claimed a career group as large as 30 percent. A few, however, reasoned that the quality of membership would improve by virtue of the anticipated high level of career motivation which would characterize an all-volunteer program.

It is the judgment of a majority of military professors that monetary incentives, such as increased monthly allowances and scholarships, would be unable to offset the expected drop in ROTC enrollment resulting from an all-volunteer armed force. Similarly, a great majority of the professors do not consider first-term officer pay to be an influencing factor in attracting students to the ROTC program. In fact, some identified a general unfamiliarity with officer pay and allowances on the part of ROTC students, particularly those at the freshman and sophomore level.

The study group experience supports this observation on the basis of its contact with college students during the pilot testing of the survey questionnaire. Students requested elementary information about first-term officer pay in order to answer questions posed in the questionnaire. There is some evidence that interest in the pay of junior officers is not manifested by ROTC members until they reach their senior year, at which time the immediacy of military service becomes a reality.

This generally pessimistic appraisal of campus attitudes is cause for concern. The fact that this appraisal was made by a uniquely qualified group of observers, representing both public and private institutions in all regions of the country, including both Army and Air Force programs, is particularly significant. Despite the subjective nature of the responses, an unmistakable conclusion is reached that Professors of Military Science and Aerospace Studies consider that ROTC is regarded with apathy and general dislike by the large majority of campus youth. They indicate that the draft provides the principal stimulus for the program, and in the absence of a draft the ROTC program could not be sustained on many campuses.

The feasibility of obtaining sufficient military officers under voluntary conditions will, in large measure, be determined by the attitudes of eligible youth toward military service. Toward this end, the principal officer procurement sources were surveyed, using attitudinal survey techniques. While recognizing that attitudes may change with changing circumstances, analysis of the survey results does permit certain conclusions and recommendations.

Conclusions.

1. The security of the United States demands a guaranteed system of providing qualified young men to serve as officers in the Armed Forces. The needs of the Armed Forces for a steady flow of qualified college graduates into the officer corps cannot be left to the free choice of the market place. During the pre-Vietnam period of 1961-65, conscription was required to maintain the officer corps in a 2.6 million man force. Given the current attitudes of college youth, return to this approximate force level on an

all-volunteer basis is not considered feasible. Consequently, it is concluded that in the current environment, minimum officer needs for the Air Force may be marginally obtainable, but Army, Marine Corps, and Navy officer requirements will be unattainable except at the expense of quality.

2. The possibility of military service as a conscripted enlisted man in the U.S. Army provides the major incentive for first-term officer volunteers in all the services. However, without this pressure, monetary incentives would entice some college youth to enroll in one of the officer procurement programs. College-related financial assistance, such as a combination of scholarships and increased monthly allowances for officer candidates, will be just as effective as a substantial increase in first-term officer pay. Nevertheless, in the absence of a draft, both types of incentives will be required if the college oriented officer procurement programs are to remain productive.

3. A significant downward trend in ROTC enrollment was established before the Vietnam war became a major issue. This trend was obscured by the dramatic increase in draft calls during the 1966-69 time period. Under the pressure of high draft calls, the current group of advanced ROTC students committed themselves in 1968 for military service upon graduation. Consequently, it is expected that the impact of reduced draft calls and negative campus attitudes will result in sharply curtailed ROTC enrollment and production beyond the 1970 time period.

4. The high degree of selectivity now being enjoyed by the Navy OCS and the Air Force OTS programs will diminish substantially in the absence of a draft. While deterioration in quality can be expected without the draft, overall motivation and retention should improve as these programs shift to attracting candidates on career merits rather than draft pressure.

5. The prolonged involvement in Vietnam has exerted a negative influence on the college oriented officer procurement programs. It has, in fact, contributed to the decision by several prestigious universities to abandon their ROTC programs. In addition to the immediate impact on enrollment, withdrawal actions by these schools may permanently change the character of the ROTC program. If generally higher quality universities drop the ROTC program and are not replaced in kind, the overall quality of the ROTC product will be adversely affected.

6. The ROTC scholarship program is accomplishing its objective of attracting quality students. Unlike the Navy Regular program, however, there is no evidence that the Army and Air Force employ career motivation criteria in the selection of scholarship students. Consequently, in the absence of a draft, approximately half of the ROTC scholarship holders questioned would drop out of the program.

7. In the absence of a draft, the officer corps would attract college youth of lower socioeconomic background and reduced level of academic achievement. Furthermore, existing geographic imbalances in the officer corps would be amplified somewhat by virtue of the higher percentage of volunteerism in the South and the significantly lower percentage in the Northeast.

8. Candidates are generally enrolled in the college oriented officer procurement programs regardless of their academic field of study. Almost half the candidates surveyed were limited to two academic disciplines—engineering and business administration. This approach to officer procurement may, in fact, contribute to eventual dissatisfaction with military service. Failure to recognize education, training, and personal interests in the utilization of college graduates is a primary influence in first-term officer decisions to reject a service career.

Recommendations.

1. That a system of conscription be retained and incentive programs progressively implemented to reduce or eliminate reliance on the draft. Should experience demonstrate attainability of an all-volunteer force under their conditions, maintain a standby draft system for use during general mobilization.

2. That existing ROTC monetary inducements be revised to include an increase in the monthly allowance and that a substantial increase be made in the number of ROTC scholarships awarded.

3. That the military departments establish criteria for identification of officer requirements by field of academic study.

4. That scholarship inducements be employed to support procurement of officers with selected degree specialties and that the criteria for award of ROTC scholarships be revised to include consideration of the career motivation of recipients.

5. That consideration be given to the utilization of monetary incentives in non-ROTC institutions as a means of inducing contract commitment to one of the college graduate officer programs such as OCS/OTS.

6. That first-term officer pay be raised to a level of comparability with civilian salaries for new college graduates.

7. That maximum publicity be given to existing and proposed monetary incentive programs. The full potential of incentive programs cannot be realized unless the desired population is aware they exist.

FOOTNOTES

[1] National Advisory Commission on Selective Service, "In Pursuit of Equity: Who Serves When Not All Serve?" Report (Washington: U.S. Govt. Print. Off., February, 1967).

[2] *Report of the President's Commission on an All-Volunteer Armed Force* (Washington: U.S. Govt. Print. Off., February 1970), p. 9.

[3] "The Real Revolution Campus," *U.S. News & World Report*, 12 January 1970, p. 29.

[4] "Laird Says Volunteer Plan Would Cut Forces a Third," *The New York Times*, 30 January 1970, p. 16: 1, 2.

[5] Gene M. Lyons and John W. Masland, *Education and Military Leadership* (Princeton: Princeton University Press, 1959), p. 11.

[6] Encyclopedic Almanac, *The New York Times* (New York: 1969), p. 205.

[7] It should be noted that force levels during this period averaged 2.6 million officers and men.

[8] U.S. Dept. of Defense, *Annual Report of the Secretary of Defense on Reserve Forces* (Washington: 9 February 1970), p. X.

[9] U.S. Dept. of the Army, Office of the Adjutant General, *Enrollment Report Army Reserve Officers Training Corps Opening of School Year 1968–69* dated December 1968 and 1969–70 dated December 1969; U.S. Dept. of the Air Force, *Enrollment and Production of Graduates of AFROTC Units*, 31 October 1968 and 31 October 1969.

[10] Franklin Institute Research Laboratories, *Career Motivation of Army Personnel—Junior Officer Duties*, Technical Report 1-212, v. I: Summary Report (Washington, 1968), p. 24. On file, DCSPER, U.S. Dept. of the Army. See also Harold Wool. *The Military Specialist* (Baltimore: Johns Hopkins, 1968), p. 116.

[11] Bette Mahoney and Joan McRae, *The Opportunity Costs of Military Careers*, Study S-291 (Arlington, Va.: Institute for Defense Analysis, March 1967).

[12] A ratio of 60 percent to 40 percent draft motivated vs. volunteer was used based on the pretest survey data. For a discussion of this method of determining sample size, see John R. Stockton, *Business Statistics*, 2d. ed. (Cincinnati: South-Western, 1962), p. 245.

[13] It is recognized that control of randomness in the selection of individuals was relinquished to the ROTC faculty.

[14] A 1961 DOD study indicates that 33 percent of Army officers surveyed (lieutenant through colonel) indicated that their initial motivation for entering the service was "drafted or ordered to duty." (As reported in Morris Janowitz, ed., *The New Military Changing Patterns of Organization* (New York: Russell Sage Foundation, 1964), p. 274.

[15] Alan E. Fechter, *The Supply of First-Term Military Officers*, Study S-290 (Arlington: Institute for Defense Analysis, March 1967), p. 23.

[16] Bette Mahoney and Alan Fechter, *Military Compensation and the Supply of Career Officers*, Study S-290 (Arlington: Institute for Defense Analysis, May 1967), p. 10; *Career Motivation of Army Personnel, Junior Officers' Duties*, p. 36.

VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE COMMUNICATION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business be laid before the Senate.

The PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 699) to require a radiotelephone on certain vessels while navigating upon specified waters of the United States.

The PRESIDENT pro tempore. Without objection, the Senate will proceed to its consideration.

Mr. MANSFIELD. Mr. President, what is the pending question?

The PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Montana.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, and ask for a brief quorum call.

The PRESIDING OFFICER. The clerk will call the roll.

The second 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.

Mr. MANSFIELD. Mr. President, last Friday, the Senate adjourned for lack of a quorum. Pending at that time was my amendment to S. 699—offered by my distinguished colleague, the Senator from Montana (Mr. METCALF) and me—an amendment which, if adopted into law, would have postponed for 7 months the new Amtrak rail system. The system began operating at 12:01 Saturday morning. My amendment is still pending. I must admit, therefore, that at this time the issue would appear moot. One cannot postpone what has already occurred. At this time it must be said that all efforts to postpone Amtrak were either prevented—as was done here in the Congress when the Senate failed to produce a quorum last Friday—or denied—as was the case when the issue was raised in the courts. I do think, in passing, that if the Senate had acted favorably on this amendment last Friday, the court might very well have granted an injunction to permit the full Congress to act. But since the Senate was prevent-

ed from acting, the issue—as I said—is moot.

Voting now on this amendment would thus be a gesture of blatant futility. If adopted—and I believe the Senate would adopt the amendment—nothing would be gained; nothing at all. It has never been customary for me to ask the Senate to undertake meaningless acts of futility. I would prefer to look elsewhere for a remedy; I would prefer to take action that will have meaning—action that will result in the correction of the inequity visited upon the people of Montana and other parts of the Nation with the abolition of sufficient rail passenger service. That is the real issue at stake—the restoration to my part of the country of adequate rail service. It is to this question that I intend to devote my efforts and energies in the days ahead.

In this regard, it should be said that as recently as last Friday, negotiations began with officials of the National Rail Passenger Corporation to determine how to meet the rail crisis facing Montana. I am encouraged but not satisfied with the progress thus far. I am encouraged, as well, by the legislative remedies to right this wrong that remain available here in Congress—remedies that could be taken in connection with appropriate authorization or appropriations bills. It should be said, therefore, that although the efforts of last Friday were unsuccessful in putting off the Amtrak system—and I support Amtrak generally—I certainly have not capitulated or acquiesced so far as the interests of Montana are concerned. Today, those interests are not being served by Amtrak. I intend to see that they soon will be and shall work tirelessly to that end in the days ahead.

I am in receipt of a news story published in the New York Times of today, bearing the heading "Miles City, Mont., Mourns End of Passenger Trains." The subheading reads, "Dim Railroad Depot Is the Quietest Place in Town." I shall read portions of this story, and I ask unanimous consent to have the article printed in the RECORD in full at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. MANSFIELD. The article reads in part as follows:

Miles City, a ranching center with a population of about 10,000 on the Burlington Northern line, is one of hundreds of towns and cities that are without passenger trains since the National Railroad Passenger Corporation, or Amtrak, took over all railroad passenger trains this weekend.

THE THEORY

In theory, service will improve in the towns that are left with service because of the savings from not having to serve the unprofitable places that have been cut off.

Such places as Harper's Ferry, W. Va., Barnesville, Ga., and Dothan, Ala., are in the same predicament as Miles City, Glendive, Missoula, Forsyth, Billings and Bozeman, Mont. They are all without passenger trains, most of them for the first time since the beginning of the railroads.

The people of Miles City are not simply saddened by the loss of passenger service. They are angered.

Many regard it as another doubtful step in the march of civilization, on a par with the slaughter of the buffaloes and the pollution of the Yellowstone River, which runs past Miles City.

Another part of the article reads as follows:

Part of the resentment is peculiar to the Western states. The Federal Government gave the railroads large tracts of land in the 19th century to induce them to extend their lines into the undeveloped areas of the West.

The Burlington Northern still owns 1,439,137 acres in Montana, most of it valuable for ranching, oil and coal. These holdings stir deep animosity among many people.

Half a dozen men sat drinking at the bar of the Golden Spur yesterday afternoon. "Damn it," said an automobile dealer wearing a Stetson and cowboy boots, "if the railroad is not going to run passenger trains, then I say let's make them give back the land and oil and coal we gave them."

Mr. President, shortly I shall move to proceed to the consideration of calendar No. 81, S. 166, and to other items on the calendar that have been cleared. That action will result in the displacement of the Metcalf-Mansfield amendment and along with it, the underlying bill. They will go back to the Senate calendar. They will remain there until again called up on motion. At an appropriate time in the future, I intend to again call up S. 699 to which the Metcalf-Mansfield amendment is pending and, assuming the entire issue has been resolved, S. 699 undoubtedly will be passed unencumbered and sent to the House.

Mr. METCALF. Mr. President, I concur with my colleague, the majority leader, that the resolution upon which we sought a vote last Friday is now moot. May 1 has come and gone. The operative date of Amtrak has passed and is now a matter of history. Future results as a result of the resolution adopted by the Commerce Committee, decisions of appellate courts, and other actions are still to be determined. But there is no point today on May 3 to press an amendment that was only pertinent prior to May 1. Nor is there any reason at this time to oppose confirmation of the nominees for directors of the National Railroad Corporation.

Mr. President, today's mail brought a letter from a visitor to Montana whose condition may be diagnosed as pre-Railpax frustrated. His recital suggests that he will not again attempt a visit by common carrier to the Big Sky Country, because his condition would clearly worsen after May 1 when all of the passenger trains on the southern route of the Burlington-Northern are discontinued and, instead of being unable to get reservations to travel on one of two trains, he will be unable to get reservations to travel on no trains.

Mr. Smith came to Montana with his family and attempted to reserve space on the soon-to-be-discontinued southern route train out of Butte. He was told the train was fully booked, but he would be waitlisted in case another car were added.

Mr. Smith then tried the airlines. There is one serving this area of 65,000. On Saturdays and Sundays there are two flights per day. He was given standby listing on a flight out of Billings, over 200 miles away. The Smiths drove to Billings and were booked on separate flights to Chicago.

Mr. Smith asks:

Would you please explain how a person can travel in your state without renting an automobile?

Mr. President. I am unable to answer that question or the next one—

How can you explain the removal of the rail service and the fact that there is no competition among the airlines industry to provide better service?

I feel sure that Halftrak's designers will be able to persuade Mr. Smith that the service he is about to see is better than the service he has seen, and I am therefore inviting Mr. Kendall to reply.

I ask unanimous consent to have Mr. Smith's letter printed in the RECORD.

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

Senator LEE METCALF,
Senate Office Building,
Washington, D.C.

DEAR SENATOR METCALF: During my recent trip to the state of Montana my wife and family encountered the following:

1. Being in Livingston, Mont. on Thursday, April 15, 1971, we attempted to make train reservations to return to Chicago from Butte on Saturday or Sunday April 17 or April 18, 1971.

2. Unable to get train reservations but given a promise that I would be put on the waiting list or another car would be put on I proceeded to arrange for airline reservations.

3. To my amazement there is only one airline that serves the northwest from Chicago's O'Hare field. This is Northwest Airlines and all flights to Chicago from Butte were filled for Saturday and Sunday. (I think there's only one flight per day.)

4. I then ask about the flights from Billings (some 235 miles away) and was advised they were full but I could be placed on a standby.

5. I accepted this as my only possibility to get home.

6. This meant I must drive from Butte to Billings some 235 miles and hope my family and I could get a flight home sometime in the next two days.

7. Upon arrival at Billings we (the four of us) could be split up and sent to Chicago upon separate flights.

8. When the weather at Helena did not permit a landing and flight No. 72 came directly to Billings this give us the seats to Chicago.

9. After a two hour delay for mechanical problems and a over cooked meal we arrived at Chicago happy to be home.

Would you please explain how a person can travel in your state without renting a automobile? How can you explain the removal of the rail service and the fact that there is no competition among the airline industry to provide better service?

Mr. PROUTY. Mr. President, it is true that because of the lack of a quorum on Friday last, it was not possible to take action on the amendment submitted by the distinguished majority leader; but I say to him, in complete sincerity and honesty, that the mere fact he introduced that amendment, in my judgment, will do more to bring about a restoration of meaningful railroad passenger service in this country than anything else that could have been done.

I might point out that the Committee on Commerce took action last Thursday which will require the directors of Amtrak to appear before the committee and indicate in detail the whole situation as it relates to trains that are not now or will not be in operation. That was done in large part because of the respect and admiration of members of the committee for the integrity of the distinguished majority leader.

My objection is the same as his. I want passenger service restored in this country. My own section of New England has no passenger service whatsoever. We have not had trains taken off. We have none now. The Senate joint resolution which the committee ordered reported last Thursday requires Amtrak to report to Congress by June 30, 1971, on the feasibility and desirability of expanding service beyond that included in the basic system.

It is because I believe that Amtrak will be the method and the means through which we can restore service in that area, as well as in the State of the distinguished Senator from Montana, and elsewhere throughout the Nation, that I felt his amendment was not wise at the time.

