SENATE—*Wednesday, July 7, 1971*

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

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

Eternal Father, who knowest us better than we know ourselves, in our own need and our Nation's need, we pause to seek Thy wisdom and Thy grace. Speak to us the truth we need to hear; truth concerning the strength of goodness, the power of good will, the dynamism of the spirit, and the steadfastness of those who trust in Thee. Supplement our weakness by Thy strength and enlarge our wisdom by Thy grace within us.

Lead us, O Lord, beyond conventional goodness to the fullness of that love, which suffereth long and is kind—which beareth all things, believeth all things, hopeth all things, endureth all things and never fails, in that eternal kingdom over which Thou dost rule, and which by our service, those wouldst bring on earth.

In the Redeemer's name, we pray. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. ELLENDER).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., July 7, 1971.

To the Senate:

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

ALLEN J. ELLENDER,
President pro tempore.

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

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

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

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 7960) entitled "An act to authorize appropriations for activities of the National Science Foundation, and for other purposes"; asked for a conference with the Senate on the disagreeing votes of the two Houses thereon; and appointed Mr. MILLER of California, Mr. DAVIS of Georgia, Mr. CABELL, Mr. FULTON of Pennsylvania, and Mr. MOSHER managers of the conference on the part of the House.

The message also announced that the House had passed the following bills in which the concurrence of the Senate is requested:

H.R. 2127. An act for the relief of the estate of Charles Zonars, deceased;

H.R. 3475. An act for the relief of Paul Anthony Kelly;

H.R. 4667. An act for the relief of Roger Stanley, the successor partnership, Roger Stanley and Hal Irwin, doing business as the Roger Stanley Orchestra;

H.R. 5420. An act for the relief of Robert F. Franklin;

H.R. 7085. An act for the relief of Eugene M. Sims, Sr.;

H.R. 3344. An act to authorize the Administrator of Veterans' Affairs to sell at prices which he determines to be reasonable under prevailing mortgage market conditions direct loans made to veterans under chapter 37, title 38, United States Code;

H.R. 8629. An act to amend title VII of the Public Health Service Act to provide increased manpower for the health professions, and for other purposes;

H.R. 8630. An act to amend title VIII of the Public Health Service Act to provide for training increased numbers of nurses; and

H.R. 9181. An act to amend the Northwest Atlantic Fisheries Act of 1950.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred, as indicated:

H.R. 2127. An act for the relief of the estate of Charles Zonars;

H.R. 3475. An act for the relief of Paul Anthony Kelly;

H.R. 4667. An act for the relief of Roger Stanley, the successor partnership, Roger Stanley and Hal Irwin, doing business as the Roger Stanley Orchestra;

H.R. 5420. An act for the relief of Robert F. Franklin; and

H.R. 7085. An act for the relief of Eugene M. Sims, Sr.; to the Committee on the Judiciary.

H.R. 3344. An act to authorize the Administrator of Veterans' Affairs to sell at prices which he determines to be reasonable under prevailing mortgage market conditions direct loans made to veterans under chapter 37, title 38, United States Code; to the Committee on Veterans' Affairs.

H.R. 9181. An act to amend the Northwest Atlantic Fisheries Act of 1950; to the Committee on Commerce.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, July 6, 1971, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

THE UNITED STATES AND NATO; TROOP REDUCTIONS—VII

Mr. MANSFIELD. Mr. President, in the series of articles, pro and con, commentaries, editorials, news stories, and the like, having to do with the U.S. presence in Europe, which still stands at about 300,000 men and 225,000 dependents, at a cost of $14 billion a year out of our defense budget, I ask unanimous consent that series VII of such articles, et cetera, be printed in the RECORD.

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

THE JANEWAY SERVICE,
May 19, 1971.

To the very considerable extent that the Russians are able to supplement their political nuisance value with financial nuisance value—and this is so to a very considerable extent, as their gold sales have been suggesting—they are able to enjoy the best of both sides of the international gaming table. To that same extent, they like the way things are going and want the status quo kept undisturbed until the happy day (for them) comes when the forced contraction of the Eurodollar market gives them a chance to pull the plug on it. Hence their latest move aimed at insuring themselves against the risk that Washington may pull its "tourists-in-uniform" military garrison out of Europe. Brezhnev's call for a conference about troop reduction is a bare-faced strategy aimed at insuring the dollar's continued exposure to the strain resulting from keeping any troops there.

The White House operatives, meanwhile, are delighted because Moscow has moved swiftly and decisively to catch Senator Mansfield and other advocates of the U.S. troop pull-out from Europe in the well-known dunce-cap-wearing position. Why give away what the Russians are offering to make a trade in return for? The premise implicit in the question assumes that NATO stands for a bigger military plus than the dollar strain caused by the cost drain is a financial minus.

Moscow, traveling free from capitalistic stresses, is playing its hand on the realistic proposition that the longer America keeps the more troops in the most places, the weaker America will be. Moscow's fear is that Washington will respond to financial pressure by getting out from under it. Tragically, there is no chance. The Russians' offer to make a trade in return for a troop pull-out guarantees that America will keep its military hostages in the European financial trap—if only because all conferences with communists are slower-motion drags than even labor negotiations with the Steelworkers Union are.

Adding insult to injury, the Moscow line mouthing its supposed opposition to America's so-called military presence in Germany is that it objects to this assertion of American political domination over the German government. This is the sourest, saddest laugh of the year in this week in which the German government is undoing the miracle of Germany's export achievement. For, while

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Germany is reversing the expansive dynamism of the Eurodollar market, she is demonstrating her domination over America where it counts—on the financial front. What protection can a financially weakened America be trusted to give a Germany seemingly triumphant on the financial front? And especially a Germany doing pretty well in her dealings with Russia?

[From the Nation, June 21, 1971]

TROOPS, TRADE AND DIPLOMACY

(By Robert E. Hunter)

WASHINGTON.—May 1971 could go down in the history of diplomacy as one of those critical months when a series of events sets in train developments that are to affect nations for years to come. A "breakthrough" at the SALT talks, a political agreement on Britain's admission to the European community; a Soviet offer to talk about troop reductions in Europe, and a Senate vote on the withdrawal of half the U.S. troops in Europe—all these events could foretell the end of a quarter-century of political practice. The post-war era may now be over; a new era may indeed have begun.

As often happens with such great developments, the drama began in a mundane way when, once again, Senator Mansfield introduced a proposal to reduce U.S. forces stationed on the Continent. But it ended in a political triumph for President Nixon on several fronts; in a potential reshaping of Western Europe politics; and in signs of possible major progress in East-West relations. Most important of all, the developments of May are closely related, and potentially reinforce one another.

It is tempting to dwell on President Nixon's announcement about developments at the SALT talks in Vienna but the changes now possible in Europe are equally important. Under way is a major redefinition of Atlantic politics, and the relating of these politics to East-West understanding. None of this should be surprising; the trend of events had been clear for some time, if only a number of dilemmas could be resolved.

The first dilemma resided in a conflict between U.S. and European views of *détente* with the Russians and their Warsaw Pact allies. Our allies have long held vague suspicions that we might conclude some agreement on strategic arms with the Soviet Union without at the same time trying to obtain something of interest to West Europeans. In simplest terms, this "something of interest" means a shift away from the infamous Brezhnev doctrine, under which the Russians have attempted to justify in advance a decisive role in East European countries—leading, if necessary, to attacks like that on Czechoslovakia in 1968. At the very least, the Russians have insisted, West European efforts to improve relations with East European countries must be closely controlled by Moscow, if not actually directed through the Soviet capital. For our allies, therefore, critical questions had to be answered. Would the United States reach agreement with the Russians at SALT without trying to change Soviet behavior in East Europe? Or would we insist that any progress must benefit our allies as much as ourselves?

Until recently, Washington had refused to face the implications of these questions. For one thing, the Administration permitted rumors to circulate that it did not trust the efforts being made by the West German Government to improve relations with the East. By giving voice to those misgivings, the U.S. Government only increased the tensions already existing between our direct dealings with the Soviet Union and our allies' view of them.

For another thing, Washington continued to oppose the convening of a European Security Conference, as proposed by the Warsaw Pact powers and favored by a few of the minor NATO nations. The State Department saw it as premature; as a potential vehicle for a Soviet "propaganda victory"; and as a threat to NATO's political cohesion, without promise of offsetting benefit. But here, too, we failed to understand the concern of our allies that some advance be made in a strictly European *détente* with the East, as the price of our reaching agreement at SALT. Perhaps a security conference would have been ill-advised, but we had nothing to put in its place.

The Mansfield amendment threatened to make matters worse. It called into question our willingness to keep on the Continent enough troops to indicate our support of West European objectives. It also raised doubts as to whether we are really at all concerned about the future of Europe. Coming hard upon the dollar crisis, the amendment reinforced the fears of those Europeans who already believe that the experience of Vietnam will lead us to cut down on our commitments in other parts of the world.

But while Europeans have been concerned with these broad questions of our political intentions, the U.S. Government has tended instead to concentrate on the strategic and military implications of troop reductions in Europe. The Administration has also seen possible reductions, not in terms of our allies' concerns but as a means to gain some corresponding reduction in Soviet troop strength there. In order to preserve another "bargaining chip," it therefore refused to broach the subject of U.S. troop reductions on its own, and thus paved the way for the psychological damage caused in Europe by the Mansfield amendment.

Yet neither the strategic nor the bargaining concern is all that important. In the first place, no European any longer believes that there will be a war on the Continent. Few even believe the Soviets would resort to political blackmail if the current balance of forces were not maintained. In the second place, it is likely that force reductions in the West would in any event be followed eventually by reductions in the East, because the Russians also feel the pressure of rising troop costs. Of course, the Soviet Union may still think it must retain forces in the Eastern bloc countries in order to impose some discipline over internal developments; in which case the Russians will make no reductions, whatever happens in the West. But for West Europe, the key issue is still not the relative number of U.S. troops that remain on the Continent. Rather, it is whether the United States will continue to demonstrate its commitment to Europe—a commitment that is psychological not military. If Europeans continue to believe in it, the number of U.S. troops deployed to back it up becomes a far less important issue. If they do not believe in it, today's current force levels will not suffice.

The same kind of reasoning can be applied to the interests of the Soviet Union in Western Europe. It may want to increase its influence, and reduce the NATO nations to the semi-dependent status of Finland. But gaining this objective will not depend primarily upon the state of the military balance on the Continent; it will be attained or not more according to the degree of common interest and sense of involvement that remains between West Europe and the United States.

As a result, the key U.S. interest will be to preserve and convey a sense of commitment to the Continent's future, however many troops we supply to NATO. This means that the *way* in which force reductions take place, not the absolute number that remains, will be the important factor. If the process is orderly, with the allies fully involved, there would be few political problems. But if the withdrawal is haphazard, the Soviet Union would be given all sorts of opportunities. At the same time, our European allies could well panic in the face of what seemed to be an American retreat from their area. They would probably proceed with the idea of a European defense force and, more particularly the idea of a European nuclear deterrent. Inevitably this would raise the question of West Germany's contribution to such a deterrent. Then, as Germany's neighbors revived old memories, we should have a first-class crisis on our hands. It would make no difference that this crisis would come about over a military capability that few Europeans think is necessary for defense or deterrence; the problems would arise nonetheless, if only because of the hold that traditional attitudes about military forces and security still have on people's minds.

That is the sequence of events that the Mansfield amendment promised to trigger. It may yet do so later in this session of Congress, if the Administration does not now take urgent steps to seek some U.S. force reductions in an orderly process of negotiations with our European allies. The Administration was warned many months ago that it could no longer expect to maintain 310,000 men on the Continent without challenge from Congress. Unfortunately, it chose to insist upon this "magic number" as the principal symbol of our commitment, instead of working for a much lower number that would serve just as well.

Happily for Mr. Nixon, the Russians came to his rescue. This was not the first time that Moscow had mistimed or misjudged its actions in ways that worked to its detriment. Usually, the West has benefited from Soviet threats at the very moment when some spur to alliance was required. This time, however, a Soviet proposal for direct negotiations to reduce forces in Europe gave the President the argument he needed to turn back the Mansfield amendment.

Of course, it is not certain that the Russians themselves would rejoice if the United States reduced its forces in a haphazard fashion, or even left the Continent entirely—as Moscow has long publicly advocated. Along with their Warsaw Pact allies, they, too, must be concerned about Germany, and particularly about the prospect that the *Bundeswehr* will become the only sizable military force in West Europe. West German participation in any kind of nuclear force would, to say the least, disconcert those countries that suffered German occupation during the last war.

These problems could be resolved in a series of negotiations about the reduction of forces on the Continent. Indeed, the actual substance of such talks would be less important than the fact that they had taken place. There are obvious difficulties in equating Soviet and American forces, especially since the former have only to withdraw a few hundred miles, while the latter must cross an ocean. But such considerations pale beside the political value of initiating this process of change—one in which, everyone agrees, the object is to retain a state of European security, but at less cost.

The United States was quick to indicate its acceptance of the Soviet proposal, even though it had ignored a similar suggestion made a few weeks earlier when there was no Mansfield amendment to defeat. The Administration took a further step, urging acceptance of the idea that talks about forces precede a satisfactory agreement on the status of Berlin. That is a significant development. Until recently, the allies had insisted that agreement among the four powers on Berlin precede virtually any further progress in a general European *détente*. This meant no European Security Conference; it also meant that the treaties which Bonn had negotiated with Moscow and Warsaw could not be ratified.

At the time, there was merit in this view,

since the West German Government had to assure its own population that *detente* with Moscow was not being purchased at the price of West Berlin. In the process, however, the Soviet Union was being given a veto over *Ostpolitik*. That did not seem to matter, since Russia did not then seem to be prepared to move on any other major aspect either of *Ostpolitik* or of *detente* in general. But this position also gave a veto to East Germany, which has staunchly opposed *Ostpolitik* on the ground that it is a West German attempt to isolate the regime in Pankow. In fact, there is some evidence that the interruption of traffic between West Germany and West Berlin earlier this year was the doing of the East Germans, not of the Russians.

Unfortunately, by putting a Berlin agreement ahead of most other steps in European *detente*, and not just ahead of the moves by West Germany, the Western allies were making a tacit admission of failure. The Berlin issue, after all, is of such complexity and symbolic importance for all concerned, that it is likely to be settled finally as a fairly late date in *detente*, despite recent evidence of Soviet flexibility. To make Berlin the test case of Soviet intentions, therefore, was putting too much weight on the wrong issue, at the price of a more gradual, step-by-step approach to *detente*. When the Soviet Union proposed talks on troop reductions, however, the United States and its allies were faced with a dilemma: how could they continue to permit the single issue of Berlin to dominate Western actions? Even the West German Government, despite its initial insistence on the primacy of a Berlin agreement, later acquiesced in talks to reduce forces across the board in Europe.

At the ministerial meeting of the North Atlantic Council on June 3 and 4, the allies adopted a compromise formula: there should be a series of bilateral talks between East and West to clarify the Soviet proposal. This fall the council will then decide what to do in responding officially to Chairman Brezhnev.

This decision proposed by the United States, is a gamble. It is based once again on a desire to see progress made on Berlin, in order to justify the needs of Herr Brandt's coalition government. It is true that the NATO ministers did not formally link the talks on force reductions to progress on Berlin, but they still assumed that the West German interest will be satisfied before the wider issue of troop levels is joined.

The gamble could fail. Once again, it gives the Russians a veto on *détente*, by making the erroneous judgment that a Berlin settlement should be a prerequisite of *détente*, rather than a later product of it. This problem is complicated by the possibility that Senator Mansfield will reintroduce his amendment on U.S. force reductions. This time, the Senator is less likely to go along with the Administration if NATO appears to be dragging its feet on the Soviet proposal.

Thus the stage is still set for crisis in the alliance. If the Russians do not move far enough on Berlin during the next few months, there will likely appear a growing divergence between the West German interest in Berlin and the desires of the rest of the alliance to accept the Soviet offer on force negotiations. And there will be more pressures in the United States to bring some troops home, with the attendant worries in Europe about our commitment. By temporizing on the issue of troop reduction talks, therefore, the NATO ministers have bought some time to work on Berlin; but in the process they have given hostage to Soviet and East German good intentions.

The Russian proposal for talks on forces in Europe may be a vehicle for getting at still another difficult problem of *détente*. Again, this relates to the SALT talks, and the need the United States has to secure its allies' interests in *détente* at the same time. Until President Nixon and Chairman Brezhnev apparently intervened in the strategic arms negotiations, the talks were stalled, partly over the status of American aircraft and missiles stationed with NATO and with the Sixth Fleet in the Mediterranean. Were these strategic weapons to be included in any count of U.S. offensive missiles? The Russians thought so, but we faced a problem. If we admitted these weapons to the bilateral negotiations, we would be implicitly making fundamental decisions of NATO strategy without the participation of the West Europeans. As a result, we refused to discuss these so-called "forward based systems" at SALT. Of course, we could have initiated a process of negotiations with our allies on these systems, but, as with the question of our troop levels, the Administration decided not to risk losing control of the diplomatic process.

This problem would be a natural one to come up at a European conference on troop levels, along with a parallel West European concern: the few hundred remaining Soviet medium-range missiles that could reach the Western half of the Continent but not the United States. Indeed, Mr. Brezhnev included "armaments" in his proposal for European talks. So far, the Western allies have not decided what to do about this proposal insofar as it would relate to these nuclear weapons.

The issue must be faced some day. It may be that the Russians have set aside the question of forward based systems in order to get a first-step agreement at SALT, but without question they will return to it. When they do, the talks on European troop reductions that may then be under way could provide the ideal occasion for discussing these knotty political matters in a forum that would include all the Western allies, not just the United States.

These are some of the diplomatic changes and developments that have been taking place recently in Europe. They have profound implications for SALT, in that they reduce the problems for the United States of concluding on a bilateral basis an agreement that would have implications for West European interests in *détente*. Indeed, now that Mr. Brezhnev has re-emphasized his doctrine at the Czechoslovak Party Congress, fears will grow in West Europe that the Russians are making concessions to the United States on arms problems—and possibly on Berlin—in order to gain a free hand in East Europe. That gives an even stronger reason for us to support the interests of our allies, as well as our own and those of West Germany.

These diplomatic changes have also come at a propitious moment from the standpoint of Britain's projected entry into the European community. France has already extracted from Britain a general indication that the latter will move closer to Europe, and in effect abandon its postwar ambitions to have a "three-circles" foreign policy: Europe, the Atlantic and the Commonwealth. Still unresolved, however, is the possibility that some form of defense community will emerge on the Continent, with a pooled Anglo-French nuclear deterrent as its linchpin. Whether this materializes depends at least in part on what role the United States is prepared to play in the future of the Continent. It also depends on the need that various European countries feel to augment their economic and political relations with military force, the traditional coin of power.

Recent developments are important, in this context. In the first place, a possible reduction of both NATO and the Warsaw Pact forces (the so-called Mutual and Balanced Force Reductions) could increase chances that the United States will maintain on the Continent those forces needed to indicate our continuing interest in Europe's stability. It could also set in train a procedure for U.S. troop reductions less likely to be disruptive of Atlantic diplomacy than one in which a succession of Mansfield amendments is met by an adamant Administration, in a clash between Senate and President. In the second place, some progress on force reductions, plus a limited agreement at SALT, could reduce the emphasis which some West Europeans place on having their own defense community. They will be inhibited from taking new initiatives by the very fact that a process of force reductions is taking place.

But most important, this whole set of diplomatic developments in the realm of weapons and forces supports some changes that have been taking place in any event. Agreements in this area would bring the hope that the importance of military forces in estimating inherent power on the Continent will be reduced. And the nature of the Atlantic relationship itself is changing. It has become increasingly clear in the past year that relations between the United States and West Europe are becoming less concerned with military matters, of any kind, and more concerned with questions of economics and trade. Indeed, these actually are *security* questions, in the sense that America's commitment to Europe's future is the important thing, not the way to which it is expressed. If there were going to be a threat of war, or even of Soviet blackmail, that would be untrue. But with care, such threats should not materialize.

In fact, the most significant step taken by the United States to reassure our allies about our future intentions did not come with the defeat of the Mansfield amendment, nor with the President's reaffirmation of the magic number of U.S. troop levels in Europe. It came, rather, in the defeat of the Trade Bill of 1970, which might have set off an Atlantic trade war that could have substantially undermined the psychological value of a full garrison of U.S. forces on the Continent. Unfortunately, the Administration did not really appreciate the dimensions of this problem, nor its potential impact. Therefore, we have not yet given adequate attention to preventing a trade war in the future; to obtaining Atlantic understanding on the role of the dollar in Europe; to, working for a harmony of business and trading practices; or to deciding how the multinational corporation will be controlled. We have not faced the possibilities of a Continent-wide economic Gaullism that could conflict in a serious way with Atlantic attempts to eliminate strains in matters of security, and particularly strains arising from different objectives of *détente*.

It is not difficult to see why we have yet to grapple with these impending developments in the Atlantic relationship. For one thing, we are still dependent upon a set of institutions that served us well for twenty years by providing a multilateral forum for discussing common problems. These institutions are primarily military, and center around NATO. In the future, however, we shall not be able to afford the luxury of concentrating on the role of NATO in alliance politics, when relations among the allies depend increasingly upon what is done in economics and trade. The Organization for Economic Cooperation and Development (OECD) is a far better forum, and better reflects the fact that "Atlantic" relations also depend in part on the role played by nations in other quarters of the world, notably Japan. The OECD is not much of an organization at present; it will need to be made much more important, especially if present ventures in *détente* diplomacy reduce even further both the real and psychological importance of military forces and strategy on the Continent.

Finally, we still do not have a clear grasp of the changing nature of international politics. It is true that military force will not entirely disappear as a means of ordering relations among states, but its significance in the part of the world stretching from the United States across Europe to Russia is diminishing. That is particularly true as the

superpowers reach understandings about the limits of each other's activities in major parts of the world, and as Europe experiences a phenomenal economic resurgence. In effect, we are entering a period, not unlike that after 1815, when a concert of interests, albeit loosely constructed, will reduce the opportunities for military power. Economic power and economic relations will become increasingly important in determining the relative strength of nations and of groups of nations.

In that period, the United States should fare well, but we can no longer expect to play the dominant role in our direct dealings with our European allies. It may be that the economic interests of the United States will not stand in fundamental conflict with a Europe soon to include Britain, but it is evident that the basis of our overall diplomatic relations across the Atlantic will be dominated by these economic and trade questions, and not by those that occupy us in the military diplomacy of the moment. These developments may also play an increasing, if not dominant, role in U.S.-Soviet relations. The real significance of May 1971 may prove to be that in that month Europe, America and the USSR took the first major steps toward liquidating practices that stood in the way of new diplomacy for a world that is increasingly interdependent. If that is the fact, May 1971 will prove to have been a month well spent.

[From the Baltimore Sun, June 30, 1971]

U.S., BONN CONTINUE TROOPS-PACT TALKS

(By Joseph R. L. Sterne)

BONN, June 29.—United States and West German negotiators failed to reach agreement tonight on a new financial package to offset the balance of payments costs of keeping almost 200,000 American servicemen in this country.

But, for the first time in weeks, Bonn sources stopped talking about a "billion-mark gap" between the two sides.

A short communique issued after the two-day session—the third so far this year—said the bargaining had been conducted in a "friendly" atmosphere and would be resumed shortly in Washington.

CURRENT CONTRACT

The current, two-year contract amounting to $1.52 billion, expires tomorrow but neither government was concerned about going past the deadline.

At stake is how much West Germany will spend in arms purchases, direct cash payments and low-interest or no-interest loans to offset balance of payments losses Washington now pegs at $1.2 billion annually.

The United States, insisting that Bonn should continue to offset 80 per cent of these rising military costs, has been demanding a two-year package amounting to almost $2 billion.

A powerful source of leverage for the American negotiators has been the likelihood that Senator Mike Mansfield (D., Mont.) might renew his campaign for unilateral U.S. troop withdrawals from the NATO command if West Germany proves tight-fisted.

ORIGINAL PROPOSAL

The West German government, after originally proposing a sharp cut in the size of the offset agreement, went into the third round of negotiations seeking to hold its total contributions to approximately the same level as in the past two years.

Despite perennial fears about U.S. troop reductions, Chancellor Willy Brandt's Government insisted that domestic budget pressures would not permit an increase.

Just yesterday, the federal economics minister, Karl Schiller, infuriated the financial chiefs of the various West German state governments by demanding spending cutbacks to help check sharp inflationary trends.

With the transportation, defense, and health and education ministries crying for public funds that are nonexistent because of the Chancellor's refusal to raise taxes, any proposal to enlarge the offset agreement is likely to arouse controversy in the Bundestag.

WHO GAVE GROUND?

Just which side gave ground and in what manner to narrow the "billion-mark gap" this week was not disclosed.

But it was predictable that both governments would want to take the sharp edge off any concessions by coating them with the financial complexities involved in offset arrangements.

While it has generally been agreed that West Germany will purchase about $400 million a year in American arms—including a new order for F–4–E. Phantom reconnaissance aircraft—the Defense Ministry would like to pay for this hardware by reducing American debts to the Bonn government.

This is an idea unpalatable to the Americans because it would not help the current U.S. balance of payments deficit, though it would reduce indebtedness from loans included in past offset accords.

NEW FEATURES

New features of the 1971–1973 agreement may include direct German cash payments of between $80 million and $100 million to the United States, plus $200 million to $300 million in no-interest or very low interest loans.

The West German government has insisted that direct budgetary support should be given much great weight than loans (on which it will be paid back) and arms contracts (for which it receives equipment).

But the United States has been reluctant to accept any cutback in the overall size of the agreement that would curtail balance of payments relief and strengthen Senate arguments that West Europeans are not carrying their fair share of the NATO burden.

[From the Los Angeles Times, June 30, 1971]

U.S. TROOPS ARE NEEDED IN EUROPE—BUT NOT AS MANY AS ARE THERE NOW

(By Robert S. Elegant)

MUNICH.—The argument is plausible: "If, after 5, 10, or 15 years of American help, 18 million backward South Vietnamese cannot defend themselves, they'll never be able to do so. Let's get out!"

The argument is also specious. It ignores the varying magnitudes, conditions and purposes of American assistance at different times, as well as the changing threat, and American national interests.

I shall, hypothetically at first, put forward an analogous argument, at least as plausible—and less specious: "If, after 25 years of American assistance, 325 million advanced Europeans cannot unite to defend themselves, they will never be able to do so. Let's get out before we go broke providing the basis of their defense—and subsidizing competition which hurts us badly!"

Champions of the present American commitment to the North Atlantic Treaty Organization consistently contend its effective military power would vanish if a significant proportion of some 300,000 American troops were withdrawn. It is, therefore, reasonable and fair to meet them on their own ground.

Although the argument is as persuasive—if as emotional—as that regarding Vietnam, I would not advocate total withdrawal of American forces from Europe. Although Europeans are much better situated to defend themselves than Vietnamese and attack is unlikely, Europe is also much more important to us. I would, however, suggest major modifications of the U.S. commitment—including substantial cutbacks in our troop strength.

The chief purpose of the American military presence in Europe is its psychological effect on our friends and our enemies.

No responsible military man believes 4⅓ American divisions could halt a Soviet thrust into Western Europe. But American units serve as a nucleus around which European units coalesce. They also enhance stability and give Europeans confidence in their security by discouraging subversion and showing that an attack on Europe would be an attack against American forces.

Although American troops are the most effective fighting units of a force which is not particularly effective, their chief function is political. They are the "hostage army," which concretely proves the American commitment to both Western Europeans and Moscow. Because of their presence, major attacks against Western Europe would, almost assuredly, force an American nuclear response.

The same effects could be attained by a greatly reduced, streamlined American military presence in Western Europe. Moreover, a smaller American force, costing substantially less, might—just possibly—stimulate greater European participation in its own defense. The often reviled Americans have too long carried a great psychological and financial burden to help Europeans recognize their own self-interest.

Hard facts on present dispositions suggest the most advantages—and least damaging—way to cut back. The American ground combat force is 4⅓ divisions—65,000 men at wartime strength. Those divisions are not at full strength; the remaining Americans are support troops.

The Sixth Fleet in the Mediterranean maintains a "shore party" of only a few thousand. Its permanent complement is just three ships. Other units, rotate every six months from the United States and are supplied from the United States. Except for a few nuclear submarines, the U.S. Atlantic fleet is also based on the East Coast. The Air Force, similarly, maintains few combat air bases and rotates combat units.

Ground forces are, therefore, the kernel of the matter. More than 200,000 troops support a striking force of no more than 60,000—and maintain "ready" facilities for the reinforcements which would, presumably, be flown to Europe to meet attack. There would be little time. NATO could hold for two weeks at most.

The same psychological and military effects now sustained by nearly 300,000 men could be attained by 100,000 American troops. That figure, some professionals feel, is generous—even lavish. They advocate no more than 70,000.

The combat force would not be diminished. But support units would be cut severely, since, by and large, they perform no immediate, essential functions.

The cutback should be accompanied by other measures that would reduce both costs and the irritations arising from the presence of many foreign troops and their dependents.

Except for senior officers and specialists, who would serve longer tours, duty in Europe could be reduced to 13 months. Short-tour soldiers would not bring their families. A vast support apparatus could be sharply trimmed: schools, post exchanges, department stores, commissaries, "community activities," and medical facilities—as well as the major regular air-lift and extensive recreational facilities.

Still the combat force would remain. Ready facilities for reinforcements would be maintained, but the reinforcements would bring their own direct support units. Support units would be brought in to any crisis protracted enough for reinforcement.

Some senior officers would agree, though many would automatically object to troop reduction. Nevertheless, the program is worth consideration by a cost-conscious America which now realizes its large troop commitment bestows neither particular advantage nor significant influence in Europe.

[From the CONGRESSIONAL RECORD, June 30, 1971]

THE COST OF U.S. FORCES IN EUROPE

Mr. PERCY. Mr. President, once a week, I try to comment on the negotiations we are carrying on with the West German Government and our balance-of-payments problems caused by our NATO troop costs in Europe.

My main concern today, Mr. President, is that no offset arrangement has been agreed upon by the United States and Germany for the next 2 years. Nathaniel Samuels, Under Secretary of State for Economic Affairs, is in Germany today for the third round of the offset negotiations and we certainly wish him Godspeed in attempting to get an equitable and fair offset arrangement for the United States.

But Mr. President, I was most disturbed to learn in last week's testimony by Mr. Samuels before the Joint Economic Committee that we may once again be thinking of accepting loans for part of the offset payments.

Loans are not a true offset, with or without interest. They merely postpone the agony a little longer. Loans are like applying a bandage to the outside of the stomach in the hope that it will cure the bleeding ulcer inside.

Germany must absorb more of the share of the costs of NATO. The Federal Republic has a lower level of inflation than we do, has only 1.3 percent unemployment, has a healthy surplus in her trade account and has a balanced Federal budget. She is capable of doing much more than she is doing.

I urged Mr. Samuels in the hearings last week to take a firm stance with the Germans in the offset negotiations and assured him that he would be backed up by Congress. An inequitable agreement will only rekindle demands for troop reductions in Europe. The best way to avoid further calls for U.S. troop cutbacks in Europe is to have our costs offset by West Germany and our other European allies.

I am pleased that this morning I had the opportunity to question Dr. Arthur Burns, Chairman of the Federal Reserve System, as to whether or not he feels that loans to cover our balance-of-payments deficit would be in any measure a satisfactory solution for this problem. I was pleased to have his prompt denial that loans would be satisfactory.

Mr. President, over the past 2 weeks the Joint Economic Committee has held most interesting hearings in the Foreign Economic Policy Subcommittee and in the International Exchange and Balance of Payments Subcommittee on the questions of the U.S. balance of payments and international monetary policy.

Some of the most interesting statements and comments have been in reference to U.S. military expenditures overseas and their effect on the U.S. balance of payments.

Witnesses, both from the administration and from private life, have discussed the burden the United States faces overseas in maintaining and paying for our military commitments.

On June 24, the Under Secretary of the Treasury, Paul Volcker, said:

"Meanwhile, a generation after the Second World War, our far-flung security interests continue to place a heavy burden upon the Nation, absorbing some 8% of our gross national product. That is far more than the proportionate cost to our allies. Nearly $5 billion of our expenditures are abroad, about $3 billion more than offsetting receipts."