It threatened to destroy the operation so painstakingly put together by the corporation at its inception, rather than building upon the basic service system established by it.

In conclusion, I would like to express my conviction that the action taken by Congress in establishing Amtrak and the actions of its directors in the past months to begin its operation are firm steps forward toward a national rail passenger system.

The course which Congress must take is one which builds upon this established base—not one which sets back, or even cripples, its development. Accordingly, I will urge immediate passage of the study resolution when it is reported by the Commerce Committee this week. This study will provide the explicit information needed by Congress to determine how and when Amtrak should be strengthened and expanded to serve the needs of the Nation.

But, again, I say to the Senator from Montana, the distinguished majority leader, he is entitled to the greatest credit from all of us who are interested in railroad passenger service.

Mr. MANSFIELD. I thank the distinguished Senator from Vermont very much.

EXHIBIT 1

MILES CITY, MONT., MOURNS END OF PASSENGER TRAINS—DIM RAILROAD DEPOT IS THE QUIETEST PLACE IN TOWN

(By Roy Reed)

MILES CITY, MONT., May 2.—Casey Barthelmess, 80 years old, once a bronc buster and a cowpoke, shifted on his crutches, outside the depot. He tried to sound uninterested in what happened.

"I thought there might be a little excitement," he said, "but it was pretty quiet." His voice had betrayed him by going hoarse in mid-sentence.

He had just watched the coming and the going of the last passenger train through Miles City. As he spoke, the train could still be heard in the distance as it sped toward the end of the line at St. Paul.

It had been a quiet event, as Mr. Barthelmess said. But there was drama in it for the 10 or 12 who had come to the old brick station to say good-by to 90 years of history.

THE BELL TOLLS

The eastbound Mainstreeter from Seattle pulled into the dim Miles City station at 10:58 P.M., one hour and three minutes late. It came in like a funeral train, moving about five miles an hour, its bell seeming to toll rather than ring in the night chill.

The engineer stopped the train beside the worn brick platform and one passenger, a middle-aged man, got off and walked quickly away.

Then two other men, a Montana editor and a companion, got on. Like hundreds of others they were taking a last ride to record, or just to feel, how it was the day the passenger trains stopped running in southern Montana and in many other places across the United States.

Miles City, a ranching center with a population of about 10,000 on the Burlington Northern line, is one of hundreds of towns and cities that are without passenger trains since the National Railroad Passenger Corporation, or Amtrak, took over all railroad passenger trains this weekend.

THE THEORY

In theory, service will improve in the towns that are left with service because of the savings from not having to serve the unprofitable places that have been cut off.

Such places as Harper's Ferry, W. Va., Barnesville, Ga., and Dothan, Ala., are in the same predicament as Miles City, Glendive, Missoula, Forsyth, Billings and Bozeman, Mont. They are all without passenger trains, most of them for the first time since the beginning of the railroads.

The people of Miles City are not simply saddened by the loss of passenger service. They are angered.

Many regard it as another doubtful step in the march of civilization, on a par with the slaughter of the buffaloes and the pollution of the Yellowstone River, which runs past Miles City.

The loss of passenger trains is especially painful to those old enough to remember how good the service once was.

Carter Snell, an 86-year-old retired rancher and wool buyer, said he and his family used to ride the train from Miles City to their ranch 20 miles away and the train would let them off there.

"The trains stopped anywhere you wanted them to, by God, in those days," he said.

Miles City has had only two daily passenger trains east and two west for several years. Many here admit that they have not used the trains much since the coming of good highways and easy automobile travel. But they still resent having the trains taken off.

Part of the resentment is peculiar to the Western states. The Federal Government gave the railroads large tracts of land in the 19th century to induce them to extend their lines into the undeveloped areas of the West.

DEEP ANIMOSITY

The Burlington Northern still owns 1,439,137 acres in Montana, most of it valuable for ranching, oil and coal. These holdings stir deep animosity among many people.

Half a dozen men sat drinking at the bar of the Golden Spur yesterday afternoon. "Damn it," said an automobile dealer wearing a Stetson and cowboy boots, "if the railroad is not going to run passenger trains, then I say let's make them give back the land and oil and coal we gave them."

Many who have continued to ride the trains here are older people or those with illnesses that require attention in Minneapolis or Seattle. They either fear flying or find it too expensive. And they are uncomfortable on buses.

Mrs. Emily Robinson, 78, has to go to Minneapolis at least once a year for medical attention. She has always gone on the train and she thinks it is a "crime" that the trains have stopped.

"I'll use the plane now," she said. "I don't think I could sit on a bus for 24 hours."

Some will not be able to afford airplanes. Frontier Airlines charges $22 to fly from here to Billings, 145 miles away. The train fare was $6. It costs $5.65 on the bus.

A coach seat on the train from Miles City to Minneapolis cost only $25.75.

FEW MOURNERS

Despite the emotional wrench of losing the trains, not many people here went to the station last night to mourn the Mainstreeter's last trip.

It was a Saturday night, much like any other here; 200 or 300 went to the Elks Club for the annual fiddler's contest, and several hundred other men and women crowded the bars and cafes on Main Street and ate, drank and danced.

But memory or sentiment edged aside the frolic here and there.

Casey Barthelmess left the fiddler's contest early to pay his respects to the trains. Bill Dunn, the postmaster, whose father was an engineer, came and looked on unsmiling with his hands in his pockets. Mrs. Patricia Birdwell and her son Brian rode double on a bicycle to come to the station.

The mourners drifted away as the rumble of the Mainstreeter died in the east. All except Casey Barthelmess. He stayed awhile, slumped on his crutches, and talked of playing on the railroad tracks when he was a boy, and of riding free on the freight cars, and of the day a man was run over by a train.

Finally, the old man tired of talking and the railroad station became the quietest place in town.

Mr. MONDALE. Mr. President, I would like to take this opportunity to comment on Amtrak and to renew my support for the legislation that will postpone the implementation of this plan for 6 months. I believe that this delay is needed for several reasons.

First of all, I think that the Congress was misled regarding the original legislation that made Railpax possible. It was not my intention, when voting for this legislation, to force the elimination of over half of the passenger trains that are currently operating or were operating as of April 30, 1971. My State will lose all passenger service, except for a single route traveling from Chicago to the Twin Cities, and then continuing across the State via Willmar, Breckenridge, Fargo-Moorhead, and Grand Forks.

Even though the legislation allows Amtrak to add routes in the future, I do not think that this is a very satisfactory solution. This addition of routes will be a painstakingly slow process and I know that many of these routes will be lost forever once they are discarded by Amtrak.

When the preliminary report establishing the routes was first made available last fall by Secretary of Transportation Volpe, I immediately protested the reduction in passenger train service for Minnesota and for the entire Nation. I followed this up with protests to Mr. George Stafford of the Interstate Commerce Commission and finally with Mr. David Kendall when he was appointed

Chairman of the National Rail Passenger Corporation. The final report added two additional routes and made a few other minor changes but this was still not enough to make for an adequate rail passenger system.

The limited effect of Amtrak will force Minnesotans into using less dependable forms of transportation. Airlines serve only a small number of Minnesota communities and oftentimes the fare is much more than many people can afford. Automobiles are restricted by snow and ice in the winter and often are not available to students, senior citizens, and other people who cannot afford to own an automobile or are not in a position to operate one. Amtrak will force other regions into identical situations and will cause even greater problems in the six States that are totally excluded from rail passenger service.

Labor would also benefit if we could delay the implementation of Amtrak for 6 months. Many railroad employees from Minnesota have contacted me to express concern over the job protection that will be provided by the existing legislation and by the contracts that Amtrak has negotiated with the railroads.

I share these concerns and would like additional time to study these matters.

I think that the Congress was misled by the administration, the Department of Transportation, and the Office of Management and Budget. They told us that this legislation and that the amount of money that they requested were adequate to provide a rail passenger network for this Nation. In fact, much more money would be needed to provide an adequate system and these agencies were not willing to advocate that position even though they would have had very little trouble in obtaining approval from the Congress. I feel, therefore, if the administration and the Department of Transportation can consider spending a billion dollars in Federal funds for the development of the SST, then I can see no reason to exclude consideration for an increased Railpax appropriation and thus preserve necessary routes and stops which would otherwise be discarded.

DESIGNATION OF THE WASHAKIE WILDERNESS AND THE SHOSHONE NATIONAL FOREST IN WYOMING

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to Calendar No. 81, S. 166.

The PRESIDING OFFICER (Mr. HUGHES). The clerk will report the bill.

The legislative clerk read as follows:

S. 166, a bill to designate the Stratified Primitive Area as a part of the Washakie Wilderness, heretofore known as the South Absaroka Wilderness, Shoshone National Forest, in the State of Wyoming, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be laid aside temporarily and that the Senate go into executive session to consider nominations on the Executive Calendar.

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

The PRESIDING OFFICER. The nominations on the Executive Calendar will be stated.

NATIONAL RAILROAD PASSENGER CORPORATION

The legislative clerk proceeded to read sundry nominations in the National Railroad Passenger Corporation.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The legislative clerk read the nomination of Ethel Bent Walsh, of the District of Columbia, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1975.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

OFFICE OF ECONOMIC OPPORTUNITY

The legislative clerk read the nomination of Phillip Victor Sanchez, of California, to be an Assistant Director of the Office of Economic Opportunity.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

DEPARTMENT OF THE INTERIOR

The legislative clerk read the nomination of William T. Pecora, of New Jersey, to be Under Secretary of the Interior.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

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

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

LEGISLATIVE SESSION

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

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

DESIGNATION OF THE WASHAKIE WILDERNESS AND THE SHOSHONE NATIONAL FOREST IN WYOMING

The Senate resumed consideration of the bill S. 166, to designate the Stratified Primitive Area as a part of the Washakie Wilderness, heretofore known as the South Absaroka Wilderness, Shoshone National Forest, in the State of Wyoming, and for other purposes.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the distinguished Senator from Wyoming (Mr. MCGEE).

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

STATEMENT BY SENATOR MCGEE

Mr. President, the bill before us to establish the Washakie Wilderness Area in Wyoming will serve admirably to enhance and improve upon the existing wilderness system in the State of Wyoming in the interest of the public. The bill also happens to represent the fruits of much endeavor, including considerable dialogue between Senator Hansen and me, not over the wisdom of designating these lands, but over the details involved, chiefly the boundaries. My colleague and I have worked long and hard at this job, with much assistance from the Interior Committee, U.S. Forest Service, conservationists, local residents, industry and others. We have reached agreement on satisfactory and widely accepted lines which we ask the Senate to approve today, as it did last October, only to have the measure die for lack of House action in the 91st Congress.

This bill, of course, owes its genesis to the Wilderness Act of 1964, which directed that Primitive Areas be studied by the Department of Agriculture to determine their suitability for inclusion in the National Wilderness Preservation System. Such a study was made on the Shoshone Forest of Wyoming, Mr. President, culminating in this bill, which proposes to include most of the Stratified Primitive Area and some contiguous land in the Wilderness System by joining it to the existing South Absaroka Wilderness to form the newly-designated Washakie Wilderness. This is an area approximately 80 miles southeast of Yellowstone National Park. It is a region offering true wilderness values for the public, including opportunities for unusual adventure and challenge in a pristine setting on land free of man's interference with the works of nature.

The area being added to the Wilderness totals about 280,000 acres, while the existing South Absaroka Wilderness to which it is being added is 483,130 acres in size.

Much of the difficulty which surrounded the history of this legislation to this point, and which necessitated the lengthy consideration on the part of Senator Hansen and me, was concerned with a 35,000 acre area we in Wyoming call the DuNoir Valley, which lies along the west end of the wilderness area. Conservationists in particular were eager to have this area included in the wilderness designation being considered today for several reasons, although it did not appear within the originally-proposed boundaries published by the U.S. Forest Service. The DuNoir, unlike many wilderness areas in Wyoming, is not confined to the top of peaks or the very high ground which no one else wants for commercial use. It is lower, enjoys a particular wealth of wildlife and represents a significant calving ground for the magnificent elk which reside in our

mountain regions. In the early 1920's, the DuNoir was visited by the old Wyoming Timber Company, which cut some wood, mostly for railroad ties. But the timber removed was skidded out by horses and floated. Never was mechanized equipment in there. The passage of half a century has largely covered the relatively minor incursions of man on this region.

In the bill before you, the DuNoir is not designated as Wilderness, but as a special management unit which will be treated much as though it were inside the boundaries of the Washakie Wilderness. In this way, Mr. President, we have moved to insure, for generations yet to come, the benefits to be derived from the magnificent DuNoir Valley.

It has been a spirit of cooperativeness, a demonstrated willingness to tackle some difficult and sometimes precise questions and work out solution, which has resulted in this bill reaching the floor of the Senate under the joint sponsorship of Senator Hansen and me. Many people were involved in the solution of the differences which occurred in the early history of this legislation, and I wish to thank all for staying with us. America, I am confident, will be the richer for the preservation of these lands in their natural state.

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

S. 166

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in accordance with subsection 3(b) of the Wilderness Act of September 3, 1964 (78 Stat. 891), the area classified as the Stratified Primitive Area, with the proposed additions thereto and deletions therefrom, comprising an area of approximately two hundred and eight thousand acres as generally depicted on a map entitled, "Washakie Wilderness—Proposed," dated June 15, 1967, revised September 12, 1970, which is on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture, is hereby designated for addition to and as a part of the area heretofore known as the South Absaroka Wilderness, which is hereby renamed as the Washakie Wilderness.

SEC. 2. As soon as practicable after this Act takes effect, the Secretary of Agriculture shall file a map and a legal description of the Washakie Wilderness with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made.

SEC. 3. The Stratified Primitive Area addition to the Washakie Wilderness shall be administered as a part of the Washakie Wilderness by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

SEC. 4. The previous classification of the Stratified Primitive Area is hereby abolished.

SEC. 5. (a) Within the area depicted as the Special Management Unit on the map referred to in section 1 of this Act, the Secretary of Agriculture shall not permit harvesting of timber or public or private vehicular use of any existing road, and shall not construct or permit the construction or expansion of any road in said Special Management Unit. The Secretary shall administer said unit in accordance with the laws, rules, and regulations relating to the national forests especially to provide for nonvehicular access recreation and may construct such facilities and take such measures as are necessary for the health and safety of visitors and to protect the resources of said unit: *Provided, however,* That this section shall not affect such vehicular use and maintenance of existing roads as may be necessary for the administration of said unit by the Secretary of Agriculture.

(b) As soon as practicable after this Act takes effect, the Secretary of Agriculture shall file a map and legal description of the area referred to in subsection (a) with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such description shall have the same force and effect as included in this Act: *Provided, however,* That corrections of clerical and typographical errors in such legal description and map may be made.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–80), explaining the purposes of the measure.

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

PURPOSE

S. 166 designates as wilderness a unique mountain area located within the boundaries of the Shoshone National Forest in northwest Wyoming. It is approximately 200 miles northwest of Casper and 80 miles south of Yellowstone National Park. Access is from U.S. Route 26 and 287, and on the east from State Route 20. The proposed wilderness is characterized by deep, narrow valleys exposing the strata which were built up by volcanic activity. Broad, flat-topped mountains and plateaus separate the canyons.

In this area elevations range from 8,150 to 12,615 feet. It has only 29 percent timber cover, of which the predominant species is the Engelman spruce. The higher sites are barren with only grassland vegetation. Since much of the higher elevations are above timberline, the proposed wilderness is rich in the petrified remains of forest, ferns, and animal life of other geologic ages.

Some 16 lakes and nearly 40 miles of streams are found here. The trout fishing in the area as well as the big game hunting are well known.

Elk, moose, deer, bighorn sheep, and black and grizzly bear inhabit the area, along with many varieties of smaller animals such as bobcat, snowshoe rabbit, and badger.

Summer temperatures in the area rarely exceed 80 degrees, with winter minimum ranging between 30 and 40 degrees below zero Fahrenheit. Summers are short with an average growing season of less than 60 days, though frost can occur on any day of the year.

Included within the 208,000 acres of proposed wilderness served by this proposal are opportunities for a variety of outdoor recreation activities which include hiking, riding, back-packing, hunting, fishing, camping, and photography.

Most of those who visit the area for recreation are from Wyoming; however, a large number of people from outside the State use commercial packer facilities. Generally, from within 350 miles drive by automobile, a population of 500,000 people has access to the area. Thirty-two percent of the visitors come for hunting.

LEGISLATIVE BACKGROUD

The Wilderness Act of 1964 (78 Stat. 890) established the National Wilderness Preservation System which encompassed some 54 national forest areas.

The proposed Washakie Wilderness results from a review of one such National Forest area by the Secretary of Agriculture. Pursuant to receiving this review, the President of the United States recommended that the area in northwestern Wyoming known as the Stratified Primitive Area be designated as a wilderness area.

On November 7, 1967, Senator Hansen submitted an original bill, S. 2630, which included the Stratified Primitive Area and proposed that it be designated as a wilderness area.

On February 19 and 20, 1968, hearings were held on S. 2630. At that time the Secretary of Agriculture submitted his report on behalf of the Department in support of S. 2630.

In the 91st Congress, two bills were introduced. S. 1468, introduced by Senator Hansen, included the area within the original Stratified Primitive area. Also included within the boundaries of the Washakie Wilderness proposal were approximately 9,500 acres which met the criteria for wilderness. This area protected elk and wildlife migration routes.

Senator MeGee's bill, S. 164, would have increased the original wilderness area proposal by 45,000 acres.

S. 1468 as reported from committee was in a form acceptable to both Senator Hansen and Senator McGee. The final bill represented a compromise whereby most of the additional area included within S. 164 was included within the special management provisions set forth in S. 1468.

That bill, S. 1468, passed the Senate October 14, 1970, but did not reach House consideration in the 91st Congress. This bill, S. 166, is identical to S. 1468.