Don R. Brazier Principal Deputy Assistant Secretary of Defense—Comptroller—outlined clearly and succinctly the costs to the United States of our NATO commitment. His statement before the Joint Economic Committee also pointed out the impact of military expenditures on the overall U.S. balance of payments. Col. Edward L. King—U.S. Army (retired)—talked about the costs to the United States of our NATO commitment and what he saw as less than optimum deployment of our troops in Europe. Mr. President, I ask unanimous consent that extracts from the testimony of Mr. Brazier and Colonel King be printed in the RECORD at this point.

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

STATEMENT OF PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE (COMPTROLLER) DON R. BRAZIER BEFORE THE SUBCOMMITTEE ON INTERNATIONAL EXCHANGE AND PAYMENTS OF THE JOINT ECONOMIC COMMITTEE JUNE 21, 1971

INTRODUCTION

We fully recognize that expenditures by the Department of Defense represent a substantial portion of Government expenditures abroad. Therefore, we believe we have a responsibility to minimize, to the maximum extent feasible, the impact of our overseas activities on the United States' balance of payments.

The mission of the Department of Defense is to provide for the security of the United States. Therefore, balance of payments considerations cannot be controlling, or indeed, examined independent of requirements stemming from our national security objectives, including our security commitments with other nations. Given the overriding importance of our security objectives and the obligations we have to our personnel, the Department of Defense has emphasized that *first*, essential combat capability must be maintained and *second*, expenditure reductions must be achieved without creating undue hardships for U.S. military and civilian personnel and their families. Our measures affecting personnel must also be equitable in relation to personnel in other agencies of the government.

RECORD TO DATE

During the period FY 1961 to 1965, we reduced the net adverse balance on the defense account by almost half, from $2.8 billion in FY 1961 to $1.5 billion in FY 1965, even though expenditures started to increase in FY 1965 due to Southeast Asia. As shown in Table I, this reduction was achieved by (1) a fourfold increase in our receipts, which stem primarily from sales of U.S. military goods and services to foreign countries, (2) a reduction in uranium purchases abroad for defense purposes and (3) a successful effort to hold down overseas expenditures in the face of increases in foreign prices and wages and in the pay of U.S. Defense Department personnel. In countries where we had large numbers of foreign nationals, wage increases were particularly significant. For example, based on an index of wage levels published by the International Monetary Fund, from CY 1961 through CY 1964, the wage index in France rose 27%, in Germany by 30%, and in Japan by 34%. There also were price increases in the cost of supplies and services we procure overseas. Similarly, for U.S. personnel from FY 1961–1964, military basic pay increased by about 11% and classified civilian salaries increased by about 8%.

Beginning in mid-1965, our expenditures, as shown in Table II, have increased, due primarily to the conflict in Southeast Asia. Although it is difficult to make a clear-cut distinction between expenditures relating to Southeast Asia support and expenditure increases for other reasons including wage and price increases, it is estimated that in FY 1970 roughly $1.5 billion of our total direct balance of payments expenditures of about $5 billion were associated with Vietnam. This compares to incremental budget costs of $17.4 billion. Incremental budget costs cover all the costs for all forces other than our peacetime force levels plus the extra costs above the normal peacetime operating level of peacetime force units supporting operations in Southeast Asia.

It is important to note, however, that there also have been significant price and wage increases affecting the costs of our activities overseas. From CY 1964 through CY 1970, for example, based on data published by the International Monetary Fund, the wage index has risen by 57% in Germany, 98% in Japan, 39% in the UK, and 234% in Korea. Wholesale and consumer prices have also increased abroad and are reflected in the increased costs of procurement. In addition, U.S. military basic pay raises from FY 1964–FY 1970 were 59% and U.S. classified civilian pay raises were approximately 40%. Finally, it has been estimated that the revaluation of the German mark in the fall of 1969 has increased our expenditures at an annual rate of roughly $95 million.

DEPARTMENT OF DEFENSE EFFORTS TO MINIMIZE THE BALANCE OF PAYMENTS IMPACT OF ITS ACTIVITIES OVERSEAS

In our last appearance before this Subcommittee, we covered in some detail the actions we had taken which served to minimize our foreign exchange expenditures. The basic framework of our balance of payments effort remains as we then discussed it with you. Therefore, rather than restate the details of our individual programs as they have been carried out, I will, at this time, summarize and highlight the more significant areas of our effort.

As you can see by looking at Table I, a significant portion of our expenditures are made by our military and civilian personnel and their dependents. Department of Defense efforts to minimize foreign exchange expenditures by our personnel have focused on (1) reviews of requirements for U.S. military and civilian personnel overseas, (2) actions to reduce personal spending on the economy and (3) actions to hold down balance of payment expenditures related to non-appropriated fund activities.

With respect to our personnel stationed overseas, our efforts have been directed at encouraging participation in voluntary programs designed to channel available disposable income back to the U.S. Actions undertaken in the past which have served this purpose have included internal information programs, emphasis on use of U.S. controlled recreation facilities, a more attractive savings plan, easing of regulations to permit larger allotments and, for military personnel stationed in South Vietnam, a rest and recuperation program in Hawaii.

For non-appropriated fund activities, our policy is to promote the sale of U.S. items. Military exchanges and other non-appropriated fund activities in foreign countries have been directed to take whatever steps are feasible, within the limits of sound business practice, to stock merchandise of U.S. origin to the greatest practicable extent.

As to requirements for U.S. military and civilian personnel overseas, I believe it would be fair to say that this question has received more attention in the last two to three years than in any comparable time period in recent years. Much of this attention has been devoted to U.S. strength in Asia, particularly South Vietnam. But, there also has been much attention, Executive and Congressional, on the question of U.S. strength levels in Europe.

Summary data on military strength are shown in the following table:

DOD ACTIVE DUTY MILITARY PERSONNEL BY LOCATION

[In thousands]

	All foreign countries and areas			United States and related total	United States and foreign total
	Shore based	Afloat	Total		
June 30, 1968	1,083	117	1,200	2,347	3,547
June 30, 1969	1,061	94	1,155	2,304	3,459
June 30, 1970	913	120	1,033	2,033	3,066
Mar. 31, 1971	785	82	867	1,935	2,802

Thus, between June 30, 1968 and June 30, 1970, in foreign countries and areas there was an overall reduction in U.S. military strength of 167,000 or about 14%. By March 1971, the reduction from the June 30, 1968 level was 333,000, or about 28%. Most of this reduction, of course, has come about since June 30, 1969.

As may be seen in Table I, the reduction in strength between June 30, 1968 and June 30, 1970 had served merely to retard the overall growth in our personal spending overseas. Personal spending grew from $1.5 billion in FY 1968 to close to $1.9 billion in FY 1970. We do not expect any reduction in these foreign exchange spending levels in FY 1971, even with the additional 14% reduction in strength which has been made through March 31 of this year. Wage and price increases will offset any reduction related to strength.

The Department of Defense also has made substantial efforts to hold down employment of foreign nationals to minimum essential levels. We had made some progress in stemming the overall growth in our foreign national costs by the mid-1960's in spite of substantial wage increases. The major influence on our foreign national employment levels since that time has been the requirement to support operations in Southeast Asia.

While foreign national costs have continued to rise overall, we have, however, made some progress during the past two years in reducing requirements for foreign national employment. Most of this reduction is related to the reduced operating requirements in Southeast Asia although, as shown in the table below, foreign national employment in Europe also has been reduced.

DEPARTMENT OF DEFENSE FOREIGN NATIONAL EMPLOYMENT

[In thousands]

	Europe	All other	Total
June 30, 1968	82	176	258
June 30, 1969	77	184	261
June 30, 1970	71	152	223
Mar. 31, 1971	71	133	204

In comparing these data with Table I, it is important to note that while total foreign national employment dropped by about 35,000 or about 14% between end FY 1968 and end FY 1970, our foreign national costs increased by $107 million, or about 19%.

These increases in our direct payroll related expenditures, that is, personal spending by U.S. personnel and foreign national costs are of major significance. Between FY 1968 and FY 1970, in spite of the personnel reductions I have discussed above, our direct personnel expenditures in these two categories increased by approximately $450 million. Total DoD expenditures entering the balance of payments increase during this same period by about $450 million. Therefore, the entire increase is, in effect, in these two accounts. Assuming expenditure patterns remained relatively constant during the period, these increases in turn may be attributed to the increased disposable income overseas provided primarily through pay raises, and the general impact of inflation. This would also reflect pay increases for our foreign national employees. In FY 1970, expenditures in these two categories accounted for more than 51% of our total expenditures entering the balance of payments and is expected to increase in FY 1971.

As shown in Table I, the remaining portion of DoD expenditures, totaling approximately $2.4 billion in FY 1970, generally is associated with procurement, construction and operating costs. These costs are for major equipment, construction, materials and supplies, including petroleum oil and lubricants (POL) and services such as transportation, utilities, etc. In addition, there is some minor amount of offshore procurement under the Military Assistance Program.

Department of Defense policies for a number of years have emphasized the use of U.S. materials and supplies in support of U.S. defense activities overseas. By mid-1963 we were in general applying a 50% differential in favor of U.S. products or services for our materials, supplies and services requirements, including overseas construction. These guidelines remain in effect today.

The use of such a guideline of course reinforces the basic determination which must be made in all cases that the item or service is indeed required for support of our activities overseas. In the case of construction, for example, the guidelines point to the elimination or deferral of all construction not essential to military needs, and to an effort to reduce the foreign exchange cost of essential construction.

In the case of offshore procurement for the Military Assistance Program, the Assistant Secretary of Defense (International Security Affairs) must certify in accordance with the Foreign Assistance Act of 1961, as amended, that failure to procure outside the U.S. would seriously impede the attainment of Military Assistance Program objectives. This requirement is in addition to the use of the 50% guideline.

As shown on Table I, our expenditures for materials and supplies in FY 1970 were $755 million; but about two-thirds of this total was for Petroleum, Oil and Lubricants (POL). Therefore, only a little more than 10% of our $2.4 billion in procurement, construction and operating related expenses overseas in fiscal year 1970 were for other items categorized as materials and supplies.

During the last several years, we have continued our efforts to consolidate activities and take other measures to hold at minimum required levels the numbers and functions of our overseas bases and facilities and to operate these facilities at a minimum cost. Since January 1969, there have been 245 actions taken in 17 foreign countries to reduce or consolidate activities. These actions do not consider reductions in South Vietnam and Thailand. On completion, more than 50,000 military personnel positions and over 30,000 civilian personnel positions will be reduced.

U.S. FORCES IN NATO EUROPE

There has been considerable discussion recently concerning our forces in Europe and the costs of maintaining these forces. I would like to summarize the difference bases which have been regularly used for expressing these costs to assure there is a clear understanding of each estimate. For FY 1971, estimates have been provided on three bases:

1. $14 billion represents the estimated total cost of U.S. general purpose forces both in NATO Europe and those general purpose forces usually based in the U.S. and maintained primarily for use in a European emergency, related support elements and headquarters in NATO Europe, the support in the U.S. such as training and logistics required for these forces, military assistance for NATO countries and the NATO military construction program.

2. $7–8 billion represents the cost of general purpose forces stationed in NATO Europe (including the Sixth Fleet) plus the U.S. support base required for these forces, i.e., cost of new equipment and training and logistics support.

3. $3.1 billion represents the operating cost of U.S. forces actually stationed in NATO Europe (including the Sixth Fleet). It includes military personnel costs and the costs for operating and maintaining equipment and facilities used by these personnel. It excludes indirect logistics and administrative costs outside of NATO Europe, major procurement and construction costs and the U.S. contribution to the NATO construction program.

The $3.1 billion total is included in the $7–8 billion figure which, in turn, is included in the $14 billion estimate.

In addition to the above budgetary cost estimates, U.S. defense balance of payments expenditures in NATO European countries are estimated at about $1.8 billion in FY 1971.

* * * * *

SUMMARY AND OUTLOOK

It is extremely difficult to estimate what our expenditures would have been without the programs implemented by the Department of Defense. The procurement and construction programs, for example, as they involve the use of premium budgetary costs, can clearly be attributed to our balance of payments effort. In other areas such as base closures, our balance of payments program has served as an additional impetus to reducing expenditures overseas. It is true, however, that some actions would have been taken in any case in the interest of overall management improvement. As an order of magnitude, however, it is estimated that our balance of payments program has reduced our expenditures overseas by well over $2 billion during the FY 1961–1970 period.

As a result of our past efforts, the "easy" expenditure reductions have long since been made. Our expenditures abroad today are almost completely related to our deployments. Therefore, with continuing price and wage increases (including those associated with a Volunteer Armed Force) and changes in the value of some foreign currencies to the dollar, our expenditures, assuming approximately current force levels except for Southeast Asia and Korea, cannot be expected to even approach the pre-Vietnam level. We expect some slight reduction in FY 71—to a $4.8–$4.9 billion level.

We currently intend to continue our existing programs to hold down our costs overseas. In the long run, of course, the level of our expenditures abroad, in large measure, rests on the size of our overseas deployments. As I noted earlier, balance of payments considerations cannot be controlling or examined independent of requirements stemming from our national security objectives, including our security commitments with other nations.

We also intend to continue the ongoing military sales program, where this is appropriate. In addition, we will continue to work with other government agencies in any negotiations for improving the extent and nature of arrangements to offset the foreign exchange costs of our activities overseas.

TABLE I.—*U.S. Defense expenditures and receipts entering the international balance of payments, fiscal year 1970*

[Millions of dollars]

Expenditures:	
U.S. Forces and Their Support:	
Expenditures by U.S. Military, civilian & dependents	1,862
Foreign Nationals (Direct & con-contract hire)	680
Procurement:	
Major equipment	189
Construction	341
Materials & supplies (including POL)	755
Services	967
Other payments	95
Subtotal	4,889
Military Assistance Program:	
Offshore Procurement	15
NATO Infrastructure	-----
Other	30
Subtotal	45
Net change in Dollar purchased Foreign Currency Holdings	+18
Total Expenditures	4,952

Receipts:	
Cash receipts	1,556
Barter	315
Total Receipts	1,871
Net Adverse Balance (DoD)	3,081
Other Expenditures (AEC and other agencies included in NATO Definition of Defense Expenditures)	11
Net adverse Balance (NATO Definition)	3,092

TABLE II.—U.S. DEFENSE EXPENDITURES ENTERING THE INTERNATIONAL BALANCE OF PAYMENTS BY MAJOR AREA, FISCAL YEARS 1961–70

[In billions of dollars]

Fiscal year	Western Europe	Major Asian countries	Canada	Other	Worldwide
1961	1.6	0.7	0.4	0.4	3.1
1962	1.6	.7	.3	.4	3.0
1963	1.6	.7	.3	.5	3.1
1964	1.6	.7	.3	.4	3.0
1965	1.5	.8	.2	.3	2.8
1966	1.6	1.3	.2	.3	3.4
1967	1.6	2.0	.2	.4	4.2
1968	1.6	2.1	.3	.5	4.5
1969	1.6	2.3	.3	.5	4.7
1970	1.7	2.4	.3	.6	5.0

TABLE III.—*U.S. defense expenditures and receipts entering the international balance of payments, fiscal year 1970*

[Millions of dollars]

Country	
Australia	41
Austria	3
Azores	4
Bahrain Islands	41
Belgium-Luxembourg	40
Bermuda Islands	7
Canada	274
China, Republic of	83
Denmark-Greenland	29
France	17
Germany, Federal Republic of	1,030
Greece	24
Iceland	20
Indochina	
Italy	109
Japan	675
Korea	361
Morocco	6
Netherlands	45
Netherlands Antilles	22
Norway	15
Pakistan	2
Philippine Islands	200
Portugal	3
Ryukyu Islands	261
Saudi Arabia	91
Spain	54
Switzerland	12
Thailand	246
Trinidad-Tobago	14
Turkey	45
United Kingdom	225
Venezuela	18
Vietnam	542
Other American republics	96
Other	308
Total expenditures	4,963
Receipts	1,871
Net adverse balance	3,092

STATEMENT OF EDWARD L. KING, RETIRED COLONEL, U.S. ARMY, BEFORE THE JOINT ECONOMIC COMMITTEE, SUBCOMMITTEE ON INTERNATIONAL EXCHANGE AND PAYMENTS, JUNE 21, 1971

Mr. Chairman and Members of the Committee: My name is Edward L. King. I am appearing today as a private citizen and the views and opinions I state are solely my own.

I am a professional soldier. I retired from the U.S. Army in August 1969 as a Lt. Colonel. I served on active and reserve duty for nearly 23 years as an infantry rifleman, noncommissioned officer, and commissioned officer in the United States, Asia and Europe. The last three years of my service were spent with the staff of the Joint Chiefs of Staff.

The purpose of my testimony today is to focus on what I consider are some of the unnecessarily high overall expenditures and balance of payments costs involved in present national defense concepts and force deployments.

The fiscal year 1971 defense budget included a figure variously estimated at $14 billion for the support of U.S. general purpose forces in Europe and U.S. general purpose forces maintained in the United States but committed to a European contingency. The proposed fiscal year 1972 defense budget includes substantially the same funding support for these forces. The estimated operating cost of maintaining U.S. forces in Western Europe was approximately $2.9 billion last year. This operating figure includes the cost of all military and civilian personnel located in Western Europe, Greece, Turkey and the 6th Fleet as well as the costs of operating and maintaining the facilities used by these personnel.

U.S. defense expenditures entering the international balance of payments in NATO countries including Canada, have been estimated at approximately $2 billion in fiscal year 1970 and about $1.7 billion in FY 1971. A high percentage of these expenses is incurred in the Federal Republic of Germany where over 200,000 of the 300,000 U.S. troops stationed in Europe are located. For example, in fiscal year 1970 about $1.1 billion of the total balance of payments costs were spent in the Federal Republic. The current two year offset agreement with the Federal Republic expires on June 30, 1971. I have heard that the new agreement will not completely satisfactorily handle such problems as costs for local nationals which amounts to $260 million, locally procured material, supplies and equipment which cost $55 million, costs for various services which run $160 million or payment of land taxes to the Federal Republic. The chief criticism of the current method of offset payments has of course, been that it has been a deferral rather than a pure offset. There has been no direct budgetary support given by the Federal Republic since 1961 except for certain expenses involved with maintaining U.S. military forces in Berlin. And it seems that the new offset agreement is again to be more on a loan rather than cash basis.

Many arguments pro and con have been made in regard to the adverse U.S. balance of payments deficit resulting from the stationing of our forces in Europe and other areas of the world. Others have commented on the fact that the U.S. percentage of GNP devoted to defense purposes is much greater than our allies and continues to increase as that of our allies has declined. It has also been pointed out that during the same period our European Allies have consistently maintained a smaller proportion of their population under arms.

What still remains at issue is what are the reasons that these costs remain so high, and are these adverse costs balanced by a comparable combat return to our overall national security. I would like to examine some aspects of the reasons for the costs and relate them to combat return. In Central Europe the heart of our conventional combat forces are four and one-third Army divisions. Each of these Army divisions at full strength contains around 16,000 soldiers. The divisions in Europe have seldom, if ever, been at more than 90 percent of full combat strength. According to the Department of Defense these divisions at full strength are authorized 64.6 thousand soldiers. But since the four and one-third divisions have been reported by the Department of Defense to be at only 90 percent of full strength they do not have more than 59,000 soldiers assigned to them. To support these four and one-third divisions under present planning and Army Tables of Organization, the Department of Defense has indicated that there are in Europe an additional four and one-third initial support increments (ISI) of 16,000 men each and two and one-third sustaining support increments (SSI) of 16,000 men each. The Department of Defense has also stated that there are 88.1 thousand men in these ISI and SSI units (at full strength they should contain about 97.2 thousand soldiers). The commander of the U.S. Seventh Army in Europe has stated that he has 170,000 military personnel assigned to that Army. This means that there are at least an additional 22,900 soldiers assigned to the Seventh Army but not serving in the understrength four and one-third divisions or their sustaining forces.

The majority of the soldiers serving in the ISI and SSI do not fight, their principal mission is maintenance, repair and supply. And within each of the four and one-third combat divisions there are an additional 8,000 or so soldiers who also do not fight and are involved in similar command or support duties. Broken down to basic combat terms this means that out of the 48,000 (16,000 in the division plus 32,000 sustaining it) soldiers required to put a present day U.S. Army division into the field less than 9,000 finally deliver fire on the enemy in defense of our national security. And the two and one-third SSI elements now in Europe are not performing support operations for the divisions. These elements are performing peacetime housekeeping functions such as base operations, repair, maintenance and utilities, and the operation of services for the nearly 200,000 dependent population in Germany with our soldiers. In the event of combat these SSI units have to prepare to make a transition from their peacetime functions and later move to the field to begin supporting the combat divisions. Because of this need for peacetime support the Commander of Army forces in Europe has contended that combat rather than support forces must be withdrawn in any reduction in Europe.

This is very little combat return for the tremendous costs that accrue to the American taxpayer in providing the four and one-third division force in Europe. There are today in Europe over 7,000 officers and enlisted men assigned to headquarter commands alone. Among this number are included 128 general/flag officers, or a ratio of one general/flag officer for each 2,343 soldiers assigned to Europe. Yet few, if any, armed forces units of less than 3,000 men are authorized a general or flag officer as a commander. The Congress could stop this type abuse by beginning to enforce the officer grade ceilings enacted in the 1947 Defense Reorganization Act.

All of this basically means that in order to achieve a conventional combat force of four and one-third divisions with an actual strength of about 59,000 men in Western Europe (of which less than 40,000 fire at the enemy in combat), the United States must pay in excess of $5 billion (and assume the adverse international balance of payments deficit in doing so) to station over 300,000 soldiers and 225,000 dependents there.

Furthermore, what are the probabilities that these conventional forces that cost us so dearly can accomplish the combat mission that we supposedly keep them permanently in Europe for? Assistant Secretary of Defense Roger Kelley has said, "We *assume* that the Soviets are deterred from attacking NATO by the high risk *that a conventional conflict* between NATO and Warsaw Pact forces *would escalate to the level of general nuclear war* and pose grave risks to the Soviet State itself." (Italic added). In testimony before the Senate Armed Services Committee, Mr. Kelley stated the "threat" that our NATO committed forces face in these terms, *"While we do not consider an unprovoked aggression by the USSR likely,* the fact remains

that the Soviets have a vital interest in preserving the status quo in Central Europe and in retaining their hold on Eastern Europe. A crisis that *could* lead to a conflict could arise if the political situation substantially changed in a way which threatened the USSR. Such a crisis *could* escalate to hostilities. Whatever the immediate cause, the crisis *could* trigger localized hostilities, or mobilization by the Pact and NATO." (Italic supplied.)

If we do not consider an unprovoked aggression likely then how can we envision "localized hostilities" (that remain local) being any more likely? And if a conventional conflict will admittedly escalate to general nuclear war what is the real purpose of four and one-third Army divisions stationed permanently in Central Europe? All Department of Defense spokesmen are careful to include the long-standing, but seldom noticed, caveats that always appear somewhere in their statements about the ability of U.S. conventional military forces to provide any form of successful conventional defense in Europe. I know from experience in writing them that these caveats always take two forms, "assuming a period of sufficient warning and military preparation by both sides" and "NATO has a major conventional capability after a period of mobilization." Both of these caveats are intended to remove the Defense Department from responsibility for what the conventional combat capability would be in the event of a sudden Soviet attack—which is a most likely result of "localized hostilities"—which do not permit time for premobilization evacuation of the U.S. military dependents and troop reinforcement from the United States.

The facts are that in the event of a sudden Soviet attack without sufficient warning and a period of mobilization (usually considered as a minimum of 30 days in duration) the U.S. and NATO divisions must resort to almost immediate use of atomic demolition munitions and low yield tactical nuclear weapons to even hope to save themselves from destruction by the superior Soviet armored forces. Their battle plans include the early use of these nuclear weapons. Crucial to any form of defense is the ability of our tactical air forces to gain early air superiority. A U.S. Air Force general has evaluated this possibility in the terms of "we could either hope for a stalemate or defeat but not superiority." Without this air superiority and additional French airfields, it is highly unlikely that any Army divisions re-deployed to Europe by airlift would be able to land, even if the big lumbering C–141 or C–5A transports, filled with GI's, were not shot out of the air enroute by MIG's. It is more likely that sudden Soviet pre-emptive air strikes, conventionally armed rockets, or armored units would have knocked out all presently available airfields in the first few hours of battle.

Our costly four and one-third divisions stationed in Europe must receive early reinforcement by air if they are to survive even using tactical nuclear weapons, and yet the chances are that Russian tanks would be parked on most of the available air-landing sites a few days after any sudden attack on Western Europe. The United States taxpayer is and has been for the past ten years, paying for an out-dated concept of so-called flexible response that cannot be translated into reality. We are accepting very adverse balance-of-payments problems to maintain a top heavy State and Defense bureaucracy in position in Central Europe long after the time that it could perform the mission it was sent to accomplish.

This featherbedded "bureaucracy" should be reduced in the interest of economic and military good sense. In this same vein the presence of our two Army divisions that have been in Korea for over 20 years should also be reduced. They, like the European-based divisions, remain deployed under a concept that is no longer valid or necessary for our true national security. And they are far too costly for the combat return they make to our national defense.

The American people should not any longer be deceived into continuing to pay billions of dollars annually to maintain these bloated forces permanently deployed about the world. When they actually provide little real combat defense to our national security in return for the hard earned tax dollars that they cost.

If the number of U.S. forces in Europe were reduced from the present 300,000 to an Army Corps force of approximately 150,000 men. I believe savings in balance-of-payments cost in the range of at least $500 million could be realized. These savings could, I believe, be substantially more if certain practices our forces now follow in West Germany were changed and we consider the increased pay scales envisioned for our armed forces over the coming years against the background of a growing European inflationary trend.

This reduction could be accomplished in several ways. For example, 2⅓ European-based divisions and their sustaining elements plus Seventh Army and one Corps Headquarters and one armored cavalry regiment could be brought home and the headquarters and two divisions and their sustaining forces deactivated. This would be a reduction of about 90,000 soldiers from U.S. Army in Europe. It could be combined with a concurrent withdrawal of the 50,000 additional military command and support personnel such as couriers, communications men, etc., that are in Europe but not assigned to the European Command, along with the tactical air units assigned to support the 2⅓ divisions being withdrawn. Such a reduction would produce a proportionate lowering of balance-of-payments costs that we presently sustain in paying for construction, repair and maintenance of facilities these headquarters and troops use. It would reduce the amount of maneuver damage claims that must be paid when U.S. forces go on training maneuvers and damage trees or property of German citizens. And it would substantially reduce the number of dependents in Germany and thus reduce some of the outflow of dollars that many U.S. soldiers must spend on the German economy to house, feed, and entertain their families. Such a reduction would also gain the tactical flexibility of posturing a reinforced two-division U.S. Corps force in Central Europe. Such a force like the present 4⅓ divisions, could be reinforced if the required warning and mobilization period materialized before hostilities began. But in the event of sudden Soviet attack a repositioned smaller Corps force, unlike the 4⅓ division force, could be risked initially in U.S. national interests without an immediate need for the President to grant the use of tactical nuclear weapons to save a U.S. field army and nearly one-quarter of a million American women and children from capture or destruction. The deterrent symbolism of such a force would be as actually meaningful as the representative deterrent symbolism that 4⅓ divisions really provide. But with far less risk of the possibility of forced nuclear escalation or response to a Tonkin Gulf form of "localized" hostilities. It has been estimated the withdrawal and deactivation of two mechanized divisions and their sustaining elements, now stationed in Europe could result in annual savings of at least one billion dollars. For each soldier removed from Germany an approximate saving of $1,650 in individual expenditures on the European economy can be realized.

Another way to reduce the overall costs, but not the balance-of-payments deficits, would be the deactivation in the United States of one of the divisions maintained here but earmarked for use in Europe, along with its ISI and SSI forces. This could be accompanied by a deactivation and transfer of the mission to the Army Reserves of ⅓ of each of the ISI's and all of the SSI's for the remaining two divisions that are maintained in the U.S. for reinforcement of forces in Europe. At the same time the 50,000 non-European Command troops in Europe could be brought home along with some of the excess headquarters personnel that are presently there. This reduction would leave the same combat force structure in Europe. But since the SSI elements that support the divisions normally are not vitally essential to combat operations for a period of around 60 days (and the conventional war would have probably turned nuclear by then anyway) these elements need not be on standby active duty in the U.S. Their functions of heavy rebuild, repair and maintenance are very close to civilian skills and their mission could readily be assimilated in Army Reserve Units that could be called to active service and if needed, follow the divisions to Europe within 60 days.

Assuming the U.S. based division and ISI and SSI units are maintained at least at 90% strength this would be a troop reduction of approximately 82,000 men in the U.S. For example, it costs about $35 million a year less to maintain an armored division and its sustaining elements on active duty in the U.S. than Europe (it has been estimated that it costs approximately $185 million to maintain an Army division on overseas peacetime active duty for a year). This size reduction plus a reduction of 50 to 60,000 headquarters and support troops from the non-European Command forces in Europe, would represent a sizeable reduction in the total costs of our overall European troop commitment without reducing the so-called combat forces presently stationed there.

This solution has particular merit when considered in the context of the practical impossibility of being able to safely land airborne reinforcements in Europe in the event of a sudden Soviet conventional attack, and the high probability that any conventional "localized hostilities" or "probes" would have escalated to general nuclear war before these divisions could be airlifted to Europe even assuming they could be safely landed. It makes little military or financial sense to continue to spend millions of tax dollars annually to maintain these 3⅔ divisions in the U.S. to influence a mission in Europe they cannot safely arrive here in time to have any substantive effect on.

Just as it makes little military or economic sense to continue to maintain a field Army headquarters, a Corps headquarters and a logistical command to command and support two under-strength Army divisions and their sustaining units in Korea nearly 20 years after the fighting ended there. The South Korean Army—trained since 1949 by a U.S. Military Advisory Group and equipped by U.S. Military Assistance Funds—numbers over 600,000 soldiers. Yet this Army still theoretically needs a U.S. Army division to stand guard on its border with North Korea, even though the North Korean Army numbers less than 500,000 men and there are no Soviet or Chinese divisions guarding the North Korea border. These U.S. forces should after 25 years, be withdrawn from South Korea, or at least reduced in size and cost, and placed in reserve from guarding the South Korean border where young Americans can be gunned down almost at will by North Korean snipers.

In South Vietnam all but two of our combat divisions have been withdrawn and those two divisions are in the process of standing down for withdrawal. Despite this fact over 200,000 U.S. Command, support and advisory personnel still remain in South Vietnam. Obviously, the ISI's and SSI's of the withdrawn divisions were not removed with the division, nor has the component command

U.S. Army Vietnam and five Corps headquarters been withdrawn. Nearly the same basic infra-structure that was required to support 525,000 U.S. Armed forces personnel at the peak of the fighting is still in South Vietnam. This means different things to many people. It should tell the American people that the South Vietnamese Army must require even at this late date, a tremendous amount of U.S. Command and logistical support to prop it up and keep it fighting. This does not cast a very favorable light on the possibility or probability of any early or indeed any, total American withdrawal from South Vietnam. It tells the North Vietnamese military commanders that the U.S. has withdrawn its mobile, quickly returnable combat units, but has not as yet removed any substantial part of its logistical infra-structure that they know is the real key to whether U.S. units can enter an area and fight or not. The North Vietnamese military are probably going to be quite skeptical about our real intention of totally leaving South Vietnam until they see a substantial part of the tremendous U.S. command and support infra-structure being withdrawn. They also, have read in our newspapers that the U.S. Army is considering 18-month tours for U.S. Army advisors to be assigned to South Vietnam (with their families), and this may make them doubtful of the true intent of the Nixon Doctrine.

In sum I do not see that there will be anything like a total U.S. military withdrawal from South Vietnam over the next five to ten years. And I do not therefore foresee a total lessening of our budgetary and balance-of-payments costs in Southeast Asia as a result of a so-called winding down of the war. A Korean style solution with a residual force of 40 to 50,000 U.S. servicemen in South Vietnam for an indefinite period into the 1970's and 1980's, appears to me a much more likely event under our present policies. This "residual base force" will generate in my estimation, about the same level of costs and balance-of-payments problems that we have experienced in Korea over the past 20 years. We are embarked on that same road now in South Vietnam.