MINERAL SURVEY

The U.S. Geological Survey and the Bureau of Mines, Department of the Interior, conducted a field investigation of the area during the summer of 1965. Generally, they found only minimal evidence of the presence of minerals. There has been no oil or gas leasing activity in the area, and although older rock formations indicate that there may be some oil, the prospect of the area becoming a source of oil and gas is considered minimal. Likewise, it is believed that any coal, bentonite, or phosphate in the area is so deep in the earth's crust as to make it uneconomic to mine at the present time.

ENLARGED AREA

This bill includes approximately 2,000 additional acres of land within the wilderness classification which were not originally included within the administration recommendation. The additional acreage is centered primarily around an area in the southwestern part of the proposed wilderness near a high, peaklike abutment known as the Ramshorn. The acreage was added mainly to act as a buffer zone to the Ramshorn as well as to provide for the inclusion of additional acreage which is of such quality that it should be given wilderness protection.

SPECIAL MANAGEMENT AREA

Special management provisions are provided for an area of approximately 35,000 acres which lies west of the proposed wilderness addition, generally referred to as the DuNoir area. The DuNoir is an unusually scenic region, but the committee decided it did not qualify for wilderness, and spelled out special management provisions which preclude timber harvesting, additional roadbuilding, and motor vehicle use in the area, except as necessary for the administration of the unit by the Secretary of Agriculture.

COMMITTEE RECOMMENDATION

The Senate Interior and Insular Affairs Committee by unanimous vote favorably reports S. 166 and recommends its enactment.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the remainder of the Calendar be considered in sequence.

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

SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON COMMERCE FOR INQUIRIES AND INVESTIGATIONS

The resolution (S. Res. 81) authorizing supplemental expenditures by the Committee on Commerce for inquiries and investigations was considered and agreed to, as follows:

S. RES. 81

Resolved, That the Committee on Commerce, or any subcommittee thereof, is authorized to expend, through February 29, 1972, from the contingent fund of the Senate not to exceed $150,000, in addition to the first amount and for the purposes stated in Senate Resolution 25, Ninety-second Congress, agreed to March 1, 1971, such amount having not been included in that resolution because at the time at which that resolution was considered there was insufficient information to determine the total amount of expenditures the committee would incur in conducting its inquiries and investigations. Of such $150,000, not to exceed $14,000 (which shall be in addition to the amount specified in section 2(1) of such resolution) may be expended for the procurement of individual consultants or organizations thereof.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–82), explaining the purposes of the measure.

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

Senate Resolution 81 would authorize the Committee on Commerce, or any subcommittee thereof, from the date of its approval through February 29, 1972, to extend not to exceed $150,000 (of which amount not to exceed $14,000 could be expended by the committee for the procurement of individual consultants or organizations thereof) for inquires and investigations, such funds to be in addition to the amount ($1,233,800) and for the purposes stated in Senate Resolution 25, its annual expenditure authorization, agreed to March 1, 1971. The Committee on Commerce is requesting the additional funds—to respond to the crisis in the railroad industry—of which the Penn Central's collapse and its need for Federal financial assistance in order to prevent cessation of essential services is the prime example.

Pursuant to the requirement stipulated in section 133(g) of the Legislative Reorganization Act of 1946, Senate Resolution 81 contains the following statement of the reason why authorization for the expenditures described therein could not have been sought at the time of the submission by such committee of an annual authorization resolution for this year:

At the time at which that resolution was considered there was insufficient information to determine the total amount of expenditures the committee would incur in conducting its inquires and investigations.

AUTHORIZATION FOR THE PRINTING OF THE REPORT ENTITLED "PROGRESS IN THE PREVENTION AND CONTROL OF AIR POLLUTION"

The resolution (S. Res. 88) authorizing the printing of the report entitled "Progress in the Prevention and Control of Air Pollution" as a Senate document was considered and agreed to, as follows:

Resolved, That the annual report of the Administrator of the Environmental Protection Agency to the Congress of the United States (in compliance with Public Law 90–148, the Clean Air Act, as amended) entitled "Progress in the Prevention and Control of Air Pollution", be printed as a Senate document.

SEC. 2. There shall be printed two thousand five hundred additional copies of such document for the use of the Committee on Public Works.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–83), explaining the purposes of the measure.

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

Senate Resolution 88 would provide (1) that the annual report of the Administrator of the Environmental Protection Agency to the Congress of the United States (in compliance with Public Law 90–148, the Clean Air Act, as amended) entitled "Progress in the Prevention and Control of Air Pollution," be printed as a Senate document; and (2) that there be printed 2,500 additional copies of such document for the use of the Committee on Public Works.

The printing-cost estimate, supplied by the Public Printer, is as follows:

Printing-cost estimate

To print as a document (1,500 copies)	$717.18
2,500 additional copies, at $65.82 per thousand	164.55
Total estimated cost, S. Res. 88	881.73

AUTHORIZATION FOR THE PRINTING OF ADDITIONAL COPIES OF THE "REPORT OF THE JOINT ECONOMIC COMMITTEE"

The resolution (S. Res. 97) authorizing the printing of additional copies of the "Report of the Joint Economic Committee" was considered and agreed to, as follows:

Resolved, That there be printed for the use of the Joint Economic Committee two thousand additional copies of its report to the Ninety-second Congress, first session (Senate Report Numbered 92–49), entitled "Report of the Joint Economic Committee on the February 1971 Economic Report of the President, Together With Statement of Committee Agreement, Minority and Other Views," pursuant to section 5(b)(3) of Public Law 304, Seventy-ninth Congress, as amended.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–84), explaining the purposes of the measure.

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

Senate Resolution 97 would authorize the printing for the use of the Joint Economic Committee of 2,000 additional copies of its report to the 92d Congress, first session (S. Rept. 92–49), entitled "Report of the Joint Economic Committee on the February 1971 Economic Report of the President, Together With Statement of Committee Agreement, Minority and Other Views," pursuant to section 5(b)(3) of Public Law 304, 79th Congress, as amended.

The printing-cost estimate, supplied by the Public Printer, is as follows:

Printing-cost estimate

Back to press, 2,000 copies	$1,200

AUTHORIZATION FOR SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON GOVERNMENT OPERATIONS FOR INQUIRIES AND INVESTIGATIONS

The resolution (S. Res. 107) authorizing supplemental expenditures by the Committee on Government Operations for inquiries and investigations was considered and agreed to, as follows:

S. RES. 107

Resolved, That the Committee on Government Operations is authorized to expend, through February 29, 1972, from the contingent fund of the Senate not to exceed the sum of $50,000 (in addition to the amount provided in section 9 of Senate Resolution 31, Ninety-second Congress, agreed to March 1, 1971), such sum having not been included in that resolution because at the time at which that resolution was considered there was insufficient information to determine the total amount of expenditures the committee would incur in conducting its inquiries and investigations. Such sum shall be expended for the purposes specified in sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with the committee's jurisdiction under rule XXV of the Standing Rules of the Senate.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–85), explaining the purposes of the measure.

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

Senate Resolution 107 would authorize the expenditure by the Committee on Government Operations through February 29, 1972, of not to exceed $50,000 for inquiries and investigations. These funds, which would be in addition to the $1,582,200 authorized for use by that committee by Senate Resolution 31, agreed to March 1, 1971, would be utilized for field hearings on S. 10, a bill to establish a national policy to revitalize rural and other economically distressed areas.

Pursuant to the requirement stipulated in section 133(g) of the Legislative Reorganization Act of 1946, Senate Resolution 107 contains the following statement of the reason why authorization for the expenditures described therein could not have been sought at the time of the submission by such committee of an annual authorization resolution for this year:

Such sum (was not) included in that resolution because at the time at which that resolution was considered there was insuffi-

cient information to determine the total amount of expenditures the committee would incur in conducting its inquiries and investigations.

PAYMENT OF GRATUITY TO FLORENCE H. LOUDERMILK

The resolution (S. Res. 111) to pay a gratuity to Florence H. Loudermilk was considered and agreed to, as follows:

S. RES. 111

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Florence H. Loudermilk, widow of Charles G. Loudermilk, an employee of the Senate at the time of his death, a sum equal to one year's compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

AUTHORIZATION FOR THE PRINTING FOR THE USE OF THE COMMITTEE ON PUBLIC WORKS OF ADDITIONAL COPIES OF HOUSE DOCUMENT 92–70, ENTITLED "CONTROL OF HAZARDOUS POLLUTING SUBSTANCES"

The resolution (S. Res. 110) authorizing the printing for the use of the Committee on Public Works of additional copies of House Document 92–70, entitled "Control of Hazardous Polluting Substances" was considered and agreed to, as follows:

Resolved, That there be printed for the use of the Committee on Public Works two thousand five hundred additional copies of House Document 92–70, entitled "Control of Hazardous Polluting Substances", a report of the Secretary of Transportation, submitted to Congress in accordance with section 12(g) of the Federal Water Pollution Control Act, as amended.

Mr. MANSFIELD. Mr. President, I ask unanmious consent to have printed in the RECORD an excerpt from the report (No. 92–86), explaining the purposes of the measure.

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

The Committee on Rules and Administration is reporting this original simple resolution in lieu of Senate Concurrent Resolution 14, which as referred to the committee would provide (1) that there be printed as a Senate document the report of the Secretary of Transportation, entitled "Control of Hazardous Polluting Substances," submitted to Congress in accordance with section 12(g) of the Federal Water Pollution Control Act, as amended; and (2) that there be printed 2,500 additional copies of such document for the use of the Senate Committee on Public Works.

This action is taken by the Committee on Rules and Administration because the report in question has already been ordered printed as a House document, and since the 2,500 additional copies of the report requested by the Committee on Public Works may be obtained within the $1,200 statutory limitation on printing additional copies by a simple resolution.

The prnting-cost estimate, supplied by the Public Printer, is as follows:

Printing-cost estimate

2,500 additional copies, at $420.18 per thousand $1,050.45

AUTHORIZATION FOR A STUDY OF NATIONAL FUELS AND ENERGY POLICY

The Senate proceeded to consider the resolution (S. Res. 45) to authorize a study of national fuels and energy policy, which had been reported from the Committee on Interior and Insular Affairs with amendments: On page 3, in line 14, strike out the word "make", and insert the words "make, in accordance with the national policy enunciated in the Mining and Minerals Policy Act of 1970 (84 Stat. 1876),";

On page 7, at the beginning of line 3, strike out the date "January 31, 1972," and insert in lieu thereof "February 29, 1972,";

And on page 8, strike out the language of Sec. 7 reading:

The expenses of the committee under this resolution, from the date of its agreement through January 31, 1972, shall not exceed $———, and shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

And insert in lieu thereof:

The Committee on Interior and Insular Affairs, or any subcommittee thereof, is authorized to expend, through February 29, 1972, from the contingent fund of the Senate not to exceed $200,000, in addition to the first amount and for the purposes stated in Senate Resolution 35, agreed to March 1, 1971, such amount having not been included in that resolution because at the time at which that resolution was considered there was a need for public hearings and other information to determine the total amount of expenditures the committee would incur in conducting its inquiries and investigations pursuant to the study authorized by this resolution.

And reported from the Committee on Rules and Administration with additional amendments:

On page 6, in line 3, strike out through line 9 the language:

SEC. 3. The chairmen and ranking minority members of the Committees on Commerce and Public Works or their designees and the ranking majority and minority Senate members of the Joint Committee on Atomic Energy or their designees shall participate in the study authorized herein and the Senators so appointed shall serve with the committee in an ex officio capacity.

And insert in lieu thereof:

SEC. 3. The chairman and ranking minority member of each of the Committees on Commerce and Public Works, or members of such committees designated by such chairmen and ranking minority members to serve in their places, and the ranking majority and minority Senate members of the Joint Committee on Atomic Energy, or Senate members of that committee designated by such ranking majority and minority Senate members to serve in their places, shall participate in the study authorized by this resolution and shall serve as ex officio members of the committee.

And in line 24, strike out "Such advisers shall serve without compensation."

On page 7, in line 2, after the comma, insert "or any subcommittee thereof,";

In line 3, strike out down through line 14 the language: "(1) to make such expenditures as it deems advisable; (2) to employ upon a temporary basis, technical, clerical, and other assistants and consultants; (3) with the prior consent of the heads of the departments or agencies concerned, and the Committee on Rules and Administration to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government; (4) and with the prior consent of the chairmen of other committees of the Senate to utilize the services, information, facilities, and personnel of such committees as needed to assist in carrying out the purpose of this resolution," and insert in lieu thereof: "in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency, and (4) to consent to the assignment of personnel of other committees of the Senate to assist in carrying out the purposes of this resolution."

On page 7, at the end of line 25, strike out "by September 1, 1972.";

On page 8, in line 5, strike out "The", and insert the words "For the purposes of this resolution, the";

In line 10, strike out the words "and for the purposes stated", and insert in lieu thereof the word "specified";

At the beginning of line 11, strike out "35" and insert in lieu thereof "34";

And in line 17, after the word "resolution." insert "Of such $200,000, not to exceed $12,000 (which shall be in addition to the $6,000 specified in section 2 of such Senate Resolution 34) may be expended for the procurement of individual consultants or organizations thereof."

So as to make the resolution read:

Resolved, That the Committee on Interior and Insular Affairs, or any duly authorized subcommittee thereof, is authorized under sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdiction specified in rule XXV of the Standing Rules of the Senate to—

(a) make a full and complete investigation and study (including the holding of public hearings in appropriate parts of the Nation) of the current and prospective fuel and energy resources and requirements of the United States and the present and probable future alternative procedures and methods for meeting anticipated requirements, consistent with achieving other national goals, including the high priorities—national security and environmental protection; and

(b) make, in accordance with the national policy enunciated in the Mining and Minerals Policy Act of 1970 (84 Stat. 1876), a full and complete investigation and study of the existing and prospective governmental policies and laws affecting the fuels and energy industries with the view of determining what, if any, changes and implementation of these policies and laws may be advisable in order to simplify, coordinate, and provide effective and reasonable national policy to assure reliable and efficient sources of fuel and energy adequate for a balanced economy and for the security of the United States, taking into account: the Nation's environmental concerns, the investments by public and private enterprise for the maintenance of reliable, efficient, and adequate sources of energy and fuel and necessary related industries, and the need for mainte-

nance of an adequate force of skilled workers.

SEC. 2. In carrying out the provisions of section 1 the committee shall, in addition to such other matters as it may deem necessary, give consideration to—

(1) the proved and predicted availabilities of our national fuel and energy resources in all forms and factors pertinent thereto, as well as to worldwide trends in consumption and supply;

(2) projected national requirements for the utilization of these resources for energy production and other purposes, both to meet short range needs and to provide for future demand for the years 2000 and 2020;

(3) the interests of the consuming public, including the availability in all regions of the country of an adequate supply of energy and fuel at reasonable prices and including the maintenance of a sound competitive structure in the supply and distribution of energy and fuel to both industry and the public;

(4) technological developments affecting energy and fuel production, distribution, transportation, and/or transmission, in progress and in prospect, including desirable areas for further exploration and technological research, development, and demonstration;

(5) the effect that energy producing, transportation, upgrading, and utilization has upon conservation, environmental, and ecological factors, and vice versa;

(6) the effect upon the public and private sectors of the economy of any recommendations made under this study, and of existing governmental programs and policies now in effect;

(7) the effect of any recommendations made pursuant to this study on economic concentrations in industry, particularly as these recommendations may affect small business enterprises engaged in the production, processing, and distribution of energy and fuel;

(8) governmental programs and policies now in operation, including not only their effect upon segments of the fuel and energy industries, but also their impact upon related and competing sources of energy and fuel and their interaction with other governmental goals, objectives, and programs; and

(9) the need, if any, for legislation designed to effectuate recommendations in accordance with the above and other relevant considerations, including such proposed amendments to existing laws as necessary to integrate existing laws into an effective long-term fuels and energy program.

SEC. 3. The chairman and ranking minority member of each of the Committees on Commerce and Public Works, or members of such committees designated by such chairmen and ranking minority members to serve in their places, and the ranking majority and minority Senate members of the Joint Committee on Atomic Energy, or Senate members of that committee designated by such ranking majority and minority Senate members to serve in their places, shall participate in the study authorized by this resolution and shall serve as ex officio members of the committee.

SEC. 4. The chairman of the Committee on Interior and Insular Affairs is authorized to appoint an advisory panel or panels of nongovernmental experts in the fields of fuels and energy and the environment.

SEC. 5. For the purposes of this resolution the committee, or any subcommittee thereof, is authorized through February 29, 1972, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency, and (4) to consent to the assignment of personnel of other committees of the Senate to assist in carrying out the purposes of this resolution.

SEC. 6. The committee shall report its findings, together with its recommendations for legislation as it deems advisable, to the Senate.

The amendments were agreed to.

The resolution, as amended, was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 45

Whereas adequate supplies of fuel and energy resources in all forms are essential to the continued welfare of the Nation, which includes national security, balanced growth, and safeguarding and enhancing the quality of the environment; and

Whereas authoritative estimates forecast that by the year 2000 the population of the United States will increase to approximately three hundred million persons and that the consumption of fuel and energy resources may increase over 200 per centum; and

Whereas the maintenance of adequate energy and fuel supplies at reasonable price levels, the continued fiscal stability of the basic energy and fuel industries, the proper development of adequate facilities for the production, distribution, transportation, and/or transmission of fuel and energy resources consistent with environmental quality legal requirements and national goals, together with the manpower and equipment to meet these objectives, are essential to the well-being of our Nation; and

Whereas there now exist various and sometimes conflicting laws and regulations setting forth national goals which affect fuels and energy policy and which are vital to the development of fuel and energy resources; and

Whereas the Congress last reviewed national fuels and energy policy in 1962; and

Whereas, in view of these and other considerations, it appears that a Senate committee study of the fuels and energy industries is indicated to determine what, if any, changes in the implementation of existing and prospective Government policies and laws may be desirable in order to coordinate and provide an effective national policy to assure a continuation of reasonable and efficient sources of fuels and energy consistent with environmental quality laws and policies and with national security: Now, therefore, be it

Resolved, That the Committee on Interior and Insular Affairs, or any duly authorized subcommittee thereof, is authorized under sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdiction specified in rule XXV of the Standing Rules of the Senate to—

(a) make a full and complete investigation and study (including the holding of public hearings in appropriate parts of the Nation) of the current and prospective fuel and energy resources and requirements of the United States and the present and probable future alternative procedures and methods for meeting anticipated requirements, consistent with achieving other national goals, including the high priorities—national security and environmental protection; and

(b) make, in accordance with the national policy enunciated in the Mining and Minerals Policy Act of 1970 (84 Stat. 1876), a full and complete investigation and study of the existing and prospective governmental policies and laws affecting the fuels and energy industries with the view of determining what, if any, changes and implementation of these policies and laws may be advisable in order to simplify, coordinate, and provide effective and reasonable national policy to assure reliable and efficient sources of fuel and energy adequate for a balanced economy and for the security of the United States, taking into account: the Nation's environmental concerns, the investments by public and private enterprise for the maintenance of reliable, efficient, and adequate sources of energy and fuel and necessary related industries, and the need for maintenance of an adequate force of skilled workers.

SEC. 2. In carrying out the provisions of section 1 the committee shall, in addition to such other matters as it may deem necessary, give consideration to—

(1) the proved and predicted availabilities of our national fuel and energy resources in all forms and factors pertinent thereto, as well as to worldwide trends in consumption and supply;

(2) projected national requirements for the utilization of these resources for energy production and other purposes, both to meet short range needs and to provide for future demand for the years 2000 and 2020;

(3) the interests of the consuming public, including the availability in all regions of the country of an adequate supply of energy and fuel at reasonable prices and including the maintenance of a sound competitive structure in the supply and distribution of energy and fuel to both industry and the public;

(4) technological developments affecting energy and fuel production, distribution, transportation, and/or transmission, in progress and in prospect, including desirable areas for further exploration and technological research, development, and demonstration;

(5) the effect that energy producing, transportation, upgrading, and utilization has been upon conservation, environmental, and ecological factors, and vice versa;

(6) the effect upon the public and private sectors of the economy of any recommendations made under this study, and of existing governmental programs and policies now in effect;

(7) the effect of any recommendations made pursuant to this study on economic concentrations in industry, particularly as these recommendations may affect small business enterprises engaged in the production, processing, and distribution of energy and fuel;

(8) governmental programs and policies now in operation, including not only their effect upon segments of the fuel and energy industries, but also their impact upon related and competing sources of energy and fuel and their interaction with other governmental goals, objectives, and programs; and

(9) the need, if any, for legislation designed to effectuate recommendations in accordance with the above and other relevant considerations, including such proposed amendments to existing laws as necessary to integrate existing laws into an effective long-term fuels and energy program.

SEC. 3. The chairman and ranking minority member of each of the Committees on Commerce and Public Works, or members of such committees designated by such chairmen and ranking minority members to serve in their places, and the ranking majority and minority Senate members of the Joint Committee on Atomic Energy, or Senate members of that committee designated by such ranking majority and minority Senate members to serve in their places, shall participate in the study authorized by this resolution and shall serve as ex officio members of the committee.

SEC. 4. The chairman of the Committee on Interior and Insular Affairs is authorized to appoint an advisory panel or panels of nongovernment experts in the fields of fuels and energy and the environment.

SEC. 5. For the purposes of this resolution the committee, or any subcommittee thereof,

is authorized through February 29, 1972, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimburseable basis the services of personnel of any such department or agency, and (4) to consent to the assignment of personnel of other committees of the Senate to assist in carrying out the purposes of this resolution.

SEC. 6. The committee shall report its findings, together with its recommendations for legislation as it deems advisable, to the Senate.

SEC. 7. For the purposes of this resolution, the Committee on Interior and Insular Affairs, or any subcommittee thereof, is authorized to expend, through February 29, 1972, from the contingent fund of the Senate not to exceed $200,000, in addition to the first amount specified in Senate Resolution 34, agreed to March 1, 1971, such amount having not been included in that resolution because at the time at which that resolution was considered there was a need for public hearings and other information to determine the total amount of expenditures the committee would incur in conducting its inquiries and investigations pursuant to the study authorized by this resolution. Of such $200,000, not to exceed $12,000 (which shall be in addition to the $6,000 specified in section 2 of such Senate Resolution 34) may be expended for the procurement of individual consultants or organizations thereof.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–87), explaining the purposes of the measure.

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

Senate Resolution 45 as amended would authorize the expenditure of not to exceed $200,000 (not to exceed $12,000 of which could be used for the procurement of consultants) through February 29, 1972, by the Committee on Interior and Insular Affairs, or any duly authorized subcommittee thereof, to—

(a) make a full and complete investigation and study (including the holding of public hearings in appropriate parts of the Nation) of the current and prospective fuel and energy resources and requirements of the United States and the present and probable future alternative procedures and methods for meeting anticipated requirements, consistent with achieving other national goals, including the high priorities—national security and environmental protection; and

(b) make, in accordance with the national policy enunciated in the Mining and Minerals Policy Act of 1970 (84 Stat. 1876), a full and complete investigation and study of the existing and prospective governmental policies and laws affecting the fuels and energy industries with the view of determining what, if any, changes and implementation of these policies and laws may be advisable in order to simplify, coordinate, and provide effective and reasonable national policy to assure reliable and efficient sources of fuel and energy adequate for a balanced economy and for the security of the United States, taking into account: the Nation's environmental concerns, the investments by public and private enterprise for the maintenance of reliable, efficient, and adequate sources of energy and fuel and necessary related industries, and the need for maintenance of an adequate force of skilled workers.

The chairman and ranking minority member of each of the Committees on Commerce and Public Works, or members of such committees designated by such chairman and ranking minority member to serve in their places, and the ranking majority and minority Senate members of the Joint Committee on Atomic Energy, or Senate members of that committee designated by such ranking majority and minority Senate members to serve in their places, would participate in the study authorized by this resolution and would serve as ex officio members of the committee.

The chairman of the Committee on Interior and Insular Affairs would be authorized to appoint an advisory panel or panels of non-Government experts in the fields of fuels and energy and the environment.

Pursuant to the requirement stipulated in section 133(g) of the Legislative Reorganization Act of 1946, Senate Resolution 45 contains the following statement of the reason why authorization for the expenditures described therein could not have been sought at the time of the submission by such committee of an annual authorization resolution for this year:

Such amount (was not) included in that resolution because at the time at which that resolution was considered there was a need for public hearings and other information to determine the total amount of expenditures the committee would incur in conducting its inquiries and investigations pursuant to the study authorized by this resolution.

AMENDMENTS BY THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Amendments adopted by the Committee on Interior and Insular Affairs, and the explanations therefor are as follows:

On page 3, line 14, insert a comma and the following phrase after the word "make" at the beginning of the line: "in accordance with the national policy enunciated in the Mining and Minerals Policy Act of 1970 (84 Stat. 1876)."

On page 7, line 3, strike out "January 31, 1972", and insert in lieu thereof "February 29, 1972".

On page 8, beginning on line 1, delete all of section 7 and substitute the following:

"SEC. 7. The Committee on Interior and Insular Affairs, or any subcommittee thereof, is authorized to expend, through February 29, 1972, from the contingent fund of the Senate not to exceed $200,000, in addition to the first amount and for the purposes stated in Senate Resolution 35, agreed to March 1, 1971, such amount having not been included in that resolution because at the time at which that resolution was considered there was a need for public hearings and other information to determine the total amount of expenditures to the committee would incur in conducting its inquiries and investigations pursuant to the study authorized by this resolution."

This amendment was necessary under the legislative Reorganization Act amendments of last year to explain why the committee did not request funds for this study at the time our regular budget request was made and approved by the Senate. Because of the complexities involved in beginning this fuels study, the committee did not have sufficient time to begin the study until now.

AMENDMENTS BY THE COMMITTEE ON RULES AND ADMINISTRATION

At the request of the Committee on Interior and Insular Affairs, the Committee on Rules and Administration is reporting Senate Resolution 45 with the following additional clarifying and technical amendments:

On page 6, beginning with line 3, strike out through line 9, and insert in lieu thereof the following:

SEC. 3. The chairman and ranking minority member of each of the Committees on Commerce and Public Works, or members of such committees designated by such chairmen and ranking minority members to serve in their places, and the ranking majority and minority Senate members of the Joint Committee on Atomic Energy, or Senate members of that committee designated by such ranking majority and minority Senate members to serve in their places, shall participate in the study authorized by this resolution and shall serve as ex officio members of the committee.

On page 6, lines 24 and 25, strike out "Such advisers shall serve without compensation."

On page 7, line 2, immediately before "is", insert a comma and "or any subcommittee thereof,".

On page 7, line 3, beginning with "(1)", strike out through line 14 and insert in lieu thereof the following: "in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency, and (4) to consent to the assignment of personnel of other committees of the Senate to assist in carrying out the purposes of this resolution."

On page 7, line 25, strike out "by September 1, 1972".

On page 8, line 5, strike out "The" and insert in lieu thereof the following: "For the purposes of this resolution, the".

On page 8, line 10, strike out "and for the purposes stated" and insert in lieu thereof "specified".

On page 8, line 11, strike out "35" and insert in lieu thereof "34".

On page 8, line 17, after the period, add the following: "Of such $200,000, not to exceed $12,000 (which shall be in addition to the $6,000 specified in section 2 of such Senate Resolution 34) may be expended for the procurement of individual consultants or organizations thereof."

Additional information relative to the background and need for the study which would be authorized by Senate Resolution 45, excerpted from the report by the Committee on Interior and Insular Affairs thereon (S. Rept. 92–53), is as follows:

BACKGROUND

Energy is fundamental to the industrial strength and high standard of living of the United States today. Future economic growth will depend on rapidly increasing requirements of still greater quantities of energy in all forms. Historically, the United States has had more than adequate supplies of diverse and competitive energy resources. In recent years, however, there have been numerous examples of failure in supplying all of the energy which the country requires. Blackouts resulting from the failure of electrical energy supply have increased sharply, some natural gas distribution companies are unable to supply all new customers, dependence upon oil imports is increasing, and natural gas reserves are declining.

These numerous developing problems in the energy system have occurred during a period when the only energy policy was a *de facto* one resulting from a series of narrowly based laws, regulations and decisions made by Congress and by a large number of different Federal, State and local agencies. This has led to the widespread belief that a coordinated national energy policy is needed in order to prevent future disruptions in our energy supply.

NEED FOR THE STUDY

Numerous energy studies have been and are being made by industry, various agencies and departments in the Executive Branch of the Federal government, state regulatory agencies, many universities, private research foundations and by industry trade associations. These, however, are aimed at more specific and narrower problems which face these different groups. No previous attempt

has been made to make a comprehensive analysis of existing energy policies or of identifying conflicting policies, of describing systematically the numerous energy problem areas, and, most important, to suggest an internally consistent set of alternative policies that lead to solutions of present problems and prevent future ones.

Unanimous support for the need for this study was received during hearings on February 25, 1971, from such diverse interest groups as National Coal Association, the United Mine Workers, American Petroleum Institute, Independent Petroleum Association of America, American Public Power Association, Independent Natural Gas Association, National Economic Research Associates, Westinghouse Electric Corporation, and the Consumers Federation of America. Senators Bellmon, Randolph, Ribicoff and Tower all added their favorable comments during the hearings as to the need for this study. Written comments supporting the resolution were also received from the American Gas Association, the American Mining Congress, Edison Electric Institute, National Rural Electric Cooperative Association, Shell Oil Company, Union Carbide Corporation, former Senator Thomas H. Kuchel and Senator Cooper.

INCREASE OF THE LIMIT OF EXPENDITURES FOR HEARINGS BEFORE THE COMMITTEE ON ARMED SERVICES

The Senate proceeded to consider the resolution (S. Res. 105) increasing the limit of expenditures for hearings before the Committee on Armed Services which had been reported from the Committee on Rules and Administration with an amendment to strike out all after the enacting clause, and insert:

That the Committee on Armed Services is authorized to expend, through February 29, 1972, from the contingent fund of the Senate not to exceed the sum of $20,000 (in addition to the amount provided in section 2 of Senate Resolution 30, Ninety-second Congress, agreed to March 1, 1971), such sum having not been included in that resolution because at the time at which that resolution was considered there was insufficient information to determine the total amount of expenditures the committee would incur in conducting its inquiries and investigations. Such sums shall be expended for the purposes specified in sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with the committee's jurisdiction under rule XXV of the Standing Rules of the Senate.

The amendment was agreed to.

The resolution, as amended, was agreed to.

The title was amended, so as to read: "Resolution authorizing supplemental expenditures by the Committee on Armed Services".

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–88), explaining the purposes of the measure.

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

Senate Resolution 105 would authorize the Committee on Armed Services to expend from the contingent fund of the Senate, during the 92d Congress, $20,000 in addition to the amount ($10,000), and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act of 1946, as amended. The committee has had an exceptionally large number of meetings this session of Congress, and has already expended over $9,000 of its original $10,000 for transcripts of the proceedings of those meetings.

Senate Resolution 105 has been reported from the Committee on Armed Services in the format customarily employed for such purpose. Due, however, to recently enacted provisions of the Legislative Reorganization Act of 1946, a new procedure is now required. Specifically, section 133(g) of that act requires that any standing committee (except the Committee on Appropriations) desiring authorization for the expenditure of funds in excess of the $10,000 per Congress authorized by section 134(a) of the same act shall offer one annual authorization resolution to procure such authorization. Section 133(g) also stipulates that any funds in addition to those authorized in its annual expenditure authorization may be obtained by a committee during that year only by means of a supplemental expenditure authorization resolution. Since these new provisions limit authorizations for additional funds to an annual basis, it is not now possible to consider or treat them as supplements to the statutory $10,000 granted committees on a biennial basis.

Section 133(g) further stipulates that the supplemental resolution shall contain an explicit statement of the reason why authorization for the additional expenditures was not included in the annual expenditure authorization request.

While the Committee on Rules and Administration approves the request for additional funds contained in Senate Resolution 105, it is required to report the resolution with an amendment in the nature of a substitute to accommodate the requirements stated above. The title has been amended accordingly.

BILL PASSED OVER

The bill, H.R. 4246, to extend certain laws relating to the payment of interest on time and savings deposits and economic stabilization was announced as next in order.

Mr. MANSFIELD. Over, Mr. President.

The PRESIDING OFFICER (Mr. HUGHES). The bill will be passed over.

AMENDMENT OF THE SMALL BUSINESS ACT

The bill (S. 1260) to amend the Small Business Act was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1260

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (4) of section 4(c) of the Small Business Act is amended by striking out "$2,200,000,000" and inserting in lieu thereof "$3,100,000,000".

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–90), explaining the purposes of the measure.

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

SUMMARY

The bill would amend the Small Business Act to increase by $900 million the amount of certain loans, guarantees, and other obligations or commitments outstanding at any one time from the business loan and investment fund of the Small Business Administration. This increase will permit a continuation of five SBA programs through fiscal year 1972.

The committee unanimously ordered S. 1260 reported.

PURPOSE OF THE BILL

Subsection 4(c)(4) of the Small Business Act (Public Law 85–536, as amended) places an overall limitation upon the total amount of all loans, guarantees, and other obligations or commitments which may be outstanding at any time under five programs financed from the business loan and investment fund of the Small Business Administration. These programs are:

(1) The regular business loan program (sec. 7(a) of the Small Business Act).

(2) The displaced business loan program (sec. 7(b)(3) of the Small Business Act).

(3) The trade adjustment loan program (sec. 7(e) of the Small Business Act).

(4) The prime contract program (sec. 8(a) of the Small Business Act), and

(5) The economic opportunity loan program (title IV of the Economic Opportunity Act of 1964).

Loans made under the economic opportunity loan program are also subject to an additional ceiling, which is not proposed to be amended by S. 1260.

The present limitation on the five programs mentioned above is $2.2 billion. This amount was increased from $1.9 billion by Public Law 91–558, approved December 17, 1970.

At the time that the increase to $2.2 billion was requested by the Small Business Administration, it was contemplated that the new limitation would permit the five covered programs to be continued through fiscal year 1972. However, by the time that the Committee on Banking and Currency ordered the bill reported (S. Rept. 91–1366, November 23, 1970), it was clear that the increase would enable SBA to continue its programs only through fiscal year 1971. S. 1260 will permit these programs to continue through fiscal year 1972.

S. 1260 was introduced by Senators McIntyre, Sparkman, and Tower on March 16, 1971. Hearings were held by this committee's Subcommittee on Small Business on April 21. Among the witnesses was Hon. Thomas S. Kleppe, Administrator of the Small Business Administration, who appeared in support of S. 1260.

Mr. Kleppe informed the committee that SBA now thinks that it will reach its present ceiling in May of this year, somewhat earlier than anticipated. There are two reasons why the ceiling is being reached earlier than anticipated. The first is that SBA has been significantly more successful than expected with its guarantee program, primarily under section 7(a) of the Small Business Act. Under this program, the agency may guarantee up to 90 percent of an acceptable loan from a bank or other lending institution. With budgetary restrictions on SBA's direct loan program, the guarantee program has grown at a rate which could not have been anticipated earlier. Under the 7(a) program, guarantees were originally budgeted for fiscal year 1971 at $500 million, but the current estimate for this year is over $750 million and for fiscal year 1972 is over $850 million.

The second reason for the premature reaching of the ceiling is the unanticipated decline in loan repayments. The following table shows how SBA's projections of loan repayments have changed over the past 2½ years, and how those projections accord with actual experience.