And the taxpayer will be expected to assume the unseen, but nonetheless just as real, costs of turning over to the South Vietnamese Government (with little or no reimbursement), billions of dollars worth of U.S. supplies and equipment that the taxpayer has already paid for with his past taxes. These mountains of supplies and tons of heavy equipment will be too costly to bring home and will be given to the South Vietnamese Government, or we will be marginally reimbursed in inflated South Vietnamese currency at the current relatively unfavorable rate of international exchange. In any event a lot of the costly equipment will inevitably wind up on Japanese scrap piles and the U.S. taxpayer will have already assumed the costs of buying new defense equipment to replace it.

In my estimation, it is our insistence on maintaining featherbedded military forces that are excessive to our real national security needs, and over-defending against inflated threat analysis that keep the U.S. taxpayer constantly paying for more defense than he needs and paying too much for the defense he gets. The out-dated, worldwide deployment of these same military forces is a major contributor to our enormous defense budget and chronic balance-of-payments problem. It seems to me that what should be done about it is to cause the Armed Services to structure and equip themselves more responsibly and austerely for combat, and to stop scattering them all over the world with missions they cannot hope to legitimately accomplish—and which in truth have no direct relationship to the real combat defense of our country. It is past time that we Americans quit kidding ourselves with delusions of military and economic grandeur. We are a great and powerful people, but we cannot run the world. We do not have the means to answer every world problem. And it is now time that we put our energies and our money more to the tasks of solving our own urgent domestic problems than maintaining a far-flung empire of military bases that get us enmeshed more in the affairs of others than in protecting the security of all Americans.

[From the Los Angeles Times, July 7, 1971]

NATO GRAPPLES WITH SHIFTING PRIORITIES IN U.S., OTHER NATIONS

(By Nick Thimmesch)

BRUSSELS.—The men who serve as NATO representatives here as well as the International Secretariat staff tend to be academic types best suited for contemplating the European power balance and Soviet intentions. International political questions of the 15 member nations are less to their liking. These days, however, the NATO men are forced to give the internal questions almost the same priority as the omnipresent Soviets.

NATO isn't coming apart, but it is suffering strains, as all aging alliances eventually do. In the recent debate in the U.S. Senate over cutting U.S. troop levels by half in Europe, it was a lady, Sen. Margaret Chase Smith (R-Me.), who spoke the frankest: "We have carried the brunt of military liberation and protection of Western Europe for nearly 30 years now," she said. "We have done it through the sacrifice of our military personnel and their families and through the billions of our taxpayers' dollars.

"We lifted Western European countries off their backs and provided ther economic recovery through the generous Marshall Plan and other forms of economic aid.

"And what have we gotten in return? Continued slaps in the face. Continued biting of our hands that fed them. Continued failure of the nations of Western Europe to carry their fair share of the cost and personnel for the NATO that keeps them free nations."

NATO and other European leaders are startled to think of a greatly diminished U.S. presence in Europe. Maybe this is why they agreed last December to increase their contribution to the NATO defense system by $950 million in the next five years.

Without strong participation by the United States, it is possible that first the small West European nations would take the Swedish neutralist approach, with the larger nations (France, Germany and Italy) following suit.

Ironically, it is once again Germany, West that is, which is pivotal to the situation. The West Germans are on an economic binge. True, Chancellor Willy Brandt has eased relations with East Germany, at the same time reaffirming his nation's dependence on NATO. But what will West Germany do 5 or 10 years from now when its economy cools off—as it must—and it gropes about for stability, through nationalism perhaps?

The Soviets have vivid memories, and so do other Europeans, of German armies. Faced with a Germany searching for stability, the Russians might agree to an accommodation with West Germany. And if that happens, it is very likely that the rest of Europe would follow, and reluctantly accept German-Russian power.

There is even the notion that the Soviets, for the present, would prefer having an American presence in West Germany rather than a new West German army there. The Soviets know that if a clamor for national identity develops, Germany's young generation will be a part of it, and as one NATO official put it, "The Soviets would be very uncomfortable with 70 million German perfectionists on their flank."

With all the dreadful possibilities spinning through their heads, the NATO gentlemen see the need to press their governments for greater contributions of men and money to the NATO defense effort. The idea that the United States would force its European partners to do more, says Jorge Kastl, assistant secretary general for political affairs, is as wrong as the European idea that U.S. involvement is automatic.

Indeed, some theorists believe that Sen. Mike Mansfield (D-Mont.) was only trying to get the United States to appreciate the need for NATO. If NATO fell apart, through American neglect, the United States would risk a war and also losing U.S. enterprises in Europe valued at an estimated $100 billion.

For the present, then, the U.S. government tries to mark time while Europe regains its pre-de Gaulle momentum, appreciates the United States a little more and kicks in more money and men to NATO.

The British, for instance, showed their good intentions by recommissioning the aircraft carrier, Ark Royal, an 18-year-old splendor, for NATO service. Meanwhile, a new Italian navy sits in port because Italy won't pay for it to steam anywhere.

There are many facts which amounts to a negative for NATO these days. There is hope that when the present situation straightens out, there will be new, positive facts about NATO solidarity.

After all, as outgoing U.S. ambassador to NATO, Robert Ellsworth, told me: "When you deal with the Russians, it's important to deal in facts, not words. The Russians only respond to facts."

VACATING OF ORDER FOR SENATOR AIKEN TO SPEAK TODAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time given today to the distinguished Senator from Vermont (Mr. AIKEN) be vacated and that the 15 minutes be allocated, instead, to the distinguished senior Senator from Kentucky (Mr. COOPER).

The ACTING PRESIDENT pro tempore. At the same time?

Mr. MANSFIELD. Yes; if the Senator from Kentucky is here. If he is not here, then following the distinguished Senator from Minnesota (Mr. HUMPHREY), if it meets with the approval of the Senator from Minnesota.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the standing order, the distinguished Senator from Pennsylvania (Mr. SCOTT) is now recognized.

Mr. SCOTT. Mr. President, I yield back my time.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. In accordance with previous orders, the Chair recognizes the distinguished Senator from Georgia (Mr. TALMADGE) for not to exceed 15 minutes, to be followed by the distinguished Senator from Minnesota (Mr. HUMPHREY) for not to exceed 15 minutes.

(The remarks of Mr. TALMADGE and Mr. HUMPHREY when they introduced S. 2223 are printed in the RECORD under State-

ments on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. At this time, in accordance with the previous order, the Chair recognizes the distinguished senior Senator from Kentucky (Mr. COOPER) for not to exceed 15 minutes.

(The remarks of Mr. COOPER when he introduced S. 2224 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. GRAVEL). Under the previous order, the Senate will now proceed to the period for the transaction of routine morning business, not to exceed 30 minutes, with statements therein limited to 3 minutes.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. ALLEN) laid before the Senate the following letters, which were referred as indicated:

REPORT ON RELATIVE COST OF SHIPBUILDING

A letter from the Secretary of Commerce, transmitting pursuant to law, a report on relative cost of shipbuilding in the various coastal districts of the United States, dated June, 1971 (with an accompanying report); to the Committee on Commerce.

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on Opportunities For Improving the Southern Monterey County Rural Health Project, King City, California, Department of Health, Education, and Welfare, Office of Economic Opportunity, dated July 6, 1971 (with an accompanying report); to the Committee on Government Operations.

PROGRESS REPORT ON WESTERN UNITED STATES WATER PLAN

A letter from the Secretary of the Interior, transmitting, pursuant to law, a progress report on the Western U.S. Water Plan, for the year 1971 (with an accompanying report); to the Committee on Interior and Insular Affairs.

REPORTS RELATING TO THIRD AND SIXTH PREFERENCE CLASSIFICATIONS FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports concerning visa petitions which have been approved according third and sixth preference to certain aliens (with accompanying papers); to the Committee on the Judiciary.

REPORT ON DEFECTOR ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, reporting, pursuant to law, relating to certain aliens who have been found admissible to the United States as defector aliens (with an accompanying paper); to the Committee on the Judiciary.

REPORT ON PROPOSED ESTABLISHMENT OF A CONVENTION CENTER-SPORTS ARENA IN THE DISTRICT OF COLUMBIA

A letter from the Administrator, General Services Administration, transmitting, pursuant to a resolution adopted by the Committee on Public Works of the House of Representatives, a report of building project survey containing a general plan and program for the establishment of a Convention Center-Sports Arena within the boundaries of the District of Columbia (with accompanying papers); to the Committee on Public Works.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. ALLEN):

A joint resolution of the legislature of the State of California; to the Committee on Appropriations:

"ASSEMBLY JOINT RESOLUTION NO. 18—RELATIVE TO PROTECTION OF THE BEACHES AND SHORELINE OF VENTURA COUNTY

"Whereas, The beaches and shoreline of Ventura County represent a natural resource of inestimable value to the people of California; and

"Whereas, The coastline of this portion of the state should be preserved for the enjoyment of generations to come; and

"Whereas, The storms and high tides of December 1969 caused damage to these beaches and shores amounting to hundreds of thousands of dollars; and

"Whereas, The Army Corps of Engineers has had authorization for a study for the protection of these beaches for over four years, but has been unable to obtain the necessary funds to proceed; and

"Whereas, Until such a study has been conducted, no action may be taken by the federal, state, county, or local governmental agencies or by private individuals toward protecting these shores; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the legislature of the State of California respectfully memorialize the Congress of the United States to appropriate sufficient funds for a study and report on the facilities needed to protect the beaches and shoreline of Ventura County, in the State of California, from damage by storms and high tides; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

An act of the legislature of the State of North Carolina; to the Committee on the Judiciary:

AN ACT TO RATIFY A PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO EXTEND THE RIGHT TO VOTE TO CITIZENS EIGHTEEN YEARS OF AGE OR OLDER

Whereas, The Senate and House of Representatives of the United States of America assembled (two-thirds of each House concurring) and proposed the following amendment to the Constitution of the United States, to become valid as a part of the said Constitution when ratified by the legislatures of the several states, in words as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

" 'ARTICLE—

" 'SECTION 1. The right of citizens of the United States who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

" 'SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.' " Now, therefore, The General Assembly of North Carolina enacts:

SECTION 1. That the said proposed amendment to the Constitution of the United States of America set out in the preamble to this act be, and the same is, hereby ratified by the General Assembly of the State of North Carolina.

SEC. 2. That certified copies of this preamble and act be forwarded by the Governor of this State to the Secretary of State at Washington, to the Presiding Officer of the United States Senate, and to the Speaker of the House of Representatives of the United States.

SEC. 3. That this act shall be in full force and effect upon ratification.

A joint resolution of the legislature of the State of Oregon; to the Committee on the Judiciary:

HOUSE JOINT RESOLUTION 47

(Sponsored by Committee on State and Federal Affairs)

Whereas Senate Joint Resolution 7 of the Ninety-second Congress (first session) of the United States of America proposes an amendment to the Constitution of the United States, as follows:

"ARTICLE

"SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

"SEC. 2. The Congress shall have power to enforce this article by appropriate legislation."; and

Whereas the proposed amendment shall be valid to all intents and purposes as part of the Constitution of the United States when ratified by the legislatures of three-fourths of the several states within seven years from the date of its submission by the Congress; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) The proposed amendment to the Constitution of the United States, relating to the right of citizens of the United States, who are eighteen years of age or older, to vote, as set forth in this resolution, hereby is ratified.

(2) The Secretary of State shall send certified copies of this resolution to the Administrator of General Services of the United States, to the presiding officer of the United States Senate and to the Speaker of the House of Representatives of the United States.

A joint resolution of the legislature of the State of Oregon; to the Committee on Public Works:

SENATE JOINT MEMORIAL 3

(Sponsored by Committee on Environmental Affairs)

To the Honorable Senate and House of Representatives of the United States of America, in Congress assembled:

We, your memorialists, the Fifty-sixth Legislative Assembly of the State of Oregon, respectfully represent as follows:

Whereas the Columbia River is the main navigational artery for Astoria, Portland and other great Oregon ports; and

Whereas the Columbia River also affords the people of this state outstanding recreational uses, including fishing, boating and aquatic sports; and

Whereas during recent years there has been an increasing accumulation of snags, sinker logs and other debris in the Columbia River; and

Whereas such debris has caused the loss of human life and property and created

unsafe conditions for those using the Columbia River for navigation and recreation; and

Whereas the United States Army Corps of Engineers is charged with maintaining the Columbia River as a navigable highway for commercial uses and thereby also enhancing safe conditions for the recreational uses of the river by the people of this state; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) The Congress of the United States is urged to appropriate sufficient funds to the United States Army Corps of Engineers to enable the Corps to provide a full-time patrol of the Columbia River to remove and dispose of debris accumulated in the Columbia River.

(2) The Secretary of the Senate shall cause a copy of this memorial to be sent to the presiding officer of each house of the Congress and to each member of the Oregon Congressional Delegation.

A paper, in the nature of a petition, adopted by the General Assembly of the Presbyterian Church in the United States, praying for the enactment of legislation relating to welfare reform; to the Committee on Finance.

A resolution adopted by Alianza Federal de Pueblos Libres, Albuquerque, N. Mex., praying for the enactment of legislation in regard to lands belonging to descendants of former Mexican citizens; to the Committee on Interior and Insular Affairs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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. SYMINGTON (for himself, Mr. EAGLETON, and Mr. HARTKE):

S. 2221. A bill to amend Title I of the Housing Act of 1949 to permit a city whose population falls to below 50,000 to convert any outstanding urban renewal projects from a two-thirds to a three-fourths capital grant formula. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. HUMPHREY:

S. 2222. A bill for the relief of Mrs. Ana Go Pavon. Referred to the Committee on the Judiciary.

By Mr. HUMPHREY (for himself, Mr. TALMADGE, Mr. AIKEN, Mr. ALLEN, Mr. EASTLAND, Mr. JORDAN of North Carolina, Mr. MCGOVERN, and Mr. YOUNG):

S. 2223. A bill to amend the Consolidated Farmers Home Administration Act of 1961, and for other purposes. Referred to the Committee on Agriculture and Forestry.

By Mr. COOPER:

S. 2224. A bill to amend the National Security Act of 1947, as amended, to keep the Congress better informed on matters relating to foreign policy and national security by providing it with intelligence information obtained by the Central Intelligence Agency and with analysis of such information by such agency. Referred jointly to the Committees on Armed Services and Foreign Relations, by unanimous consent.

By Mr. MATHIAS:

S. 2225. A bill to restore the income tax credit for investment in certain depreciable property at a rate of 6 percent of the qualified investment. Referred to the Committee on Finance; and

S. 2226. A bill for the relief of Guy B. Dompierre. Referred to the Committee on the Judiciary.

By Mr. JORDAN of North Carolina:

S. 2227. A bill to amend title 44, United States Code, to authorize the Public Printer to designate the library of the highest appellate court in each State as a depository library. Referred to the Committee on Rules and Administration.

By Mr. HRUSKA (for himself, Mr. BAYH, Mr. BURDICK, Mr. FONG, Mr. GURNEY, Mr. HART, Mr. MATHIAS, Mr. SCOTT, and Mr. TUNNEY):

S. 2228. A bill to amend chapter 235 of title 18, United States Code, to provide for the appellate review of sentences imposed in criminal cases arising in the district courts of the United States. Referred to the Committee on the Judiciary.

By Mr. SPARKMAN:

S. 2229. A bill for the relief of John R. Poe. Referred to the Committee on the Judiciary.

By Mr. CRANSTON (for himself, Mr. MONTOYA, Mr. ALLOTT, Mr. BAYH, Mr. BENTSEN, Mr. CHURCH, Mr. DOMINICK, Mr. GOLDWATER, Mr. HARTKE, Mr. HUMPHREY, Mr. INOUYE, Mr. JAVITS, Mr. KENNEDY, Mr. MAGNUSON, Mr. MANSFIELD, Mr. MCGOVERN, Mr. MOSS, Mr. MUSKIE, Mr. PELL, Mr. STEVENSON, Mr. TOWER, Mr. TUNNEY, and Mr. WILLIAMS):

S. 2230. A bill to designate a certain traffic circle in the District of Columbia as the "Benito Juarez Circle." Referred to the Committee on the District of Columbia.

By Mr. MCGOVERN:

S. 2231. A bill to require that appropriations be made specifically to the Central Intelligence Agency. Referred to the Committee on Armed Services; and

S. 2232. A bill to provide increased educational assistance for police and correctional officers, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. MATHIAS:

S.J. Res. 124. A joint resolution limiting military assistance and military sales to Pakistan. Referred to the Committee on Foreign Relations.