[In millions of dollars]

	5 programs covered by S. 1260—Estimates presented in 1969	All SBA loan programs	
		Revised estimates	Actual experience
Fiscal year:			
1970	316.3	225.1	174.8
1971	372.9	225.2	[1] 171.1

[1] Estimated.

Thus the estimates which were presented to this committee in the 91st Congress were in error regarding repayments by over $343 million, presumably because of a general slowdown in the economy.

The committee was assured by the Administrator of SBA that the ceiling proposed by S. 1260 would be adequate to see the agency through fiscal year 1972.

RENEWAL OF AUTHORITY FOR CEILINGS ON DEPOSIT INTEREST RATES AND WAGE AND PRICE CONTROLS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 90, H.R. 4246 and that S. 699 be displaced and go back to the Calendar.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

H.R. 4246, to extend certain laws relating to the payment of interest on time and savings deposits and economic stabilization.

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

The Senate proceeded to consider the bill, which had been reported by the Committee on Banking, Housing, and Urban Affairs with an amendment to strike out all after the enacting clause, and insert:

EXTENSION OF AUTHORITY FOR THE FLEXIBLE REGULATION OF INTEREST RATES ON DEPOSITS AND SHARE ACCOUNTS IN FINANCIAL INSTITUTIONS

SECTION 1. Section 7 of the Act of September 21, 1966, as amended (Public Law 91–151; Public Law 92–8), is amended by striking out "1971" and inserting in lieu thereof "1973".

REMOVAL OF TIME LIMITATION ON THE AUTHORITY OF THE PRESIDENT TO APPROVE CERTAIN VOLUNTARY AGREEMENTS

SEC. 2. The first sentence of section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking out "714 and 719" and inserting in lieu thereof "708, 714, and 719".

PRICE AND WAGE CONTROLS

SEC. 3. (a) Section 202 of the Economic Stabilization Act of 1970 (Public Law 91–379) is amended—

(1) by inserting "(a)" before the text of such section; and

(2) by adding at the end thereof a new subsection as follows:

"(b) The authority conferred on the President by this section shall not be exercised with respect to a particular industry or segment of the economy unless the President determines, after taking into account the seasonal nature of employment, the rate of employment or underemployment, and other mitigating factors, that prices or wages in that industry or segment of the economy have increased at a rate which is grossly disproportionate to the rate at which prices or wages have increased in the economy generally."

(b) Section 206 of such Act is amended by striking out "May 31, 1971" and "June 1, 1971" and inserting in lieu thereof "September 30, 1971" and "October 1, 1971", respectively.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second 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.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, during the further consideration of H.R. 4246, I ask unanimous consent that the time on any amendment, motion, or appeal, with the exception of a motion to lay on the table, be limited to 30 minutes, the time to be equally divided and controlled between the mover of such amendment and the manager of the bill; that no amendment not germane be received; that time on the bill be limited to 1 hour to be equally divided and controlled between the majority leader and the minority leader or their designees; and that either of these leaders may from the time under his control on the bill allot such additional time as may be desired to any Senator during the consideration of any amendment, motion, or appeal, with the exception of a motion to lay on the table.

The PRESIDING OFFICER. Is there objection?

Mr. TOWER. Mr. President, reserving the right to object and I have no intention of objecting, if the distinguished Senator from West Virginia will clarify the request, I understand time on the bill can be yielded on any amendment.

Mr. BYRD of West Virginia. That is correct.

Mr. PROXMIRE. Time on the bill is 1 hour.

Mr. BYRD of West Virginia. Equally divided.

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

Mr. PROXMIRE. Mr. President, will the acting majority leader yield time on the bill?

Mr. BYRD of West Virginia. Mr. President, I yield time under my control to the Senator from Wisconsin.

Mr. TOWER. Mr. President, will the distinguished Senator from West Virginia rephrase his request so that I may control the time on the minority side since the minority leader is not in the Chamber?

Mr. BYRD of West Virginia. Yes. I do so now.

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

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

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

RENEWAL OF AUTHORITY FOR CEILINGS ON DEPOSIT INTEREST RATES AND WAGE AND PRICE CONTROLS

Mr. PROXMIRE. Mr. President, H.R. 4246, as amended by the Committee on Banking, Housing and Urban Affairs would: first, extend until June 1, 1973, the authority of the Federal bank regulatory agencies to establish flexible ceilings on the rate of interest payable on time and savings deposits by commercial banks, mutual savings banks, and savings and loan associations; second, extend on a permanent basis the President's authority to initiate a program of voluntary credit controls; and third, extend until October 1, 1971 the President's authority to establish mandatory price and wage controls.

DEPOSIT RATE CONTROL AUTHORITY

Section 1 of the legislation extends until June 1, 1973, the authority to establish flexible ceilings on the interest rates paid by financial institutions on time and savings deposits. This authority was first enacted by the Congress in 1966 in order to restrain excessive competition for funds by commercial banks and savings and loan associations. Unless renewed, the authority expires on June 1, 1971. The Federal bank regulatory agencies are unanimous in recommending that the authority be renewed.

The renewal of the flexible rate control authority is essential to protect the homebuilding industry from another serious credit shortage such as was experienced during 1966. Unrestricted competition for savings deposits between commercial banks, mutual savings banks, and savings and loan associations permitted large commercial banks to divert funds from thrift institutions and smaller commercial banks. Since thrift institutions place the bulk of their funds in home mortgages, the loss of savings deposits by these institutions resulted in a sharp drop in new home construction.

In renewing the flexible deposit rate control authority, it is expected that the financial agencies will continue to administer the ceilings so as to promote a reasonable flow of savings to mortgage-oriented thrift institutions.

VOLUNTARY CREDIT CONTROLS

Section 2 of H.R. 4246 removes the expiration date of the President's authority to initiate a program of voluntary credit controls similar to those President Truman put into effect during the Korean War. Under this authority, the President could establish committees of private lenders to work out voluntary programs for channeling credit from less essential to more essential uses. The authority is contained in the Defense Production Act which expires on June 30, 1972. Since a related authority for mandatory credit controls was enacted into permanent law in 1969, the Committee saw no reason why the voluntary credit control authority should not also be made permanent. The Federal Reserve Board, which would administer the authority if implemented, has testified that it has no objection to making the authority permanent.

WAGE AND PRICE CONTROL AUTHORITY

Section 3 of H.R. 4246 extends until October 1, 1971, the President's standby authority for controlling prices, wages, salaries, and rents. This authority, which expires on June 1, 1971, was first enacted by the Congress on August 15, 1970—Public Law 91–379; 84 Stat. 799—in order

to give the President maximum authority for fighting inflation. Although the enactment of the authority was originally opposed by the administration on the grounds that it was not needed and that it had no intention of using such authority, the President has used the authority to stabilize wages and prices in the construction industry. During the hearings on H.R. 4246 and S. 1201, the administration supported a 2-year renewal of the authority.

The committee had serious reservations about applying the price and wage control authority to a single industry. An industry subject to price controls has no control over the price it must pay for the products of other industries. Likewise, workers subject to wage controls have no protection against a continued rise in the cost of living. For these reasons, the committee has recommended the administration adopt a voluntary system of wage-price guideposts before applying mandatory controls to any specific sector of the economy. Such a program of voluntary wage-price guideposts was also recommended by Arthur Burns, the chairman of the Federal Reserve Board, in his testimony before the committee.

As a specific restriction on using the wage-price control authority on a single industry, the committee approved an amendment requiring a specific finding by the President. Under the amendment, the President is prohibited from using the authority in a single industry unless he determines that wages or prices in that industry have increased at a rate which is grossly disproportionate to the rate for the economy as a whole, after taking into account any mitigating factors such as the seasonal nature of employment or the rate of unemployment or underemployment in the particular industry.

Because of the broad grant of power given the President, the committee decided to recommend a renewal of the wage and price control authority until October 1, 1971, rather than the 2 years as was proposed by the administration.

Although the House bill would extend this authority to April 1, 1973, the House bill also provides that the entire authority expires 6 months after the date of the first order issued under the authority. The fact is that the President has issued an order.

Since the President has issued an order under the legislation on March 29, 1971, with respect to the construction industry, the authority contained in the House bill would effectively expire on September 29, 1971. Under either bill, the Congress is thus given an early opportunity to review the need for continuing the wage-price control authority, to examine the results achieved in the construction industry, and to assess the progress made by the administration in curbing general wage and price increases by a voluntary guidepost system or by other means.

VARIABLE RESERVE REQUIREMENTS

Mr. President, the Committee also considered a proposal which would have authorized the Federal Reserve Board to distribute the impact of tight money more evenly throughout the economy. As the author of this proposal, I believe the Federal Reserve Board has a responsibility to conduct monetary policy in such a way that socially important segments of the economy are not unduly damaged.

Unfortunately, in our recent post-war history this has not been the case. For example, in five times over the last 20 years the homebuilding industry has been devastated by the Federal Reserve Board's tight money policy. Moreover, the impact of tight money on housing seems to be getting worse and not better, despite numerous actions taken to deal with the problem.

One member of the Federal Reserve Board, Gov. Sherman Maisel, who is the outstanding authority on that board on housing, has estimated that the homebuilding industry accounted for 70 percent of the impact of the Board's tight money policy in 1966. When an industry comprising only 3 percent of GNP bears 70 percent of the burden of fighting inflation, something is obviously wrong with the way monetary policy works.

Because of the inherent difficulty in changing our fiscal policies, it seems evident that we will make increasing use of monetary policy as a tool for managing the economy. If this is the case, it it likely that the homebuilding industry and other socially important sectors of the economy will suffer during the next credit shortage. These sectors will include State and local financing, small business, and agriculture.

Section 4 of S. 1201 which I introduced would have permitted the Federal Reserve Board to deal with this problem by establishing variable reserve requirements on commercial bank loans. During a period of tight money, the Board would establish high reserve requirements on business loans and low reserve requirements on housing loans. The effect of this change would shift money from business spending into housing. In this way, the Board could at least partially offset the impact of its restrictive monetary policy on the homebuilding industry.

Of course, they could also do that with respect to State and local governments and other sectors, which have been crippled in tight money periods.

Under this proposal, the Board could also have facilitated the flow of credit for the following additional purposes: poverty area development; State and local financing small business; family-sized farming; and export financing. In addition, the Board was authorized to restrain the flow of credit to those sectors of the economy where, in the Board's judgment, credit restraint would help stabilize the national economy.

This proposal was strongly supported during the hearings by the National Association of Homebuilders and the AFL-CIO. However, the Federal Reserve Board opposed the idea, although at least one member, Gov. Andrew Brimmer, approved the idea in principle but had reservations over some of the specific providings. After hearing the testimony, the Subcommittee on Financial Institutions voted 5 to 4 to favorably report the proposal to the full committee. However, a majority of the full committee was opposed to the idea and the provision was deleted from the legislation.

Mr. President, I am naturally disappointed that the reform measure was dropped from the bill. I realize it is difficult to enact reform legislation unless there is a crisis which makes the need for action overwhelming. In our present economic circumstances, there is a ready availability of mortgage credit. Indeed, the Federal Reserve Board has been expanding the money supply at an annual rate of 10 percent over the last few months. With commercial banks bursting with loanable funds, it is easy to forget the tight money conditions of 1969 and 1966. However, despite the favorable credit conditions we enjoy today, the basic problem will not go away. Unless the Federal Reserve Board can come up with some specific alternative recommendations for improving its monetary policy, the homebuilding industry and other important segments of the economy will once again be devastated the next time the Board finds it necessary to supply the monetary breaks.

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

Mr. PROXMIRE. I yield myself 2 additional minutes.

The home building experts who testified estimated that this could be as early as next fall or next winter.

I understand the Federal Reserve Board has been studying the impact of monetary policy on housing and that it intends to submit a report to the Congress by September 15 together with its recommendations for stabilizing the flow of credit to the homebuilding industry.

Mr. President, I realize that it is difficult for Members of the Senate to understand an esoteric subject such as monetary policy. Nonetheless, monetary policy has a profound impact on our economic life. Unlike central banks in other countries, the Federal Reserve Board has consistently refused to assume any responsibility for allocating credit to specific sectors of the economy in order to achieve important social and economic objectives. Up till now, the Board has been able to convince a majority of the Members of the Congress that its laissez-faire policy is the only proper policy for a central bank to follow, although, as I say, it is the only one that follows it. Since the issues are complex, and since the Federal Reserve has always managed to impart a certain mystique to its operations, it has been able to operate with relatively little congressional supervision. I hope that the hearings on this legislation will establish a record for the long term reform of the Federal Reserve System which I believe is so urgently needed.

I yield the floor.

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

I recommend the passage of the bill before us, H.R. 4246, as reported by the Committee on Banking, Housing and Urban Affairs, with a provision that the wage and price controls authority be extended from 6 months to 2 years; that is to say, to meet the provisions of the

House bill, which contains the 2-year authority.

The Senate version of the bill grants general wage and price control authority to the President for a period of 6 months from date of enactment, at which time it would be presumably reviewed and renewed by Congress. The House version of the bill extends the authority for 2 years, which I personally favor as a more practical housekeeping provision. Congress can always rescind the power during the 2-year period, if it is so inclined.

The Senate version of the bill regarding the regulation of interest rates for financial institutions is essentially the same as the House version, granting a 2-year extension to regulation Q authority.

Neither bill has any specific effect on the currently imposed restraints on the construction industry, other than that they would expire in 6 months under the Senate version and in 2 years under the House version, as the general wage and price authority extension may be determined in conference.

The PRESIDING OFFICER. Who yields time?

Mr. PACKWOOD. Mr. President, I yield myself such time as I may need on the bill.

Mr. TOWER. Mr. President, on the bill or on the amendment?

Mr. PACKWOOD. On the bill first.

Mr. TOWER. Mr. President, I yield 5 minutes on the bill to the Senator from Oregon.

Mr. PACKWOOD. Mr. President, the Senator from Wisconsin (Mr. PROXMIRE) has dwelt at length on the decision of the committee to strip out of the bill the delegation of the powers to the Federal Reserve Board to set variable reserve requirements and has spoken in such a way as to indicate that the committee was not perhaps willing to undertake some of the social priorities that that delegation might entail.

In committee I voted to strip that power from the Federal Reserve Board. I think that is a power, Mr. President, that the Senate and the House should act on together, and not delegate to the Federal Reserve Board.

The argument is going to be made that the Federal Reserve Board is an agent of Congress, not an executive agency, and that is true. The Federal Reserve Board is historically, actually, and legally independent of the executive, and in theory is an arm of the legislative branch. As a matter of practice, we have given great autonomy to the Federal Reserve Board and have bent over backward not to interfere in its decisions.

The Senator from Wisconsin made reference to the fact that this is the only central bank in the world that operates with a laissez-faire attitude. That is true. But it should be called to the attention of the Senate that the Federal Reserve Board is also the only central bank in any nation that is not part and parcel of the political process.

Let me make it clear, Mr. President: I think the Federal Reserve Board should be part and parcel of the political process of this country. I think that the decisions they take in regard to monetary matters should be considered in the light of the effect they will have on the national economy. But I do not think that is a decision the Federal Reserve Board should make for itself.

Look at the Federal Reserve Board: Seven members appointed by the President—not by Congress—to serve for terms of 14 years, and, once appointed, almost impossible to remove, beholden to no one, subject to election by no one. It was suggested, if this power had not been stripped from the bill, that we give this board of seven members with 14-year terms the power to determine what should be the reserve requirements for banks as far as loans to industry, to small business, and to local and State governments are concerned.

It is my contention, Mr. President, that if Congress wants to help the housing industry and small business, we had better specifically direct the Federal Reserve Board to do it, and not just delegate the power to them generally, and hope that the Federal Reserve Board, in its wisdom, with its members insulated from any kind of process, might undertake such relief.

I would be perfectly willing to join with the Senator from Wisconsin in a bill to specifically help the housing industry, if that is the industry we want to help, and specifically direct the Federal Reserve Board to do something. But I do feel that is a decision we in Congress should make, and not attempt to delegate it away.

Now, Mr. President, I call up my amendment No. 62 to H.R. 4246.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

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

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

Mr. PACKWOOD. I ask unanimous consent, Mr. President, to make two technical corrections. There are two technical mistakes. On page 1 of the bill, line 1, the figure "24" should read "23," and on page 2, line 9, the word "by" should read "be." I ask unanimous consent that those corrections be made.

The PRESIDING OFFICER. The amendment will be so modified.

Mr. PACKWOOD's amendment (No. 62), as modified, is as follows:

AMENDMENT No. 62

On page 3, beginning with line 23, strike out all through line 13 on page 4 and insert the following:

"Sec. 3. (a) Section 202 of the Economic Stabilization Act of 1970 (title II of Public Law 91-379) is amended to read as follows:

"'§ 202. Authority

"'(a) If the President determines, after taking into account the seasonal nature of employment, the rate of employment or underemployment, and other mitigating factors, that prices or wages in any particular industry or segment of the economy have increased at a rate which is grossly disproportionate to the rate at which prices or wages have increased in the economy generally, he may issue such orders and regulations as he deems appropriate to stabilize prices, wages, and salaries in that industry or segment of the economy at levels not less than those prevailing on May 25, 1970.

"'(b) Whenever the Congress shall by concurrent resolution determine that the public interest requires the imposition of general controls affecting all industries and segments of the economy, the President may issue such orders and regulations as he deems appropriate to stabilize prices, rents, wages, and salaries at levels not less than those prevailing on May 25, 1970.

"'(c) Orders and regulations issued by the President pursuant to this section may provide for the making of such adjustments as may be necessary to prevent gross inequities.'"

On page 4, after line 17, insert the following:

"(c) The amendment made by subsection (a) to section 202 of the Economic Stabilization Act of 1970 does not affect any action taken by the President pursuant to such section prior to the date of enactment of this Act."

Mr. PACKWOOD. Mr. President, my amendment would specifically do one thing. The bill, as presently worded, delegates generally to the President the power to set wage and price controls, and the only limitation on that power relates to the imposition by the President of wage and price controls in a specific industry or specific occupation. In the bill, we have said if he is going to do that, he must make certain findings before he does it. He is not prohibited from doing it, and, most importantly, if he wants to institute wage and price controls generally, across the board, in this respect he is empowered to do so under the bill.

Mr. President, I do not think that is a power the President should have. We have been arguing ever since the Tonkin Gulf resolution was passed about the fact that Congress has not had the authority, or the power, or been able to undertake the responsibility, or whatever it was, to make war, and that we have delegated to the President the power to send troops overseas. Without getting into a discussion, Mr. President, as to whether we have or have not done that, it has been interesting to note that day after day for the past 5 years, on the floor of the Senate, we have been listening to Congress talk about reasserting its powers.

What I am asking in my amendment is for Congress to reassert its powers in the field of wage and price controls. My amendment would inhibit the President from instituting wage and price controls—these are general wage and price controls, Mr. President—unless Congress first, by concurrent resolution, authorized it. It would not prohibit the President from instituting specific wage and price controls, but if he wants to make the further decision to establish general wage and price controls, that will affect the entire economy—the most significant domestic act that can be done—he will be prohibited from doing it, under my amendment, unless Congress asks first.

When we had witnesses on this question, Mr. President, I asked them as to the merits and possibilities of this kind of amendment, and I would like to quote from the record of the hearings on March 1, 1971, before the Financial Institutions Subcommittee of the Senate Committee on Banking, Housing, and

Urban Development. The witness was Dr. Burns of the Federal Reserve Board.

I asked this question of Dr. Burns:

I have some misgivings about yielding this power to the President. Is there any reason why the legislation we chose to enact cannot leave with Congress the discretion as to whether or not to trigger the policy decision to institute wage and price controls?

Dr. BURNS. It could be done through a triggering device.

Senator PACKWOOD. It would not be that difficult a piece of legislation to enact, would it?

Dr. BURNS. I would think that a triggering device could be written into legislation, a device that would work reasonably well.

I asked the question again of Under Secretary of the Treasury, Charles Walker:

Let me ask you the same question I asked Dr. Burns. While I have misgivings about giving the power to the Executive to make the decision to impose general controls, I don't argue with giving the Executive the authority to Administer such controls.

Would it be relatively easy to draw a piece of legislation which would enable Congress to quickly trigger the policy decision as to whether or not we should institute either general or specific wage and price controls and also providing for the Administration to administer them?

Dr. WALKER. I think it would be.

Then, when Representative REUSS from Wisconsin was on the stand, I asked him this question, in relation to the imposition of wage and price controls:

What you are saying is that Congress could do it; Congress probably should do it, but in all likelihood Congress probably will not do it?

Mr. REUSS. A fair statement.

Mr. President, there is no reason to give to the President the power to institute general wage and price controls. I even have misgivings about giving him the power to institute specific wage and price controls, but I frankly do not think I have the votes to stop that. There is no earthly reason why we in this body should give him the power to institute general wage and price controls.

Inflation is not an emergency, if by an emergency we mean some unexpected happening occurring immediately. It is not a nuclear attack on the United States. Its effect on the economy is gradual. Congress is perfectly able, if it wishes, to exercise that power.

Most of us have spent a fair portion of our adult lives campaigning across our States, asking the citizens of our States to send us to the U.S. Senate and give us the power to exercise our own independent judgment and brains as to what the basic domestic and foreign policy of this country ought to be.

I hope we have not grown so weary that we are tired of wrestling with that responsibility. It is very easy to give this power away. It is easy to say, "Let us delegate it to the President. Let us let him make the decision." Then if he makes it unwisely or unpopularly, we can criticize him, and if he makes it wisely or in a popular way we can applaud him, and we will all be reelected forever. But I do not think that is the obligation of Congress. Congress is intended to be the principal policymaking body in this Nation, foreign and domestic. We can make no greater domestic decision than whether or not we are going to impose wage and price controls on an otherwise free enterprise system of producing.

So I ask that we adopt my amendment to H.R. 4246 and that Congress have the courage and the willingness to put this monkey on its back and that Congress decide, if and when we want to decide, when wage and price controls generally should be enacted.

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

The yeas and nays were not ordered.

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

Mr. PROXMIRE. I ask unanimous consent that the time for the quorum not be charged against either side.

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

The clerk will call the roll.

The 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.

Mr. MANSFIELD. I ask for the yeas and nays on the pending amendment.

The yeas and nays were ordered.

Mr. PACKWOOD. Mr. President, I left out one matter.

I asked the administration what their view might be on my amendment, and by letter of April 30, 1971, from Secretary of the Treasury Connally, they have indicated that they prefer my amendment, that they will support it, that the administration is not asking for general wage and price controls, and that this view is also shared by the Office of Management and Budget.

I ask unanimous consent to have the letter from Secretary of the Treasury Connally printed at this point in the RECORD.

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

THE SECRETARY OF THE TREASURY,
Washington, D.C., April 30, 1971.

DEAR SENATOR PACKWOOD: This letter is in response to your request for Administration views on your proposed amendment to H.R. 4246, "To extend until March 31, 1973, certain provisions of law relating to interest rates, mortgage credit controls, and cost-of-living stabilization."

As we understand your amendment, the President would be authorized to institute wage and price controls in specific industries or segments of the economy in which there is a clear case for doing so, but institution of a general wage-price control program would have to be preceded by adoption of a concurrent resolution by the Congress.

We support your amendment. It provides a workable mechanism with the safeguards we have consistently advocated with respect to such powers, namely, that general wage-price controls should not be instituted by the Chief Executive—short of an all-out national emergency—without a further mandate from the Congress.

Your proposal would surely permit speedy Congressional action in the event of such an emergency, and it would also leave the President free to use the price and wage control powers in connection wtih specific industries, as in the recent instance of Executive Order 11588, approved March 29, 1971, relating to construction wages and prices.

We have been advised by the Office of Management and Budget that there is no objection to the submission of these views.

Sincerely yours,

JOHN B. CONNALLY.

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

The Senator from Oregon is a very able and conscientious Senator, and he knows a great deal about this subject. I agree with much of what he has said about this amendment. Although I oppose the amendment, I think there is much to be said for a reluctance to give the President the kind of authority which would give him power to impose wage and price controls.

I recall that when Mr. Burns appeared before the Joint Economic Committee, he said he would give the President this authority for 2 weeks. The administration is asking for the authority for 2 years, and I have been so concerned about it that that is one of the reasons why I have limited the present authority to 6 months.

If we provide that before wage and price controls can be imposed, it is necessary to introduce a resolution to do so to have it referred to committee. to have hearings on it, to discuss it in the hearings, then to bring it out on the floor and debate on the floor that kind of resolution, we can imagine the effect that this could have on the country.

After all, if one is a businessman or the head of a labor union and anticipates that Congress is about to impose wage and price controls, there is every reason why one might proceed to try to push up his price or wages as rapidly as possible. It can be argued that this can be made retroactive. That creates great disruption in the country. It is difficult for business and labor unions to know what the future may bring.

If one reads this amendment carefully, he will see that there is no requirement on the part of the President to impose these wage and price controls even if Congress passes the resolution. Of course, the administration is going to accept it. They can do what they want. If they want to put them in effect, they can. If they do not want to put them in effect, they do not have to. So Congress can go through the difficult and onerous debate of whether or not we ought to have wage and price controls and, after coming to the conclusion that we should have them, find that the President decides he is not going to use them.

Because of the very nature of inflation—it creeps up and drops back and goes up—I think it is important that the decision be made very swiftly and be made by the President of the United States on the basis of the best advice he can get and not on the basis of a long, extended debate in Congress.

Under the committee bill, the President would still have to come to Congress for money to implement general controls, so Congress would still have final authority, whether this amendment is adopted or not. It is true that he could put into

effect very quickly the order and it could hold for a few weeks or a couple of months. But in order for the President to sustain it, he would have to come to Congress to get the funds. On the basis of everything I have seen and heard, those funds would be very substantial, because it would require quite a bureaucracy to make wage and price controls effective, especially in a period such as the present, when we have a war on, when the war is unpopular and is winding down, and there is none of the fervent patriotism we had in World War II and to some extent in the Korean war, which persuaded people and business and labor unions to discipline themselves, because they were dedicated to the overall effort to win the war.

Furthermore, this amendment discriminates against organized labor. For example, the President can control the wages of a particular group of workers, but not the general level of prices. There is much complaint about what the President is doing now in the construction industry, and I share sympathy for those workers. That could be imposed elsewhere. On the basis of this amendment, it could be imposed against workers across the board; it could be imposed by the President on workers in any kind of industry; and there would be no requirement that Congress pass implementing legislation to make it effective as there would be if we had wage and price controls affecting prices and profits.

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

Mr. PROXMIRE. I yield.

Mr. TOWER. The Senator says that this amendment will be antilabor, because it will allow the President to control wages in specific industries. It will also allow him to control prices.

Mr. PROXMIRE. But not the general price level.

Mr. TOWER. Neither would it allow him to control general wage levels without coming to Congress first.

Mr. PROXMIRE. The Senator can see the impracticality of putting this into effect so far as prices are concerned. The construction industry, for example, is in such a position that if their prices for what that industry produces were limited, they would still have to pay higher prices for what they buy. Therefore, it is not a practical, effective kind of operation for imposing price controls.

For that reason, the President has not really enforced price controls in the construction industry. He is working in that direction vaguely, but he has indicated a firm restriction on wage increases in construction. I do not say that this amendment necessarily would be but it could be discriminatory against labor.

Mr. TOWER. Mr. President, will the Senator from Oregon yield?

Mr. PACKWOOD. I yield.

Mr. TOWER. I should like the Senator to address himself to this question. I should like to ask the distinguished proposer of the amendment if this would have any effect on the current restraints being exercised in the construction industry. It is my understanding that this amendment is not retroactive and therefore would have no effect on that. Is that correct?

Mr. PACKWOOD. That is the advice I had from the legislative counsel when we had it drafted.

Mr. TOWER. Would this be discriminatory toward labor?

Mr. PACKWOOD. This is discriminatory toward either everybody or nobody.

As to the argument that it is going to be difficult to set price deadlines or executive salary deadlines, but not those of construction workers, we face the same thing under the present bill. This bill applies to profits, wages, rents—everything the President has the power to set. It does not discriminate against labor alone; and if there is a failure in this amendment, there is a failure in the entire bill.

Mr. PROXMIRE. The difficulty is that the Senator has not required action by Congress if a restraint is put into effect by the President against the construction industry or any other industry, but it does require it if he puts an overall limitation on wages and prices.

I do not refer to this President specifically, but any President can act if he wishes to restrict a particular industry or a particular group, such as labor in the construction industry, but he cannot act to restrain prices overall unless Congress acts. Then, as the Senator points out in his amendment, the President is not mandated to put it into effect. He may do it if he wishes.

Mr. PACKWOOD. That is correct. That is, so far as I am concerned, I indicated in my principal remarks that I would be happy if he could not even have the power specifically for price controls, but I do not have the votes to do that. I see no reason there to justify that by saying that we can take half a loaf or we will not take any, but will give the President the power to institute wage and price controls over the entire economy or any portion of an industry. I do not think, in good conscience, that we can go a bit further and say that we are exercising responsibility when we give away this critical power.

The Senator from Wisconsin makes the argument that we cannot move faster, that Congress is immobile. If we are, then it is our fault, not the President's.

As I look at the history of legislation, and all this argument as to whether Congress should exercise its power which stems from the problems we have had in Southeast Asia, the Gulf of Tonkin resolution which was introduced on August 5, 1964, was passed on August 7. So this Congress can move fast if it wants to. On the salary increase legislation for Congress 2 years ago, the bill took us the sum total of 6 days to pass. If we can pass an act in 6 days, we can act on wage and price controls in a substantially faster manner, because it is a much greater national emergency.

Mr. PROXMIRE. If the Senator from Oregon would yield on that, the difficulty with enacting wage and price controls is that the inflation situation is not a clearly identified emergency. Prices creep up. Wages creep up. They differ in the varying industries. We have all kinds of index prices, including the wholesale price index, the manufacturers price index, the consumers price index, the wage price index, and so forth, so it is very complicated and statistical. It is hard to mobilize congressional approval. It takes hearings, studies, and there is opposition to consider. It is hard to put into effect. That is why, in the Korean war, when we imposed wage and price controls, it was done on the basis of provision in the Defense Production Act which was then exercised by the President at a later date. This is not the efficient way and the logical way to put it into effect.

Mr. TOWER. Has not the administration already stated that if it determines it should seek controls, it will come to Congress and ask for a joint resolution authorizing it anyway?

Mr. PACKWOOD. That is what they stated.

Mr. TOWER. So the Senator's amendment is entirely consistent with what the administration proposes to do under the authority, anyway.

Mr. PACKWOOD. That is what the administration has indicated. I heard much of the fact that when we first passed wage and price controls a year ago, they said they would not use it all, but went ahead and did. It is not a question of whether they will or not. The question is whether Congress will put this monkey on its back as to whether it wants wage and price controls.

I find the argument of the Senator from Wisconsin fallacious. Not 12 months, 6 months, or 3 months. We have not passed a concurrent resolution giving him the power to institute wage and price controls. We are not asking for a full-dress argument on what the controls should be when they go into effect, on which industry is to be controlled. All we are asking is that some time in the future, by a concurrent resolution, we give the President the same power we give to him in this bill. If we can make that decision, it can mean that Congress will make it, not the President.

The PRESIDING OFFICER (Mr. WEICKER). Who yields time?

Mr. PROXMIRE. Mr. President, I yield back the remainder of my time on the amendment.

Mr. PACKWOOD. Mr. President, I yield back the remainder of my time on the amendment.

The PRESIDING OFFICER. All time on the amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from Oregon.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), the Senator from Wyoming (Mr. MCGEE), the Sena-

tor from New Mexico (Mr. MONTOYA), the Senator from Maine (Mr. MUSKIE), the Senator from Virginia (Mr. SPONG), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Alabama (Mr. ALLEN), the Senator from California (Mr. CRANSTON), the Senator from Georgia (Mr. GAMBRELL), and the Senator from Minnesota (Mr. HUMPHREY) are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Kansas (Mr. DOLE), the Senator from Colorado (Mr. DOMINICK), the Senator from Nebraska (Mr. HRUSKA), the Senator from Iowa (Mr. MILLER), the Senator from Ohio (Mr. SAXBE), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Oklahoma (Mr BELLMON) is absent on official business.

The Senator from Delaware (Mr BOGGS) is absent because of death in his family.

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

The Senator from Tennessee (Mr. BROCK), the Senator from Maryland (Mr MATHIAS), and the Senator from Illinois (Mr. PERCY) are detained on official business.

If present and voting, the Senator from Delaware (Mr. BOGGS), the Senator from Colorado (Mr. DOMINICK), the Senator from Iowa (Mr. MILLER), the Senator from South Dakota (Mr. MUNDT), and the Senator from South Carolina (Mr. THURMOND) would each vote "yea."

The result was announced—yeas 30, nays 41, as follows:

[No. 57 Leg.]

YEAS—30

Allott	Fannin	Prouty
Baker	Fong	Roth
Beall	Goldwater	Schweiker
Bennett	Griffin	Scott
Buckley	Gurney	Smith
Chiles	Hansen	Taft
Cook	Hatfield	Tower
Cooper	Jordan, Idaho	Tunney
Cotton	Packwood	Weicker
Curtis	Pearson	Young

NAYS—41

Aiken	Hartke	Moss
Anderson	Hollings	Nelson
Bayh	Hughes	Pastore
Bible	Jackson	Pell
Byrd, Va.	Javits	Proxmire
Byrd, W. Va.	Jordan, N.C.	Randolph
Case	Kennedy	Ribicoff
Eagleton	Magnuson	Sparkman
Eastland	Mansfield	Stennis
Ellender	McClellan	Stevens
Ervin	McGovern	Stevenson
Gravel	McIntyre	Symington
Harris	Metcalf	Talmadge
Hart	Mondale	

NOT VOTING—29

Allen	Dole	Miller
Bellmon	Dominick	Montoya
Bentsen	Fulbright	Mundt
Boggs	Gambrell	Muskie
Brock	Hruska	Percy
Brooke	Humphrey	Saxbe
Burdick	Inouye	Spong
Cannon	Long	Thurmond
Church	Mathias	Williams
Cranston	McGee	

So Mr. PACKWOOD'S amendment, as modified, was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. TOWER. Mr. President, I call up my amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read, as follows:

On page 4, line 16, strike "September 30, 1971" and "October 1, 1971" and insert in lieu thereof "March 31, 1973" and "April 1, 1973".

Mr. TOWER. Mr. President, I yield myself as much time as may be necessary.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. TOWER. Mr. President, this amendment would bring the bill into conformity with the House bill which provided for a time limitation of 2 years rather than 6 months. This is something imminently desired by the administration. As a matter of fact, the administration does not favor the Senate bill in its present form.

It seems to me far more practicable for planning purposes that the President be given 2 years. This does not mean that he would continue to exercise that authority for 2 years because at any point in time Congress can review the exercise of this authority and terminate it at any time it chooses.

Therefore, from a practical managerial standpoint it seems reasonable that the time be 2 years.

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

Mr. TOWER. I yield to the Senator from New York for so much time as the Senator needs.

Mr. JAVITS. I thank the Senator.

Mr. President, I agree with the Senator. I voted against the previous amendment because I believe our economy is still in grave trouble; and I believe we are at war and, therefore, we should have the machinery on the books which is compatible with war so long as we stay at war.