By Mr. DOLE (for himself, Mr. ALLOTT, Mr. BAKER, Mr. BELLMON, Mr. BENNETT, Mr. BUCKLEY, Mr. BURDICK, Mr. COOPER, Mr. CRANSTON, Mr. CURTIS, Mr. DOMINICK, Mr. EASTLAND, Mr. GOLDWATER, Mr. GURNEY, Mr. HARRIS, Mr. HATFIELD, Mr. JORDAN of North Carolina, Mr. JORDAN of Idaho, Mr. MANSFIELD, Mr. MCGEE, Mr. MCINTYRE, Mr. PACKWOOD, Mr. PEARSON, Mr. PERCY, Mr. RANDOLPH, Mr. STEVENS, Mr. TOWER, and Mr. YOUNG):

S.J. Res. 125. A joint resolution requesting the President of the United States to issue a proclamation calling for a "Day of Bread" and "Harvest Festival." Referred to the Committee on the Judiciary.

By Mr. EAGLETON (for himself, Mr. ALLOTT, Mr. BAYH, Mr. BENNETT, Mr. BIBLE, Mr. BROOKE, Mr. CASE, Mr. CRANSTON, Mr. FONG, Mr. HARTKE, Mr. HATFIELD, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. JAVITS, Mr. MAGNUSON, Mr. MANSFIELD, Mr. MATHIAS, Mr. MCGEE, Mr. MCGOVERN, Mr. MONDALE, Mr. MUSKIE, Mr. PACKWOOD, Mr. PEARSON, Mr. PELL, Mr. RANDOLPH, Mr. SCHWEIKER, Mr. SCOTT, Mr. STEVENS, Mr. TAFT, Mr. THURMOND, Mr. TOWER, and Mr. TUNNEY):

S.J. Res. 126. A joint resolution to authorize the President to proclaim the month of January of each year as "National Volunteer Blood Donor Month." Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HUMPHREY (for himself, Mr. TALMADGE, Mr. AIKEN, Mr. ALLEN, Mr. EASTLAND, Mr. JORDAN of North Carolina, Mr. MCGOVERN, and Mr. YOUNG):

S. 2223. A bill to amend the Consolidated Farmers Home Administration Act of 1961, and for other purposes. Referred to the Committee on Agriculture and Forestry.

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

Mr. TALMADGE. Mr. President, it is with considerable pride that I sponsor with Senator HUMPHREY and others legislation to create a new financial system for the development and improvement of rural America. I am proud that the legislation that is being introduced today has the sponsorship of the majority of the Members of the Senate Committee on Agriculture and Forestry. I am proud of this legislation for I regard it as the first concrete step in the fulfillment of the commitment which Congress made last year in passing the Agricultural Act of 1970.

In title IX of this act, the commitment of Congress was precisely stated:

> The Congress commits itself to a sound balance between rural and urban America. The Congress considers this balance so essential to the peace, prosperity and welfare of all our citizens that the highest priority must be given to the revitalization and development of rural areas.

As the author of title IX, I do not regard this language as another empty promise. I believe that the Congress has finally decided that the time has come to make an all-out effort to stem the tide of rural outmigration by developing the potential of the Nation's rural areas These rural areas, which contain over 98 percent of our country's total land area, have tremendous resources that can be developed.

The legislation that we are introducing today does not offer a panacea. We do not propose to have all of the answers to improving the living conditions and developing the economic potential of the Nation's rural areas. However, the legislation which we offer today does attempt to meet one critical need, the need to provide more capital for our rural areas. I believe that although we don't have all the answers about rural development, all of us who are concerned with the problem can agree that additional capital is essential.

President Nixon's task force on rural development has stated the need for additional financing for rural development in its report "A New Life for the Country." The task force recommended a new credit institution to provide rural areas with greater access to private capital. This institution was to be named the rural development credit bank and the task force recommended that it be structured in law as a wholly new title in an amendment to the Farm Credit Act.

Considerable thought was given to creating a rural development credit bank as a part of the farm credit system. However, we found that several problems would arise as a result of this approach. We did not want to add to the farm credit system any new branch which could possibly detract from the amount of capital which the system makes available to farm borrowers.

Therefore, we determined that the more advisable course was to create a new financial system to do for nonfarm rural borrowers what the farm credit

system has done for farm borrowers. Since the farm credit system established over 50 years ago has been such a remarkable success, we patterned our new nonfarm financial system as closely as possible after it. We have, in addition, built in several important tie-ins with the existing farm credit system.

The governor of the farm credit system would be a member of the rural development credit board. In addition, the securities of our new rural development bank would be marketed by the selling agency which sells the securities of the farm credit system. Also, the rural development credit system and its member institutions will be subject to the supervision of the Farm Credit Administration with respect to all of its procedures which relate to financial operations, including the audits.

I am most gratified that legislation we are today introducing is completely bipartisan in nature. I am sure that the bill which will hopefully emerge from the Senate Committee on Agriculture and Forestry will be bipartisan. Rural development is not a partisan issue. We Democrats in the Congress cannot claim credit for all the progress made in improving and developing our rural areas. For example, no man alive has done more in this area than the senior Republican in the Senate, GEORGE D. AIKEN of Vermont. Over the years Senator AIKEN has successfully pushed for the adoption of legislation which provides for the financing of water and sewer facilities in rural areas.

I believe that both Republicans and Democrats have the same objective, the same purpose, when we speak of rural development. In S. 1612, the President's bill to establish a revenue sharing program for rural development, there are a number of worthy purposes for which the revenue sharing money could be spent. The President's bill provides for the expenditure of money for every kind of project that will provide increased employment for rural residents or any project which will benefit rural residents in other ways.

Although I personally have some concern about S. 1612, in that it would abolish many rural development programs which I consider to be worthwhile in order to provide money for the revenue sharing program, I wholeheartedly support the objectives of the rural revenue sharing legislation. Therefore, the legislation which we are introducing today will provide for the making of loans for all of the objectives in the revenue sharing bill. The legislation which we propose would not eliminate existing rural development programs, but it would make loan and subsidy funds available to rural development borrowers who are unable to obtain funds from private sources or other Government programs.

The legislation we introduce today would consist of two major provisions.

First. It would expand the authority of the U.S. Department of Agriculture to provide credit for private and public borrowers, unable to obtain credit from commercial sources at reasonable rates and terms, to undertake projects to carry out a rural development purpose. It would reorganize the structure of the direct and insured loan programs of the Department of Agriculture so that the Department could more effectively deal with the credit needs of both farmers and nonfarm rural borrowers. It would not, however, change the operation of the Rural Electrification Administration.

Second. The bill would establish a nonfarm rural credit system which would be governed by a rural development credit board. The system would consist of: First, a Federal rural development credit agency which would oversee the operations of 10 regional rural development credit banks, and second, a rural development investment administration which would provide subsidies to go with the hard loans made under the rural development credit agency.

One might ask why we have chosen to increase the rural development lending authority of the USDA while at the same time establishing an entirely new system for rural development financing. The answer is simple.

It is our hope that the combination of these new financial services will result in providing for nonfarm rural enterprise and community facilities and services the same complete credit service now provided by the Farmers Home Administration and Farm Credit Administration for farm credit.

Just as in the case of farm credit, some prospective rural businessmen and rural governments will be able and will prefer to obtain immediate credit and financial resources from private banks and other financial institutions. Other potential borrowers will be unable to obtain needed credit from such sources and they will go to one of the institutions of the rural development credit systems.

Our rural development bank will make hard credit loans for any rural development purpose. This bill will also set up a Rural Development Investment Administration which would provide subsidies for those borrowers who must have a subsidy in order to qualify for credit.

In addition, our legislation would make sweeping revisions of the authority of the USDA to provide credit for rural development. This subsidized credit would be available for the borrower who is considered a poor risk and who would not qualify for a loan from the rural development bank.

It has been my experience that any government program which does not have as its cornerstone cooperative local, State, and Federal efforts is doomed to failure. Any program which does not succeed in enlisting the willing cooperation and support of the people in the area it is designed to help will never do more than to provide a government salary for the employees who run the program. For this reason we have followed the example of the farm credit system. We place the emphasis on the borrower and the local institutions which can provide individual services for the borrower. The bill provides that borrowers shall buy stock in the amount of from 5 to 10 percent of their loans. Through this process the system can eventually become completely borrower-owned, as is the farm credit system today.

The legislation we are introducing would enlist the cooperation of local units of government and private lending institutions. Not only would these institutions qualify to enter into joint financing arrangements with the rural development bank, but they would also be actual members and voting owners of the institutions of the new rural development credit system.

The bill would give private banks and other financial institutions in rural areas, and county, municipal, borough, or township governments the option of becoming a participant or a cooperator. To become a participator the financial institution or local unit of government would have to buy stock in the amount of 1 percent of the loans that they have outstanding. These participating institutions would be voting members of the rural development credit system.

If the local private bank or unit of government does not see fit to become a voting member of the rural development credit system, it can obtain the status of a cooperating institution by selling obligation paper to, obtaining a loan from, or submitting loans to be insured or guaranteed, discounted or rediscounted, to the financial agency of the local multicounty planning and development district, which is the local operating arm of the rural development credit system.

A novel feature of our legislation is our reliance on the multicounty, multijurisdictional planning and development districts that are being set up around the country. These districts have had the support of the Senate Committee on Agriculture and Forestry for some time. The senior Democratic member of our committee, who is now President pro tempore of the Senate, Senator ELLENDER, pioneered several years ago in this area. The senior Senator from Louisiana twice pushed through the Senate legislation for the establishment of multicounty planning and development districts. Today there are almost 40 States which have established these districts. My own State of Georgia has had the districts for about a decade and they have proved quite successful in my State. I know of dozens of examples of small towns in rural counties which have been able to get Federal assistance only because they had the services and expertise of the staff of the area planning and development commission at their disposal. Multicounty planning and development is the only solution to the economic problems of many rural counties in the Nation.

Since the multicounty concept is a proven success in Georgia and other States, our legislation would utilize the districts to bring the multicounty planning process to bear on the loans made by our rural development bank. In introducing this legislation it is our intention to utilize these planning and development districts and to strengthen and bolster them with financial resources to implement the comprehensive plans for rural development that they make.

The bill provides that in any State

which has developed these districts, the district shall, if permitted by State law, apply for and qualify to establish a financial subsidiary which would be Federally chartered and authorized to obtain financial resources from the regional rural development credit bank serving the area. In turn, the multicounty financial subsidiary would make available to local banks and units of general government the funds to finance rural development projects.

As Senator HUMPHREY will explain in his statement, the regional rural development banks will make funds available to the multicounty financial agencies which will in turn fund local banks and local units of government.

The rural development credit system which I have described would make loans for rural development purposes and these loans would be subsidized by a separate but coequal branch of the system, the Rural Development Investment Equalization Administration, by providing interest subsidies and direct grants to especially worthwhile projects, our system would make possible rural economic development where it would not be economically feasible without such a subsidy.

In addition, our reorganization and revision of the lending authorities in the U.S. Department of Agriculture would provide soft credit to those borrowers who could not qualify for a bank loan. By reorganizing these lending authorities we would completely separate rural development type loans from farm loans.

One administrator would be responsible for the Rural Electrification Administration, as he is today.

One administrator would be responsible for the Farm Development Administration, which would make loans only to farmers for agricultural purposes.

One administrator would be responsible only for nonfarm rural development loans. By providing annual funding of $300 million for Rural Enterprise and Community Development Administration grants, we would hopefully be able to finance a great many more water and sewer programs than are presently funded by the U.S. Department of Agriculture. By revising and broadening USDA authority to make rural development loans, we hope to cover the whole host of rural credit needs which cannot receive financing from other sources.

I will not attempt to cover every aspect of this very complex legislation in this statement. Senator HUMPHREY, the other principal sponsor of this legislation, will cover several features of the bill in his statement. In addition, we are placing in the RECORD several explanatory documents which should prove helpful in the analysis and understanding of this bill.

Of course, we do not feel that the bill is perfect in every respect. However, we believe that it does provide the framework of a system which will meet the rural development credit needs of this Nation. We invite comments and suggestions from all interested parties.

Hopefully, this legislation will be enacted during the 92d Congress. Such enactment would mean that this Congress intends to fulfill the commitment made in the 91st Congress—a commitment to achieve rural-urban balance in this Nation.

Mr. HUMPHREY. Mr. President, I express my appreciation to the distinguished chairman of the Committee on Agriculture and Forestry for his exemplary leadership in all matters relating to rural America and particularly for his successful efforts with relation to title IX of the Agricultural Act, which calls for the Government of the United States to give the highest priority to rural development.

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

Mr. HUMPHREY. I yield.

Mr. TALMADGE. Mr. President, permit me to express my deep appreciation to the Senator from Minnesota for his generosity. I compliment the Senator on his effective and diligent perseverance in trying to make title IX a reality. He has worked very diligently and effectively as chairman of the Subcommittee on Rural Development. I compliment the Senator.

Mr. HUMPHREY. Mr. President, it is a special privilege to have in the chair the distinguished Senator from Alabama (Mr. ALLEN), who serves as a member of our committee. Today we are privileged to visit his State where we will conduct our second field hearings. Tomorrow we will continue in the State of Georgia, the State of our distinguished chairman.

Mr. President, I am privileged to introduce legislation today to amend the Consolidated Farmers Home Administration Act of 1971, and to establish major new sources of financial assistance for the development of rural America.

Joining me in the sponsorship of this vital legislation are the distinguished chairman of the Committee on Agriculture and Forestry, the Senator from Georgia (Mr. TALMADGE), and six members of the Committee on Agriculture and Forestry—the distinguished Senator from Vermont (Mr. AIKEN); the distinguished Senator from Alabama (Mr. ALLEN), the present Acting President pro tempore; the Senator from Mississippi (Mr. EASTLAND); the Senator from North Carolina (Mr. JORDAN); the Senator from South Dakota (Mr. MCGOVERN); and the Senator from North Dakota (Mr. YOUNG). As the chairman of the committee has already noted, this is a bipartisan group. We all have the same objectives of trying to revitalize what we call rural America and to carry out the instructions and the mandate of title IX of the Agricultural Act of 1970, known as the rural development title.

The title of the bill we are introducing today is the Consolidated Farm and Rural Development Act. But it is more than a bill for rural America.

It is a bill for the entire country. It is a bill not only for America's farmers, but America's small towns, villages and growing communities that can and ought to be centers of growth.

It recognizes the interrelationships between America's farms and the community trade and cultural centers so vital to the social and economic life of our Nation.

It is a bill to promote balanced rural-urban growth in our Nation at a time when we are experiencing one of the greatest continuing mass migrations to our cities.

And urban governments are near fiscal collapse as they try vainly to cope with the relentless pressures of population.

Meanwhile our rural areas are in decay.

As we focus on the massive problems of urban America, we sometimes forget that rural poverty remains disproportionately high. Only part of the reason is the depressed farm economy. The highest levels of rural poverty are among those people who are not in farming.

It is a bill for freedom of residence.

The rural-urban migration has produced these alarming statistics: 73 percent of our population now live on just 2 percent of our land.

Within 30 years, if the trend should continue, more than half of our people will be living in three huge metropolitan regions—one along the upper Atlantic seacoast, one around the Great Lakes, and the third along our southern California coastline.

This migration has compounded the problems of both our urban and rural areas.

It has put enormous pressures on our cities. Local governments have been unable to meet the demand for quality services for their rapidly growing populations.

We have not met the need for metropolitan housing; we have fallen behind. We have not made progress on air and water pollution; we have fallen behind. Urban slum conditions fester. Crime increases. Quality education suffers. Metropolitan transportation in most urban areas is a snarled shambles. Greenbelts and open spaces have been gobbled up in the rush to build for more and more people. We experience power shortages.

Two-thirds of our substandard housing is in rural America. Nearly 20 million rural houses lack plumbing.

Infant mortality in rural areas is higher than the national average. Education is of a lower quality. Health care is tragically inadequate. In rural South Dakota, for example, there are 16 counties with no doctors—none at all.

Most tragic of all, the migration to the cities is robbing small communities of their most precious resources—people—to rebuild and revitalize their communities. The most energetic and ambitious, the finest minds are leaving for the city because of depressed wages, lack of development, and lack of opportunity.

Our bill is designed to provide the necessary financing to revitalize our rural areas—financing for business and industrial development for new payrolls and new jobs—for better schools, for medical centers and hospitals close to the people, for parks and recreation areas, for improved transportation systems, for day care facilities, museums and cultural centers, for desperately needed housing.

And much more: Industrial parks, water and sewer systems, waste disposal plants, community colleges, rural slum clearance, streets and highways, police and fire stations, and libraries.

There are two main features of the bill:

First, it reorganizes the Department of Agriculture to insure a major emphasis on financing farm credit and nonfarm rural development requirements.

Second, it expands rural credit by making it available to private and public borrowers, unable to get credit from commercial sources, for rural development purposes.

The initial subscription by the government would be $2 billion, in 10 annual payments averaging $200 million. This would enable the system to issue about $2 to $3 billion a year in debentures and bonds in its early years, increasing to a potential of $10 to $20 billion a year after full operation when full or partial borrower-owned status is achieved.

I should note that most of this capital would come from private sources so that there would be a combination of capital investment by the Federal Government plus a large measure of private capital built on the principle of the famous Federal Land Bank system which worked so well and which today is devoid of any Federal Government capital. It has all been repaid and is now owned by the borrowers themselves.

The Consolidated Farm and Rural Development Act has the potential to revitalize rural America and to rebuild rural opportunity.

Thus we can make our rural communities the vital, attractive, prosperous communities they can and should be. We can make a reality of a new freedom—freedom of residence—by providing the environment in which all our people can make a realistic choice about where they will live and work.

Under title II of the Consolidated Farm and Rural Development Act, the system of providing development credit muscle for rural community America has 10 vital organs—10 regional banks, all of which would be located in places of under 35,000 people.

Their location in the rural areas would do a great deal to place emphasis on the financing and technical assistance which is so desperately needed by rural America.

These banks would obtain their money through the sale of debentures, bonds, and other obligations on the general money market. The regional banks would then make money available to some 500 district rural development credit agencies that would be immediately accessible for local borrowers.

This money would be available for public and private projects that would help to achieve balanced national growth. These projects are consistent with those described by the administration as the kinds of things rural community America must have if it is to progress.

The regional banks, like the district financial agencies, would be authorized to issue voting and nonvoting stock, which district credit agencies would be required to buy as a condition of loan approval. In other words, the borrower becomes an owner in the banking structure. We believe this promotes fiscal responsibility.

Each of the regional banks would be required to pay a special Federal franchise tax in lieu of paying Federal corporate income tax. The Treasury would be repaid from the earnings of the system.

This works because every one of the great credit systems that has been established by the Federal Government, such as the Production Credit Agency, the Federal Land Bank, the Bank for Cooperatives, and others, has paid back the capital that was borrowed from the Federal Government.

The present farm credit system is owned by its borrowers, and it is expected that this system will work the same way, so that eventually it will be self-supporting.

The new nonfarm rural development credit system will not be intermingled or imposed upon the present farm credit system. Instead we are building the nonfarm system on its own foundation, using the lessons learned by the farm credit system without placing further burdens on it.

Each regional Rural Development Credit Bank will have a board of directors appointed by the Federal Rural Development Credit Board. And each member of these regional boards must be a resident of a place of under 35,000 population. We want to assure that firsthand knowledge and experience are applied to the credit needs of rural America.

The regional banks will be governed and supervised by the Federal Rural Development Credit Agency, and subject to the policies and rules of the Federal Rural Development Credit Board.

Even though we want this loan system to become independent and borrower-owned, it is not the purpose of the sponsors of this bill to set up a new banking system that will be completely free of the control and guidance of the Federal Government. We propose instead that this system be an action arm of the Government to carry out the national interest of speeding up and implementing the rural development component of the national balanced growth policy which Congress made law last year.

We do not want a credit system for rural community development that can disregard the policies of the President and Congress, so we have built in a set of cross-checks and control mechanisms that will insure that "bureaucratitis" does not set in. The system will be under the constant surveillance of the General Accounting Office so that the Congress will have timely warning to correct any developments in the system not deemed appropriate.

This bill is going to help solve an age-old problem which many of my colleagues know only too well. A community may wish to build a water and sewer system. It must wait for final approval of its loan and grant, and when these are finally approved, the community must get into another long line to wait for the money to become available.

By the special authorization to the Rural Development Credit Agency to make loans to be repaid out of Federal grants when money does become available, a town or county can move ahead with construction at the time of need, and the grant money would be paid directly to the Rural Development Credit Agency when it becomes available.

All projects undertaken under this legislation would have to be proved consistent with the areawide development plans of multicounty planning agencies. And I would point out here that this legislation will offer important assistance and incentives to groups of rural counties to undertake areawide planning.

In our Nation 40 States have what we call multicounty planning agencies. We are trying to strengthen those agencies with the credit muscle which is so essential.

The Federal Rural Development Credit Agency would be authorized to undertake a broad program of technical assistance and research covering all of the purposes for which loans could be made. These would include:

Access roads and street improvements.

Hospitals, health clinics and other facilities for the improvement of health services in rural America.

Airports, developmental highways, access highways, mass transit systems and further programs to improve the quality of all forms of transportation in the countryside.

Improved rural housing, for which there is a crying need.

Municipal buildings and facilities of all kinds.

Open space and parks.

Courthouses and facilities for improvement of law enforcement.

Water and sewer systems, and projects to prevent pollution and enhance the protection of the environment.

Industrial and commercial development, with incentives for American industries to disperse their new plants.

Rural manpower development and training.

Fishing and fisheries, including fish farming.

Forest production, marketing, and processing.

Tourism and outdoor recreation.

Public libraries.

Cooperative self-help forms of economic organization such as areawide planning and development systems.

One of the reasons often given for not locating government installations and private industries in rural areas is that it is uneconomical. This point of view often expresses the theory that the big city is the only place where all the factors come together in sufficient mass and complexity to make business development profitable.

I am not going to argue that point here, even though new research by the Economic Research Service of the Department of Agriculture indicates that this theory is not true.

The studies of the 1960's show that it was the smaller places which grew at the fastest rate, and where the increase in employment was the greatest. The Economic Research Service, in a study to be published soon, has also found that in Pennsylvania, from 1960 to 1966, it was the nonmetropolitan towns of 10,000 to 25,000 people that were growing faster in employment than places of any other size.

Similar studies indicate that the same thing is happening in Minnesota, Arkansas, Georgia, Missouri, Mississippi, and

Virginia, where a maximum State effort was made to push rural development.

Despite this information, many businessmen are still convinced that industry cannot make a profit in rural areas. The wives of these businessmen say they will not put up with poor rural schools, or scarce medical and dental attention for their children. Middle management in America demands some local culture and recreation, and these things produce corporate bias against locating in the countryside.

We might have provided tax exemptions to lure industry, or provided some hidden subsidies. We chose instead to put the rural development incentives right out in the open, to be considered annually by Congress in the appropriations process.

The purpose of these incentives is not to bail out ailing industries. We propose to make the incentive payments to sound businesses and for rural community facilities in towns, demonstrating the capability to grow and prosper. We justify the incentive payments because of the importance to the Nation to direct a large proportion of its new plant development into rural areas. We are going to have an additional 75 million Americans in the next 30 years. If we create jobs outside of the present metropolitan centers, we will serve to influence some of that new population to disperse.

I must also point out that there are strict provisions in this legislation to prevent the pirating of industry from one State to another. This bill would cover only new industrial development.

The bill also provides for a partial reorganization of the Department of Agriculture, setting up a new assistant secretary who would oversee all rural credit, including rural electrification and telephone loans, farm credit and nonfarm rural credit.

This reorganization would not tear down any existing programs. Our legislation today is designed to stimulate the channeling of financial market resources to rural areas where it can create jobs and opportunity.

This bill would build upon the proven programs of the Farmers Home Administration and expand them in scope and funding. We especially want to strengthen the financial services available to young farming couples who confront major start-up investment costs.

Although jobs and new industry are an important part of the process of rural development, we can never lose sight of the fact that farmers and our agricultural economy must be protected above all.

I believe in this legislation. It is a cornerstone—something we can build on to provide a better future for the young people growing up in rural community America.

When this legislation is signed by the President, this Government will be telling those young people that they do not have to go to the big cities for jobs and opportunities. And, we will be telling our big cities that finally, someone is doing something to lessen the increasing population burdens that make providing decent city services a nearly impossible task.

This is legislation of which the sponsors are proud. I believe it is a development program that our entire Nation can support.

Mr. President, this is not a legislative proposal merely to bail out a community or a business or a farm that is on the precipice of disaster. We have legislation that helps such instances and such businesses and such institutions. This program is designed for long-term, constructive, orderly development of America. America needs a development program just like the ones through which we are helping other nations in the world.

The purpose of this legislation is not a dramatic, sudden injection of capital which might be wasted or foolishly expended. The purpose of this legislation is to provide for sustained, orderly growth and progress, to help communities develop facilities that are needed for a growing America, to help people in business and agriculture to modernize and upgrade their facilities, services, and production.

Mr. AIKEN. Mr. President, I am glad to join in sponsoring the Consolidated Farm and Rural Development Act which is being introduced today.

The end of the Vietnam war is now in sight.

Our troop commitments overseas are being reduced, not as fast as I would like to see but we are definitely returning to a peacetime economy.

Rural development will, therefore, have high peacetime priority because we must provide our rural communities with the same advantages and opportunities enjoyed by urban residents.

I recognize that this is not a perfect bill but no bill of this scope ever is when first introduced.

It will probably require considerable study and revision in committee, and I am confident we can develop a final bill which, when enacted, will provide practical ways for bringing urban benefits into our rural areas.

I commend the chairman of the Agriculture Committee, Mr. TALMADGE, and Mr. HUMPHREY, the chairman of our new Rural Development Subcommittee, for the emphasis of the committee as a whole on the problems associated with rural America.

When the Rural Water and Sewer Act was under consideration in the Senate in 1965, I pointed out that it was a major step in providing modern living facilities and jobs for persons living in small rural communities.

I also noted that when the war in Vietnam ended, there would be a great rush for funds to build these essential facilities.

Mr. President, the rush for funds started with enactment of the bill.

From the very start this program has been the most popular rural program since the enactment of the Rural Electrification Act.

Appropriations to fund these projects have never been anywhere near to adequate, because of the priority we have had to give to defense spending.

Without electricity, running water, and modern sewage facilities, no community can expect to grow.

I am glad to note that our rural water and sewer programs will become an important part of the development program this bill authorizes.

More than almost any other peacetime need is the demand for better balanced national growth.

This bill provides credit for public and private borrowers who wish to launch special projects in rural towns.

It should attract large industries to establish branch plants in rural communities, and I should point out that the bill contains a provision prohibiting one community from pirating an established industry from another small town.

Existing small companies which cannot finance expansion through normal banking channels would receive special help because the bill has special provisions to enable small-town banks to lend money for rural growth.

Technical assistance would also be provided where needed.

One very important point is the distinction this new legislation makes between existing farm credit laws and credit for rural development.

I have been assured that there is nothing in this bill which would in any way limit the farmers' access to credit under existing farm credit programs, or the expanded farm credit legislation we hope to enact this year, the Farm Credit Act of 1971.

I would not be a sponsor of any measure which would divert available farm credit to other rural development purposes.

It is my hope that we can move rapidly ahead in perfecting this bill in time for enactment next year.

It is critically important and nothing should be allowed to stand in its way.

Mr. President, I ask unanimous consent that the text of the Consolidated Farm and Rural Development Act, a section-by-section summary, and a statement entitled "How the Consolidated Farm and Rural Development Act Would Work," be printed at this point in the RECORD.

There being no objection, the bill, summary, and statement were ordered to be printed in the RECORD, as follows:

S. 2223

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

TITLE I—AMENDMENTS TO THE CONSOLIDATED FARMERS HOME ADMINISTRATION ACT OF 1961

SECTION 101. Section 301(a) of the Consolidated Farmers Home Administration Act of 1961 is amended to read as follows:

"(a) This title may be cited as the 'Consolidated Farm and Rural Development Act'."

Section 102. The first sentence of section 306(a)(1) of the Consolidated Farmers Home Administration Act of 1961 is amended to read as follows: "The Secretary is also authorized to make or insure loans to associations (including corporations not operated for profit), cooperatives that are unable to obtain credit from the Banks for Cooperatives, public and quasi-public agencies, and others to provide for the acquisition and improvement of lands, the application or establishment of soil conservation practices, provision of marketing and other services, shifts in land use, the conservation, development, use and control of water, the processing, manufacture, and finishing of products from raw materials and intermediate products, and the installation, improvement, equipment, or operation of drainage, waste disposal, or other

rural community development projects, and recreational developments, all primarily serving or providing employment for farmers, ranchers, farm tenants, farm laborers, and other rural residents, and to furnish financial assistance or other aid in planning projects for such purposes."

SEC. 103. The first sentence of section 306 (a) (2) of the Consolidated Farmers Home Administration Act of 1961 is amended to read as follows: "The Secretary is authorized to make grants aggregating not to exceed $300 million in any fiscal year to finance specific projects for—

(i) works for the development, storage, treatment, purification, or distribution of water or the collection, treatment, or disposal of waste, or

(ii) other rural community development projects in rural areas."

SEC. 104. The first sentence of section 306 (a) (3) of the Consolidated Farmers Home Administration Act of 1961 is amended to read as follows: "No grant shall be made under paragraph (2) of this subsection in connection with any project unless the Secretary determines that the project (i) will serve a rural area which is not likely to decline in population if such project is carried out below that for which the project was designed, (ii) is designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area, or (iii) is necessary for orderly community development consistent with a comprehensive community water, sewer, or other development plan of the rural area and not inconsistent with any planned development under State, multijurisdictional, county, or municipal plans approved as official plans by competent authority for the area in which the rural community is located, and the Secretary shall establish regulations requiring the submission of all applications for financial assistance under this section to the multijurisdictional agency and county or municipal government having jurisdiction over the area in which the proposed project is to be located for review and comment concerning among other considerations, the effect of the project upon the area-wide goals and plans of such agency or government * * * within a designated period of time. No loan under this section shall be made that is inconsistent with such multijurisdictional planning and development district area-wide plan."

SEC. 105. Section 306(a) (7) of the Consolidated Farmers Home Administration Act of 1961 is amended to read as follows:

"(7) (A) Rural areas for the purposes of this section shall not include any area in any city or town which has a population in excess of 35,000 inhabitants, nor any urbanized or urbanizing area immediately adjacent thereto.

"(B) The term 'rural community development project' includes, but is not limited to, projects, programs and activities which—

"(1) Establish and improve public works, public service, and development facilities;

"(2) Encourage private investment in, and promote the establishment and expansion of, industrial, agricultural, and commercial enterprises;

"(3) Prevent conditions of excessive unemployment and underemployment, alleviate unemployment caused by loss or curtailment of large industries or Governmental activities, generate increased employment opportunities, and assist in manpower development;

"(4) Assist in generating increased personal and corporate income;

"(5) Further the economic development and growth potential of underdeveloped areas and help such areas to help themselves achieve lasting improvement;

"(6) Improve the quality and accessibility of rural community facilities and services;

"(7) Stem outmigration of families, labor, and capital from rural areas and encourage migration to such areas;

"(8) Assist in the solution of farm, home, and community problems;

"(9) Promote the conservation, development, and proper utilization of human and natural resources;

"(10) Encourage the solution of problems of wide geographic significance;

"(11) Establish and improve educational facilities and encourage the development of improved educational methods;

"(12) Establish and improve land, water, and air transportation systems and services for goods and passengers;

"(13) Assist in the solution of problems related to law enforcement activities;

"(14) Enhance domestic prosperity by the establishment of stable and diversified local economies and improved local conditions;

"(15) Assist in the establishment of decent, safe, sanitary, and comfortable housing;

"(16) Establish and improve health facilities and services and generally promote improved health and nutrition of residents of rural areas;

"(17) Establish programs and projects of the type authorized under title I of the Demonstration Cities and Metropolitan Development Act of 1966; and

"(18) Provide direct financial incentives to industry to create jobs in rural areas."

Sec. 106. (a) The first paragraph of section 331 of the Consolidated Farmers Home Administration Act of 1961 is amended by striking out everything beginning with "Farmers Home Administration" and inserting the following:

(1) "Farm Development Administration and the Rural Enterprise and Community Development Administration, each of which shall be headed by an Administrator, appointed by the President, by and with the advice and consent of the Senate. Each such Administrator shall be subject to the supervision and direction of an Assistant Secretary of Agriculture-Rural Development Credit, who shall be additional to the Assistant Secretaries of Agriculture otherwise authorized by law and shall be appointed by the President, by and with the advice and consent of the Senate."