I think the element of unsettlement—paying out some line and then pulling it back in—which is represented by the short date, is a disadvantage in the bill.

I am glad the ranking minority Member has filed the amendment and I shall support it.

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

Mr. PROXMIRE. Mr. President, I yield to the Senator from Alabama.

Mr. SPARKMAN. Mr. President, I wish to ask the distinguished Senator from Texas if he would consider changing the time period of his amendment from 2 years to 1 year? His proposal, I understand, is for 2 years.

Mr. TOWER. The Senator is correct.

Mr. SPARKMAN. I wonder if the Senator would change that to 1 year. As the Senator knows, we had considerable discussion in committee on this matter and the committee did not even go for 1 year. The House bill that has already passed calls for a 2-year extension.

Mr. TOWER. Two years.

Mr. SPARKMAN. The House passed bill provides for 2 years, but if we pass the bill with a 1-year extension, it is my understanding that the House will accept the bill, and in that way we would avoid the necessity for a conference.

I wonder if the Senator would be willing to accept an amendment at a 1-year rather than a 2-year term.

Mr. PROXMIRE. Mr. President, will the Senator yield on that point?

Mr. SPARKMAN. I yield.

Mr. PROXMIRE. I think 1 year goes further than the House because the House language provides that once the President invokes this legislation—and he did on March 29—it expires in 6 months. So if we go along with the House this will expire in less than 6 months, in September. For that reason, the Sparkman proposal is a considerable compromise.

Mr. TOWER. That is, from the time of the inception of action by the President?

Mr. PROXMIRE. That is right, and it would be effective over the action of the President of last March, we made clear in the committee. So the House bill will expire on March 29. I would say the Sparkman proposal would go rather far toward accommodating the views of the administration that its authority should go longer than 6 months.

Mr. TOWER. Let me ask the Senator a question for clarification. Is there anything in the committee bill at all that affects the current construction industry controls except in the limitation here with respect to the final 1- or 2-year general authority?

Mr. SPARKMAN. My understanding is that there is nothing in the bill that affects the authority.

Mr. PROXMIRE. Not in the Senate bill.

Mr. TOWER. In other words, it is not retroactive?

Mr. SPARKMAN. That is correct. The only change necessary in the Senator's amendment in order to do what I have proposed is to delete the two dates of "September 30, 1971" and "October 1, 1971" in the present bill and insert in lieu thereof "April 30, 1972" and "May 1, 1972." That is the amendment I propose to the Senator's amendment.

Mr. TOWER. Would the Senator have any idea how long the House is going to take to complete action? Rather than wait too long, I would go ahead with the 2-year extension.

Mr. SPARKMAN. I understand with the 1-year extension I propose there could be prompt action. There has been discussion between the House staff and the Senate staff. I believe I am accurate in saying that the House will accept our bill with the 1-year extension.

Mr. TOWER. In that case, since I know what the outcome will probably be on my amendment if I press it to a record vote, I always proceed on the basis that half a loaf is better than none at all——

Mr. SPARKMAN. This is at least three-quarters of a loaf.

Mr. TOWER. Therefore I accept the amendment of the Senator from Alabama.

The PRESIDING OFFICER. Does the Senator from Texas so modify his amendment?

Mr. TOWER. I so modify my amendment.

The amendment, as modified, is as follows:

On page 4, line 16, delete "September 30, 1971" and "October 1, 1971" and insert in lieu thereof "April 30, 1972" and "May 1, 1972."

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. TOWER. I am prepared to yield back my time.

Mr. PROXMIRE. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back. The question is on agreeing to the amendment as modified.

The amendment, as modified, was agreed to.

Mr. JACKSON. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. TOWER. Mr. President, I am prepared to yield back the remainder of my time.

Mr. PROXMIRE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, in the nature of a substitute, as amended.

The committee amendment, in the nature of a substitute, as amended, was agreed to.

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Oklahoma (Mr. HARRIS), the Senator from Massachussetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Wyoming (Mr. MCGEE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Maine (Mr. MUSKIE), the Senator from Virginia (Mr. SPONG), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Alabama (Mr. ALLEN), the Senator from California (Mr. CRANSTON), the Senator from Georgia (Mr. GAMBRELL), and the Senator from Minnesota (Mr. HUMPHREY) are absent on official business.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Maine (Mr. MUSKIE) would each vote "yea".

Mr. GRIFFIN. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Kansas (Mr. DOLE), the Senator from Colorado (Mr. DOMINICK), the Senator from Nebraska (Mr. HRUSKA), the Senator from Iowa (Mr. MILLER), the Senator from Ohio (Mr. SAXBE), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Oklahoma (Mr. BELLMON) is absent on official business.

The Senator from Delaware (Mr. BOGGS) is absent because of death in his family.

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

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 Colorado (Mr. DOMINICK), the Senator from Iowa (Mr. MILLER), the Senator from South Dakota (Mr. MUNDT), the Senator from South Carolina (Mr. THURMOND), and the Senator from Delaware (Mr. BOGGS) would each vote "yea."

The result was announced—yeas 67, nays 4, as follows:

[No. 58 Leg.]

YEAS—67

Aiken	Griffin	Pell
Allott	Gurney	Percy
Anderson	Hansen	Prouty
Baker	Hart	Proxmire
Bayh	Hatfield	Randolph
Beall	Hollings	Ribicoff
Bennett	Hughes	Roth
Bible	Inouye	Schweiker
Brock	Jackson	Scott
Byrd, Va.	Javits	Smith
Byrd, W. Va.	Jordan, N.C.	Sparkman
Case	Jordan, Idaho	Stennis
Chiles	Magnuson	Stevens
Cook	Mansfield	Stevenson
Cooper	McClellan	Symington
Cotton	McGovern	Taft
Curtis	McIntyre	Talmadge
Eagleton	Metcalf	Tower
Eastland	Mondale	Tunney
Ellender	Moss	Weicker
Fannin	Nelson	Young
Fong	Pastore	
Gravel	Pearson	

NAYS—4

Buckley	Hartke	Packwood
Ervin		

NOT VOTING—29

Allen	Dominick	McGee
Bellmon	Fulbright	Miller
Bentsen	Gambrell	Montoya
Boggs	Goldwater	Mundt
Brooke	Harris	Muskie
Burdick	Hruska	Saxbe
Cannon	Humphrey	Spong
Church	Kennedy	Thurmond
Cranston	Long	Williams
Dole	Mathias	

So the bill (H.R. 4246) was passed.

The title was amended, so as to read: "An act to extend certain laws relating to the payment of interest on time and savings deposits and economic stabilization, and for other purposes."

Mr. TOWER. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, once again the Senate is deeply indebted to the distinguished Senator from Wisconsin (Mr. PROXMIRE). He, together with the able chairman of the Committee on Banking, Housing and Urban Affairs, the distinguished Senator from Alabama (Mr. SPARKMAN) assured the prompt and overwhelming adoption by the Senate of this measure extending the President's authority over wages, prices, and credit. No authority, may I say, may prove more critical considering the present adverse state of the economy. Senator PROXMIRE and Senator SPARKMAN are to be commended. Their leadership in this matter was outstanding.

The Senate is grateful as well to the distinguished Senator from Texas (Mr. TOWER). He joined to assure the efficient disposition of this proposal. His support was vital to its overwhelming approval.

The distinguished Senator from Oregon (Mr. PACKWOOD) and other Senators deserve our commendation, as well. Their contributions to the debate were most helpful. The Senate is most grateful.

ORDER FOR ADDITIONAL PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there now be an additional period for the transaction of routine morning business, for not to exceed 30 minutes, with statements therein limited to 3 minutes.

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

Is there further morning business?

THE MAYDAY DEMONSTRATION

Mr. TUNNEY. Mr. President, the wild antics of the Mayday demonstrators are deplorable.

Overturning vehicles, throwing rocks, disrupting traffic, clashing with police are acts of anarchy.

They are contrary to the yearnings of a majority of Americans for peace.

They damage efforts to end American involvement in the war in Indochina.

They polarize and divide Americans at a time when they should be united.

I support the peace movement. I want to see a target date for getting out of Vietnam at no date later than the end of this year. But I deplore the fact that people who supposedly support peace in Vietnam are so willing to bring violence within our own country.

I want our troops out of Vietnam, and I want them out of Washington, D.C., as soon as the current disorders abate.

Until that time, I believe our police and the military police should use whatever force, within constitutional limits may be necessary to keep our bridges and streets open.

The demonstrators tried to trample the rights of Americans peacefully to go to their jobs, and they failed.

They tried to act with plan and coordination, and they failed.

They tried to rally massive support, and they failed.

They did succeed, however, in hardening the attitudes of those in the administration who want to keep our bombers in the air over North Vietnam and our troops on the ground in South Vietnam.

The vast majority of Americans want the war to end. Just as emphatically,

they do not want lawlessness and rebellion here.

With other Senators, I supported the April 24 peace marches in Washington, D.C., and in San Francisco because they brought hundreds of thousands of Americans together in orderly and legitimate assembly.

I reject the Mayday protests.

I reject them as un-American, and I reject them as harmful to getting our troops out of the quagmire of Southeast Asia.

And I reject their premise that violence overseas must be matched by violence in our Nation's Capital.

RECOGNITION OF SENATOR GURNEY TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, on tomorrow, following the remarks of the distinguished Senator from New York (Mr. BUCKLEY), the distinguished Senator from Florida (Mr. GURNEY) be recognized for not to exceed 15 minutes.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, following the conclusion of the remarks of the distinguished Senator from Florida (Mr. GURNEY) on tomorrow, there be a period for the transaction of routine morning business not to exceed 30 minutes, with statements therein limited to 3 minutes.

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

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the additional period for morning business be concluded.

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

SPECIAL HEALTH CARE BENEFITS FOR CERTAIN SURVIVING DEPENDENTS

Mr. BYRD of West Virginia. Mr. President, for the purpose of laying before the Senate the pending business at this time, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 93, S. 421, and that it be stated by the clerk.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk proceeded to read as follows:

S. 421, to amend title X of the United States Code, to provide special health care benefits for certain surviving dependents, reported with an amendment.

The PRESIDING OFFICER. Is there obection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which was reported from the Committee on Armed Services with an amendment: On page 2, line 1, add the following new section:

SEC. 2. This Act becomes effective as of January 1, 1967. However, no person is entitled to any benefits because of this Act for any period before the date of enactment.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1079 of title 10, United States Code is amended by adding the following new subsection at the end thereof:

"(g) When a member dies while he is eligible for receipt of hostile fire pay under section 310 of title 37, United States Code, or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) of this section shall continue to be eligible for such benefits until they pass their twenty-first birthday."

SEC. 2. This Act becomes effective as of January 1, 1967. However, no person is entitled to any benefits because of this Act for any period before the date of enactment.

Mr. BYRD of West Virginia. Mr. President, there will be no further action on the bill today.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Pastore rule of germaneness be waived for the remainder of the afternoon and that the Senator from Virginia (Mr. BYRD) now be recognized for not to exceed 15 minutes.

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

EXEMPTION OF CHROME ORE FROM LIST OF MATERIALS SUBJECT TO RHODESIAN EMBARGO

Mr. BYRD of Virginia. Mr. President, last week, the distinguished Senator from Nevada (Mr. CANNON) spoke on the floor of the Senate in regard to the exemption of chrome ore from the list materials subject to the Rhodesian embargo.

It seems to me that that speech was significant. The distinguished Senator from Nevada (Mr. CANNON) is chairman of the Subcommittee on the National Stockpile and Naval Petroleum Reserves. He expressed grave concern that under the embargo on trade with Rhodesia, because of that embargo, the United States is dependent upon the Soviet Union for 60 percent of the chrome ore it needs.

Mr. President, chrome ore is a strategic material and extremely important to the national defense of the United States.

The distinguished Senator from Nevada called attention to legislation which I have introduced in the Senate, S. 1404, which legislation, if enacted, would exempt chrome ore from the list of materials subject to the Rhodesian embargo and, thus, would end our dependency upon the Soviet Union for this highly important commodity.

Now, Mr. Persident, when the United States, at the request of Great Britain, put an embargo against trade with Rhodesia 4 years ago, the senior Senator from Virginia expressed concern and spoke in opposition to the embargo. However, the embargo was put on by executive action. It did not come to the Senate. President Johnson, acting alone, put an embargo on U.S. trade with that small African nation.

Mr. President, it seems to me that what our country has done to Rhodesia is unjustified and unprincipled. I see no justification for the United States to deny its citizens the right to trade with that peaceful country of Rhodesia. What has Rhodesia done? The only thing it has done is that it has sought its independence from Great Britain just as the United States did in 1776. As to whether Rhodesia should be independent of Great Britain or continue her dependency on that country, that is a matter, it seems to me, that should be decided by the peoples of those two countries. I do not feel that the United States has any right to inject itself into that dispute. Nevertheless it has done so.

President Johnson, speaking on behalf of our Nation, unilaterally decreed that embargo. So, while I personally oppose the embargo in all instances, I am concerned today, and the legislation which I have introduced is concerned, only with strategic materials; namely, chrome.

I think it is highly significant that the able junior Senator from Nevada, the chairman of the Subcommittee on the National Stockpile and Naval Petroleum Reserves, who I am not sure shares my views in regard to total embargo with Rhodesian trade, nevertheless expressed to the Senate last week his grave concern that the United States is now dependent upon the Soviet Union for this strategic and critical material.

The present administration has asked Congress through S. 773 to promote the disposal of 1,313,600 short dry tons of metallurgical grade chromium—chrome ore equivalent—from the Government stockpiles. This constitutes about 30 percent of this material that we now have on hand to assure an adequate supply in case of emergency.

The Senator from Nevada pointed out that this proposal to release chromium ore from the stockpile creates somewhat of a problem. There is no domestic production of the type of material in question and we are dependent upon foreign sources to supply our requirements. Based upon the present rate of consumption, the subcommittee which the junior Senator from Nevada heads estimates that the amount to be disposed of would supply our total requirements for a period of less than 2 years.

The distinguished Senator from Nevada pointed out also that testimony before his subcommittee left it unmistakably clear that while the amount of material to be released could be readily absorbed by the consuming industry and might serve the temporary expediency of holding world chrome ore prices in line, the relief would be short lived. The principal importation sources in calendar year 1970, in descending order, were the Soviet Union, Turkey, and South Africa, with the Soviet Union supplying about 60 percent of the needs of the United States.

Mr. President, the distinguished chairman of the Subcommittee on National Stockpile and Naval Petroleum Reserves, the junior Senator from Nevada, strongly urged in his speech last week that the

Foreign Relations Committee, to which committee was referred S. 1404, the legislation introduced by the senior Senator from Virginia, take prompt action on that measure. As the Senator from Utah states, a serious problem has been created for this Nation, a problem which we cannot continue to ignore.

Mr. President, I concur in the views expressed by the distinguished and able Senator from Nevada. I feet that this is a problem that cannot and should not be ignored. To me, it is astonishing that our committee would permit itself to be in a position of being dependent upon the Soviet Union for a critical and strategic material such as chrome ore.

I hope that the Foreign Relations Committee will give this matter early consideration. I think it deserves early consideration.

I want to say frankly that I am so greatly concerned about our country being dependent on the Soviet Union for a strategic material that when the stockpile bill comes to the floor of the Senate, if the Foreign Relations Committee has not acted affirmatively in this matter, I feel it appropriate to permit the Members of the Senate to cast a yea and nay vote as to whether the United States will continue to be dependent upon the Soviet Union for a material critical to our own national defense.

Mr. President, I call the attention of the Senate to an editorial which was published in the Fort Smith, Ark., Southwest Times-Record of April 13, 1971. Among other things, the editorial had this to say:

The U.S. embargo on purchases from Rhodesia didn't seem to us to make sense from any standpoint. Any dispute any other country might have with Rhodesia certainly wasn't a U.S. dispute. And, economically, it surely didn't make sense to pay twice as much for the metal as had been paid before.

Mr. President, I ask unanimous consent that the text of the editorial to which I have referred be printed in the RECORD.

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

MOVE AGAINST RHODESIAN ORE BOYCOTT

Pressure is building up in Congress to stop letting Russia gouge this country on chrome ore prices.

And the route proposed to accomplish that is by ending the boycott of chrome purchases in Rhodesia.

Back when that country declared its independence from Britain, a clique in the United Nations forced through a resolution calling for "sanctions" against it. And the U.S., going along with the resolution, ended its purchases of Rhodesian chrome.

The metal is vitally important. So another source had to be found. This country ended up buying from Russia—and shortly after the embargo against Rhodesia went into effect, Russia increased the ore price from $30.50 a ton to $72 a ton.

And that's the kind of economic squeeze which has been in effect since then.

The U.S. embargo on purchases from Rhodesia didn't seem to us to make sense from any standpoint. Any dispute any other country might have with Rhodesia certainly wasn't a U.S. dispute. And, economically, it surely didn't make sense to pay twice as much for the metal as had been paid before.

Senator Harry Byrd of Virginia has introduced a bill to end the embargo. To us, it seems to make sense from every standpoint. And it should win the approval of the Congress.

OKINAWA

Mr. BYRD of Virginia. Mr. President, the Senate will soon be called upon to consider a change in the Treaty of Peace with Japan. Negotiations have been going on between the two countries for quite a while. In response to an inquiry by the chairman of the Committee on Foreign Relations, the Senator from Arkansas (Mr. FULBRIGHT), the Secretary of State has informed the Committee on Foreign Relations that the change in the treaty of peace affecting Okinawa will be submitted to the Senate at a reasonably early date for consideration. In my judgment, that is the appropriate way for this matter to be handled.

The Treaty of Peace with Japan was ratified by the Senate in 1952; and any change in that treaty, I submit, must come to the Senate for approval or disapproval. Two years ago I introduced a resolution in the Senate declaring it to be the sense of the Senate that any change in the Treaty of Peace with Japan should be submitted to the Senate for approval or disapproval.

It is interesting to note that the Senate approved that resolution by a vote of 63 to 14. I am pleased that the administration—the Department of State—will follow the recommendation of the Senate resolution. I think it is the only appropriate course that can be taken. Contrary to the view of some of my colleagues, I am not surprised they took that course because I have known President Nixon for a long time and I had great confidence he would submit to the Senate any proposed changes in the treaty of peace.

I find that certain what might be called liberal publications, which in the past have been urging the Senate to assume its prerogatives, have been saying that the Senate has too frequently shirked its responsibilities, and I agree. Now, when the Senate is prepared to assume its responsibilities in respect to the treaty on Okinawa, we find the New York Times coming out and stating that the Nixon administration is making a mistake to have the treaty considered by the Senate, and that it should be done by unilateral action, by Executive action, because the New York Times feel the Senate may not do what it wants done.

One of those Members of the Senate who has been strong in his belief that the Senate should reassert its responsibilities in connection with foreign policy is the distinguished chairman of the Committee on Foreign Relations, the Senator from Arkansas (Mr. FULBRIGHT). The Senator from Arkansas has addressed a letter to the editor of the New York Times in which he takes issues with the view of the New York Times. He points out that it is the constitutional responsibility of the Senate to act on treaties and that any change in treaties from every logical sense should be submitted to the Senate before any change becomes effective.

The chairman of the Committee on Foreign Relations states in his letter to the New York Times that he strongly favors the restoration of Okinawa to Japan and:

As chairman of Senate Foreign Relations Committee, I will do all that I can to secure Senate approval of a treaty or restoration.

However, Mr. President, he is strong in his position that the only proper course, the only appropriate course, and the only logical course is to have the Senate vote on any changes which are proposed in the treaty of peace. I concur in that view expressed by the distinguished Senator from Arkansas.

I disagree with him, however on whether or not the United States should give up the unrestricted right to our bases in Okinawa, but that is beside the point. The point I am mainly concerned with today is that any change in those treaties which the Senate has already ratified not be done by unilateral action, but that it be done by the Chief Executive with the advice and consent of the Senate.

The letter to the New York Times by the Senator from Arkansas is a splendid one. It sets forth the case with clarity. Even though I am not in agreement with the last paragraph of his letter, I think it sets forth the case in excellent fashion.

Mr. President, I ask unanimous consent that the text of the letter from the chairman of the Committee on Foreign Relations, the Senator from Arkansas (Mr. FULBRIGHT), dated April 22, 1971, be printed at this point in the RECORD.

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

APRIL 22, 1971.

EDITOR,
New York Times,
New York, N.Y.

TO THE EDITOR: Having followed with interest and admiration your many editorials urging the Congress to retrieve its constitutional authority in foreign relations, I was taken aback by your editorial of April 19, urging the return of Okinawa to Japan by executive agreement on the ground that a Senate debate might make the Okinawa accords "hostage to the Southern textile lobby and other protectionist interests."

I have no knowledge of President Nixon's motive in submitting the Okinawa reversion to the Senate as a treaty. Perhaps the *Times* is correct in regarding the action as a device in a "Southern strategy" for the 1972 election.

The more important consideration is that, whatever his motive, the President acted in accord with the Constitution. Okinawa was placed under American administration by Article 3 of the Japanese peace treaty. The normal and proper means of altering a treaty is by means of another treaty. If the President were at liberty to alter treaties by executive agreement, the Senate's authority to grant or withhold its advice and consent would be reduced to a nullity; the President could simply concur in any terms desired or insisted upon by the Senate and later alter a treaty to suit himself.

The *Times* is correct in pointing out that the Bonins and other islands were restored to Japan by executive agreement. In the case of the Bonins the reversion agreement required approval by the Japanese Diet but not by the United States Senate. There have been other instances of treaty revision by executive agreement, but no number of precedents for an unconstitutional action can make such action constitutional thereafter.

The *New York Times* may well be correct in its belief that compliance with constitutional procedure in restoring Okinawa could cause serious embarrassment in our relations with

Japan. That same risk—of difficulties in foreign policy—has been invoked on numerous other occasions as an excuse for circumventing the constitutional authority of Congress—especially in matters of the war power. The question really is one of priorities. Which is more important to us: speed and efficiency in the conduct of foreign policy or the integrity of our constitutional processes?

For my own part I strongly favor the restoration of Okinawa to Japan and, as Chairman of the Senate Foreign Relations Committee, I will do all that I can to secure Senate approval of a treaty of restoration. I also share the *Time's* apprehension at the possible embarrassment to Premier Sato or the possibility of anti-American riots in Japan if the Senate should engage in a protracted debate on textile. But I am not willing to see our constitutional procedures undermined as the price of avoiding these risks. I therefore commend President Nixon on his decision to submit the Okinawa reversion agreement to the Senate for its advice and consent.

Sincerely yours,

J. W. FULBRIGHT,
Chairman.

Mr. BYRD of Virginia. Mr. President, I also ask unanimous consent that an editorial from the Chicago Tribune of today, May 3, 1971, entitled "We Need a Free Hand in Okinawa," be printed in the RECORD.

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

WE NEED A FREE HAND ON OKINAWA

Sen. Harry F. Byrd Jr. of Virginia has raised important questions concerning the proposed reversion of Okinawa and the remainder of the Ryukyu Islands to administrative control by Japan. The United States acquired these territories thru the peace treaty with Japan in 1952 and has ever since had unrestricted control over them. Okinawa is the largest American military complex in the Far Pacific and constitutes a vital base as long as the United States continues its treaty protection of Japan and other Pacific and Asiatic nations.

At a meeting in Washington with Prime Minister Sato of Japan in November, 1969, President Nixon agreed in principle to an early reversion of Okinawa, any agreement to be contingent upon "necessary legislative support." Mr. Byrd previously had submitted an amendment stating that any changes in treaties between the United States and Japan should be subject to Senate approval. The amendment was adopted, 63 to 14, and President Nixon has said that he would regard Okinawa as a treaty issue requiring two-thirds Senate approval.

This has not satisfied some newspapers and dovish elements, which contend that the President should accomplish the reversion by executive order rather than take the treaty route. Sen. Byrd has made clear his insistence that the Senate exercise its prerogatives in the area of foreign policy and in the ratification of treaties. We thoroughly agree with him. It is true that the process was breached when President Johnson returned the Bonin Islands to Japan by executive agreement, but that should not stand as a precedent.

Leftist elements in Japan have made Okinawa a focus for agitation in the hope of creating a climate that would force the Japanese government to repudiate the 1960 Mutual Security Treaty with the United States. Hardly anyone would object to a future restoration of Japanese control over the Ryukyus, but until the war in Viet Nam is liquidated and there is some cutting back in the defense commitments of the United States to Far Eastern nations it is imperative that this country retain a free hand.

Sen. Byrd states, however, that while Japan is not likely to seek removal of our Okinawa bases, it does want a veto over United States action affecting Okinawa. It wants to deny the United States authority to store nuclear weapons there and would require consultation before our military forces based there could be used.

Similar inhibitions written into the 1960 Mutual Security Treaty with Japan have already proved damaging. When North Koreans seized the intelligence ship Pueblo in 1968, Adm. Frank J. Johnson, commander of naval forces in Japan, testified that one reason help could not be sent to the ship was that approval first must be obtained from the Japanese government to use United States aircraft in Japan, those being the nearest aircraft available.

"It would be foolhardy, in my judgment," Sen. Byrd told his colleagues, "to commit the United States to defend most of the Far East and then give away this country's unrestricted right to use its military bases on Okinawa. For four long years we have fought the Viet Nam war with one hand tied behind our back [actutally six years as of this date]. As a result, the war has been prolonged and the casualties increased. Let us not be so foolish as to get into a similar position by giving someone else control over our principal military complex."

Mr. BYRD of Virginia. Mr. President, I ask unanimous consent that an editorial from the Nashville Banner of April 29, 1971, entitled "For Senate to Help Decide," dealing with the Okinawa question, be printed at this point in the RECORD.

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

FOR SENATE TO HELP DECIDE

Virginia Sen. Harry F. Byrd Jr., is right in his insistence—which he has pushed since the subject of Okinawa's possible reversion to Japan came up—that any decision on that matter is a treaty issue, requiring two-thirds Senate approval.

In further validating that view, he mentions the fact that the Nixon Administration—in communications by both the President and Secretary of State, William P. Rogers—has formally agreed to submit to that body ANY change in the Treaty of Peace with Japan.

It must not be forgotten, indeed, that the United States obtained post-war title to Okinawa as a result of that Treaty (which as such had to be ratified by the Senate) and any change in the agreement must also be submitted to that level of advice-and-consent authority.

Two important principles are involved: (1) The constitutional role of the Senate in foreign policy and in ratification of treaties; and (2) whether it is wise for the United States at this time to give up the unrestricted right to use our great military base in the Far Pacific.

Senator Byrd cites with disfavor the contrary view of some news media—including the New York Times—now urging reversion of Okinawa to Japan by Executive agreement rather than by submitting it to the Senate.

The Virginia statesman does not give tacit assent to the matter of that reversion by any line approach. He clearly believes the advisability of that to be a moot question, subject to determination by careful, competent assessment. On one point, however, he holds a conviction firmed by knowledge of the constitutional process and concern for preserving it: ANY change in a treaty—including this one—should and must be achieved by and with the consent of the Senate.

When that question was put to the Senate 18 months ago, in discussion of the policy viewpoint to be presented to Prime Minister Sato of Japan on the occasion of his 1969 visit to the United States, the body approved it 63 to 14.

Senator Byrd was right then, and he is right now.

QUORUM CALL

Mr. BYRD of 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. Without objection, it is so ordered.

THE PENDING BUSINESS

Mr. BYRD of West Virginia. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is Calendar 93, S. 421, a bill to amend title 10, United States Code, to provide special health care benefits for certain surviving dependents.

Mr. BYRD of West Virginia. I thank the distinguished presiding officer.

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 12 o'clock noon. Immediately following recognition of the two leaders under the standing order, the Chair will recognize the distinguished junior Senator from New York (Mr. BUCKLEY) for not to exceed 15 minutes, to be followed by the distinguished senior Senator from Florida (Mr. GURNEY) for not to exceed 15 minutes, upon the conclusion of which there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements limited therein to 3 minutes, at the close of which the Chair will lay before the Senate the unfinished business.

I ask unanimous consent that when the period for the transaction of routine morning business is closed tomorrow, the Chair lay before the Senate the unfinished business.

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

ADJOURNMENT

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 12 noon tomorrow.

The motion was agreed to; and at 3 o'clock and 30 minutes p.m. the Senate adjourned until tomorrow, Tuesday, May 4, 1971 at 12 o'clock noon.

NOMINATION

Executive nomination received by the Senate May 3, 1971:

U.S. CIRCUIT COURTS

James L. Oakes, of Vermont, to be a U.S. circuit judge, second circuit, vice Sterry R. Waterman, retired.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 3, 1971:

NATIONAL RAILROAD PASSENGER CORPORATION

The following-named persons to be members of the board of directors of the National Railroad Passenger Corp. for terms commencing April 29, 1971, as indicated:

For a term of 2 years:

Catherine May Bedell, of Washington.

David Walbridge Kendall, of Michigan.

John A. Volpe, Secretary of Transportation.

For a term of 3 years:

Frank S. Besson, Jr., of Virginia.

David E. Bradshaw, of Illinois.

Charles Luna, of Ohio.

For a term of 4 years:

John J. Gilhooley, of New York.

Roger Lewis, of New York.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Ethel Bent Walsh, of the District of Columbia, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1975.

OFFICE OF ECONOMIC OPPORTUNITY

Phillip Victor Sanchez, of California, to be an Assistant Director of the Office of Economic Opportunity.

DEPARTMENT OF THE INTERIOR

William T. Pecora, of New Jersey, to be Under Secretary of the Interior.

EXTENSIONS OF REMARKS

"SALUTE TO STEEL" THEME OF WEIRTONIAN BANQUET—SENATOR RANDOLPH STRESSES NEED FOR REALISTIC APPROACH TO INDUSTRIAL PROBLEMS

HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES

Monday, May 3, 1971

Mr. RANDOLPH. Mr. President, Weirton, W. Va., is a city whose economy is largely dependent on the steel industry. As the home of the Weirton Steel Division of National Steel Corp., the industrious citizens there are well aware of the importance of this industry, not only to our Nation but to a fine community such as the Northern Panhandle area.

On May 2 the Weirtonian Lodge No. 183 of the Order of Italian Sons & Daughters of America gave public recognition to this vital industry with a "Salute to Steel" at its 16th annual banquet.

I was privileged to speak at this event, attended by approximately 300 residents of Weirton and nearby places. The program was widely representative of the community.

The invocation was given by Col. Durward Brown, of the Civil Air Patrol; Mike Sinicropi served as chairman; and Trent Ciarocchi was toastmaster.

My colleague in the House of Representatives, Representative ROBERT H. MOLLOHAN, attended. Remarks were given by John Redline, president of the Weirton Steel Division, and Circuit Judges Ralph Pryor and Callie Tsapis. The benediction was by the Reverend Fr. James Altmeyer.

Among the guests was James Henry Heriot of Wheeling, W. Va., who earlier that evening was presented the Civil Air Patrol's second highest citation, the Gen. Carl Spaatz Award, in a ceremony at the lodge. He is the first West Virginian to be so honored.

Mr. President, I ask unanimous consent that my address be printed in the RECORD.

There being no objection, the address was ordered printed, as follows:

A SALUTE TO STEEL

(By Senator JENNINGS RANDOLPH)

At some time in the fifth or sixth century, before Christ, Greek warriors placed weapons in the temple of Ares, the god of war, located in the city of Mycenae.

Earlier this year, according to a news dispatch, archeologists digging in the ancient ruins uncovered two highly unusual spearheads. They were given to a metalurgist for analysis and chemical examination. He determined that the spearheads were of solid steel, rather than the case-hardened wrought iron common to that period.

Now the significance of this event is not lost among steel men today. It is the first solid evidence that the ancient Greeks were able to produce steel 2,000 years before it was first produced in Europe. It is pure academic speculation, but I'm sure that some historians will begin to argue that the fall of Troy was not so much a result of a wooden horse, but of a steel spearhead.

I recite this historic data only to illustrate that man's dependency on metals stretches farther back in time than many of us had imagined. Similarly, our "Salute to Steel" tonight emphasizes the fact that man's dependency on metals stretches far into the future.

In our complex and diversified industrial society today, there is no one basic industry. But all of us know that steel is one of the several basic industries, such as food, fuels and energy, transportation and textiles, which are essential to the kind of country we are today.

Steel represents 95 percent of the metals consumed by our economy. It is the single most useful industrial raw material in our country.

Steel's importance to our American economy cannot be overstated. In 1969, the latest complete figures show, the industry had total revenues of $19.5 billion and total assets of $23.3 billion. With more than half a million employes, it is a mature industry. Yet, in its technology and much of its fixed plant it is a young growing and changing industry. Incidentally, National Steel's employment is 30,500 and the Weirton Steel Division employs 12,500.

Steel's importance to Weirton and to the entire area is well-documented. Weirton Steel has a regular monthly payroll, in salaried and hourly employes, of $9.8 million. I am informed that during the first week of April, the company distributed $7.6 million in vacation pay and $650,000 in regular vacation bonus, as provided in the labor agreement with the Independent Steelworkers Union. This meant that in a single week, more than $14.5 million in wages alone was pumped into this area's economy.

I have said that steel is a growing and changing industry. I think this is best demonstrated by the fact that, since the end of World War II, the industry's total capital spending amounted to $30.3 billion—and more than half of that expenditure came during the decade just past.

It is likely that capital spending worldwide by the steel industry will reach $20.0 billion in this decade. This indicates not only our own continuing domestic United States modernization, but progress by overseas competitors.

We know that steel is produced in 37 states and that steel products are made in all 50 states. What is not commony realized is that the 275 American companies which make or finish steel have operations in more than 300 communities. For each of the 506,000 workers directly employed by the steel industry, there are eight other Americans employed in factories that use steel in their products. This work force accounts for one-third of all manufacturing jobs in the country.

I cite these statistics to show how pervasive, and how vitally important the continuing growth and progress of the steel industry is to all of our citizens.

To meet increasing competition around the world, the American steel industry has been virtually rebuilt since 1961. Its equipment, technology, quality of product and productivity all are greatly advanced. There is no comparable bargain in the world today—and this must not be allowed to change if steel is to continue to hold its predominant position among basic materials.

To all of us concerned with a balanced and viable industrial economy, the unparalleled rise in imports presents a problem which must be dealt with in a fair and equitable manner.

Last year, the U.S. trade deficit in steel amounted to almost one billion dollars. We imported into the United States $1 billion more in steel than we exported. Figures released last April 2 show that 1,230,000 tons of steel were imported during the month of February, the highest February total ever. In the first two months of this year, imports were 2.5 million tons, a record figure for those two months, and 71 percent more than the same two months of last year. Part of this large increase is presumably due to the inventory buildup now going on among domestic users, but the basic problem remains.

As part of the solution to the problem of rising imports, the U.S. steel industry has suggested a two-year extension of the Voluntary Limitation Program as agreed on by European and Japanese steel producers at the beginning of 1969. The agreement also would reduce the annual import growth as now allowed in the Voluntary Limitation Program.

It is most important that we all realize fully what is at stake. The American people have traditionally been among the most generous in providing aid where needed abroad. We encourage competition and reject trade barriers artificially designed to enforce unfair advantages. But we are mindful of what unlimited imports can mean to basic industries—the recent surge of shoe imports has already forced the closing of several factories in the Northeast, and more than 100,000 jobs in the southern textile industry were lost last year to imports of textile products, mostly from Japan. And our glass industries likewise suffer from serious and damaging import competition.

The problems that face your industry with