(b) 5 U.S.C. Sec. 5315(11) is amended to read as follows:

"(11) Assistant Secretaries of Agriculture (4)" (c) 5 U.S.C. § 5316(4) is amended to read as follows:

"(4) Administrator, Farm Development Administration, Department of Agriculture."

(d) 5 U.S.C. § 5316 is amended by adding at the end thereof the following:

"(131) Administrator, Rural Enterprise and Community Development Administration, Department of Agriculture."

TITLE II—FEDERAL RURAL DEVELOPMENT CREDIT SYSTEM

SUBTITLE A—FINDINGS, PURPOSE, AND DEFINITIONS

SEC. 201. Title and Findings and Purpose:

(a) This title may be cited as the Rural Development Financial Resources Act of 1971.

(b) The Congress hereby finds that:

(1) farming and forestry form the backbone of the rural economy; yet the community services and facilities and the income earning opportunities needed by farm people to increase their incomes and raise their quality of life are shared with all other residents living in rural areas and rural communities who must participate in their financial support. Adequately to raise farm family income and increase the accessibility to farm people of high quality community facilities and services requires all the resources in local rural communities to be used at maximum effectiveness and efficiency; the conduct of forestry, industry, business, and commerce, as well as farming contributes to the jobs and income earning opportunities needed to maintain adequate rural facilities and services; and the receipt of adequate income is essential to improved human nutrition and family living; the same circumstances are essential to expanding the service loads and hence the ability of rural electrification systems to pay overhead costs for service to farmers and repay indebtedness on Government loans. To attain these goals it is necessary to increase the investment of capital and level of business activity and quality of community facilities and services in rural areas and communities. Much of the needed investment must come in the first instance from outside of rural areas and communities.

It is the policy of Congress to meet a large part of the need for increased investment in rural areas by establishing a system of borrower-owned financial institutions that will be able to bring rural credit needs into effective contact with the great central money markets of the nation.

(2) prosperous, productive, and attractive rural communities are essential to the well-being of farm families and of a free nation;

(3) a more general, better balanced geographic distribution of the nation's population is essential to the prosperity, general welfare, and domestic tranquility of the urban as well as the rural communities of the United States;

(4) a more general, better balanced geographic distribution of profitable private economic enterprises, income earning opportunities, and high quality public community facilities, services, and public works is necessary to reverse the flow of population from rural to urban areas and achieve a more general, better balanced geographic distribution of the Nation's population;

(5) additional capital investment and financial resources are essential to bring to rural areas the private economic enterprises, public works, and community facilities and services necessary to achieve a more uniform geographic distribtuion of the Nation's population; and

(6) a banking system to complement the Farm Credit System and the Farmers Home Administration of the Department of Agriculture is urgently needed to provide such additional capital investment and financial resources in rural areas.

(c) It is therefore the purpose of this Act to provide for a permanent system of rural development credit banks and related financial institutions and services that will improve the income and well-being of urban as well as rural America by furnishing sound, adequate, and constructive credit, capital augmentation, and closely related financial resources and services to the residents of rural areas, corporations, agricultural producer organizations (except where able to obtain credit from banks for cooperatives under the Farm Credit Act of 1933 (12 U.S.C. 1134), other cooperatives, industrial, and business enterprises, quasi-public bodies, counties, municipalities, and other units of local general and special purpose government that will establish, construct, and operate private and public facilities, works, and services in rural areas and will provide remunerative employment to increasing numbers of rural residents. It is further the purpose of this Act to encourage borrower participation in the management, control, and ownership of a permanent system of credit for non-farm enterprises and community public works, facilities, and services similar to the Farm Credit System.

SEC. 202. Definitions.—As used in this Act—

(1) The term "Rural Development Credit System means—

(A) the participating rural development

48-059 O - 72 - pt. 18 - 29

financial institutions and units of local general government as provided in such title C of this Act;

(B) the District Rural Development Credit Agencies provided for under subtitle D of this Act;

(C) the Regional Rural Development Credit Banks provided for under subtitle E of this Act;

(D) the Federal Rural Development Credit Agency provided for under title F of this Act;

(E) the Federal Rural Development Investment Equalization Administration provided for under title G of this Act; and

(F) the Federal Rural Development Credit Board provided for under title H of this Act.

(2) The term "rural area" means any area within a State or the Commonwealth of Puerto Rico which is not part of or contiguous to any municipality having a population of 35,000 or more according to the latest decennial census of the United States. The Rural Development Credit Board may by regulation, after consultation with the Director of the Office of Management and Budget, the Secretary of Agriculture, and the Secretary of Housing and Urban Development, broaden the definition of such term to include additional areas if the Board determines that such action, because of special circumstances applicable to such areas, is consistent with the purposes of this Act.

(3) The term "rural development purpose" means any project undertaken by any private industrial or business enterprise or by any State, regional, or local development authority, any public work project, or any community facility or service that contributes or will contribute substantially to the objectives of a rational national growth policy and the enhancement of any rural community or rural area as a place to live and make a living. Such term specifically includes, but is not limited to, projects that provide increased employment or income for or directly benefit rural residents and that—

(A) establish and improve public works, public service, and development facilities;

(B) encourage private investment in, and promote the establishment and expansion of, industrial and commercial enterprises including but not limited to investor-owned and cooperative marketing and other service associations and enterprises.

(C) prevent conditions of excessive unemployment and underemployment, alleviate unemployment caused by loss or curtailment of large industrial or Governmental activities, generate increased employment opportunities, or assist in manpower development;

(D) assist in generating increased personal and corporate income;

(E) further the economic development and growth potential of underdeveloped areas and help such areas to help themelves achieve lasting improvement;

(F) improve the quality and accessibility of rural community facilities and services;

(G) stem outmigration of families, labor, and capital from rural areas and encourage migration to such areas;

(H) promote the conservation, development and proper utilization of human and natural resources;

(I) establish and improve public educational facilities and encourage the development of improved educational methods;

(J) establish and improve land, water, and air transportation systems and services for goods and passengers;

(K) assist in the solution of problems related to law enforcement activities;

(L) enhance domestic prosperity by the establishment of stable and diversified local economies and improved local conditions;

(M) assist in the establishment of decent, safe, sanitary and comfortable housing;

(N) establish and improve health facilities and services and generally promote improved health and nutrition of residents of rural areas;

(O) provide direct financial incentives to industry to create jobs in rural areas.

(4) The term "local general government" means the government of a municipality, county, or township as such terms are defined and used by the United States Bureau of the Census. Such term does not include independent school districts.

(5) The term "Regional Bank" means a Regional Development Credit Bank established under subtitle G of this title.

(6) The term "region," when used in connection with a Regional Bank, means the geographic area served by such bank.

(7) The term "Federal Rural Development Credit Board" means the body established under subtitle H of this title.

(8) The term "District Rural Development Credit Agency" means any financial institution of a multi-jurisdictional planning and development district of a State designated as a District Rural Development Credit Agency under subtitle D of this title.

(9) The terms "participating institution" and "Participating Rural Development Financial Institution" means any financial institution or local unit of general government designated as a participating institution in the Rural Development Credit System under subtitle C of this title.

(10) The term "Federal Rural Development Credit Agency" means the independent Government agency established under title F of this title.

(11) The term "Executive Director" means the head of the Federal Rural Development Credit Agency.

(12) The term "financial assistance" includes loans, participation in loans, guarantee or insurance of loans, the purchase of legal obligations, and the discount or rediscount of any note, draft, or other obligation.

Subtitle B—Borrowers and Availability of Loans

Sec. 301. Availability of Rural Development Credit.—In order to assist any individual, partnership, cooperative, corporation, non-profit association, and any instrumentality of a State, county, municipality, or any unit of local general government (hereinafter in this title referred to as "borrower" or "potential borrower") to carry out a rural development purpose, such entities are eligible to borrow from, sell its financial obligations to, or to insure its obligations with the Rural Development Credit System institution in the area in which the rural development purpose is to be undertaken. Such financial assistance shall be subject to the provisions of this title and the rules and regulations of the Federal Rural Development Credit Agency and policies established by the Federal Rural Development Credit Board. Preference shall be given to potential borrowers who have demonstrated and who have an established record of financial stability.

Sec. 302. Eligibility.—The eligibility of potential borrowers to obtain assistance for carrying out rural development purposes shall be determined within the multijurisdictional planning and development district in which the rural development purpose is to be undertaken in accordance with criteria established by the District Rural Development Credit Agency located in such district. Such criteria shall be subject to the approval of the Regional Bank concerned, the rules and regulations of the Federal Rural Development Credit Agency, established pursuant to policies prescribed by the Federal Rural Development Credit Board. The potential borrower must demonstrate that the financial assistance applied for is not available from any other public or private credit source.

Sec. 303. Terms and Conditions.—The terms and conditions under which assistance may be made available to borrowers in any region shall be established by the Regional Bank concerned, subject to the rules and regulations of the Federal Rural Development Credit Agency established pursuant to policies of the Federal Rural Development Credit Board. Such terms and conditions may vary depending on the rural development purpose for which loan proceeds are to be used.

Sec. 304. Security.—Borrowers shall be required to provide the best available collateral for financial assistance made available under this Act, and may be allowed to demonstrate repayment ability and that factor shall be taken into consideration in determining whether any such assistance should be approved or disapproved. In determining the amount of security necessary for financial assistance to any applicant, a District Rural Development Bank Agency shall also take into consideration any grant or payment from the Federal or State government, including any grant or payment under the provisions of this Act, for which the borrower may qualify and obtain commitment with respect to the project involved in the loan application.

Sec. 305. Required Purchase of Capital Stock.—Each borrower, as a condition of loan approval, shall be required to purchase capital stock in the District Rural Development Credit Agency through which assistance is made in an amount (at par value) equal to not less than 5 per centum and not greater than 10 per centum of the amount of the loan, as determined by the Federal Rural Development Credit Board from time to time.

Subtitle C—Participating Rural Development Financial Institutions and Units of Local General Government

Sec. 401. Designation.—Any National or State Bank, savings institution, credit union, or other financial institution making loans in rural areas for rural development purposes, and any county, municipality, or other unit of local general government shall, upon application, be considered for designation as a Participating Rural Development Financial Institution, hereinafter in this Act referred to as a "Participating Institution."

Sec. 402. Functions of Participating Institution.—Any participating institution is authorized, subject to provisions of this title, the approval of the District Rural Development Credit Agency from which assistance is being sought, and subject to the rules and regulations of the Regional Bank concerned and the Federal Rural Development Credit Agency, established under policies adopted by the Rural Development Credit Board, to borrow from and to make loans for, or on behalf of, District Rural Development Credit Agencies, to make loans guaranteed or insured by the Regional Bank concerned, and to issue obligations for purchase by the District Rural Development Credit Agencies, and to perform such other duties as the District Rural Development Credit Agency concerned may delegate and the participating institution agrees to undertake.

Sec. 403. Endorsement by Participating Institutions.—A participating institution shall endorse to the District Rural Development Credit Agency under which it operates such evidences of obligations as it shall sell to, insure or guarantee with, or discount with such Agency and shall assume full responsibility for the repayment of principal and interest represented by such obligation.

Sec. 404. (a) Purchase of Capital Stock.—A participating institution shall require the borrower of loans made for or on behalf of District Rural Development Credit Agencies, as a condition of loan approval, to subscribe to an amount of par value capital stock in the District Rural Development Credit Agency from which such financial assistancies obtained equal to not less than 5 per centum nor more than 10 per centum of the total proceeds of the loan. In addition, each participating institution shall, as a condition of its designation as a participating institution, maintain at all times a total ownership of capital stock in the District Rural Development Credit Agency under which it operates equal to at least one per centum of the amount outstanding on all loans and other

obligations in which it has participated on behalf of such District Rural Development Credit Agency.

(b) Any of the institutions listed in Section 401 are authorized to purchase voting stock or participating certificates of District Rural Development Credit Agencies authorized by this title.

(c) Any of the institutions listed in Section 401 may qualify as "cooperating financial institutions" by participating in any loan or other obligation on behalf of the District Rural Development Credit Agency. Cooperating financial institutions shall not be required to maintain stock ownership as required in section 404(a). Such institutions shall, however, be subject to all other rules, regulations and requirements provided for participant institutions.

SEC. 405. GOVERNANCE OF PARTICIPATING AND COOPERATING INSTITUTIONS.—With respect to all loans and other obligations which a participating or cooperating institution shall process or otherwise handle for a District Rural Development Credit Agency, the policies, rules, and regulations, and procedures followed shall be in accordance with the rules and regulations established by such Agency and approved by the Regional Bank concerned. The designation of any institution as a participating institution may be cancelled by the District Rural Development Credit Agency concerned, in accordance with rules and regulations established by the Regional Rural Development Credit Bank. Any participating institution whose designation has been cancelled under this section may appeal the cancellation to the appropriate Regional Bank. The decision of the board of directors of such bank shall be final. The Regional Banks shall, in accordance with rules and regulations established by the Federal Rural Development Credit Agency, establish appropriate rules and regulations and review bodies to implement expeditious, orderly, and fair consideration of appeals filed by participants objecting to cancelled designations or other matters related to their relationship to the Rural Development Credit System.

SEC. 406. CERTIFICATES OF PARTICIPATION.—Each participating institution shall be issued a certificate of participation embossed by the Rural Development Credit Board indicating on the face of such certificate (1) that the participant has been designated as an official Participating Rural Development Financial Institution of the Rural Development Credit System, (2) the date of certification, and (3) a statement in summary form of the powers and responsibilities of the participating institution. The application of an eligible institution for designation as a participating institution shall be forwarded to the District Rural Development Credit Agency along with its initial application to purchase capital stock. Such application shall be endorsed by the District Agency and forwarded to the Federal Rural Development Credit Agency through the appropriate Regional Rural Development Bank. The Executive Director will submit his recommendation for designation to the Federal Rural Development Credit Board for approval and issuance of certificate.

SUBTITLE D—DISTRICT RURAL DEVELOPMENT CREDIT AGENCIES

SEC. 501. (a) DESIGNATIONS AND CHARTERS.—Any financial agency or any multijurisdictional planning and development district of a State may make application to the Regional Bank serving the area in which such district is located for designation as a District Rural Development Credit Agency.

(b) The application filed under this section shall specify in general terms the objects for which the Federal charter will be used, the powers to be exercised under the charter, and the territory it proposes to serve. The application shall be signed by appropriate officials of the agency making the application and shall be accompanied by appropriate documents authenticating the legal status of the applicant and of the officials signing the application. A copy of the proposed charter, constitution, bylaws, and other pertinent instruments of the applicant shall accompany any application filed under this section.

(c) An application filed with any Regional Bank under this section shall be forwarded by such bank to the Executive Director together with the recommendations of the bank concerning the need for such a District Rural Development Credit agency to help provide adequate credit for rural development purposes in the area the applicant would serve. The Executive Director may for good cause shown deny any application for a charter.

(d) Upon the approval of the application of any financial agency of any multi-jurisdictional planning and development district of a State filed under this section, such agency shall be designated as a District Rural Development Credit Agency and be chartered as an instrumentality of the United States. The Executive Director shall prescribe by regulation or otherwise the organization, management, and conduct of the business of any District Rural Development Credit Agency chartered under this section, shall prescibe the initial amount of stock in the Regional Rural Development Credit Bank that such District Rural Development Credit Agency shall be required to purchase, and the territory within which its operations may be carried on. The Executive Director is authorized to modify the charter of any District Rural Development Credit Agency whenever he determines it necessary to accomplish the purposes of this Act.

(e) No application for designation under this section shall be approved unless the applicant agrees to subscribe to stock in the Regional Bank concerned in such amount as may be required by such bank.

SEC. 502. GOVERNING BOARD.—Each District Rural Development Credit Agency shall have a governing board of directors of such number, for such terms, with such qualifications, and elected in such manner as may be required by State law and its Federal charter. No member of the board of directors shall, within one year after the date he ceases to be a member of such board, be elected or designated a salaried employee of such agency.

SEC. 503. GENERAL CORPORATE POWERS.—Each District Rural Development Credit Agency, subject to supervision by the appropriate Regional Bank and the Federal Rural Development Credit Agency, shall have power to—

(1) Have succession until terminated in accordance with this Act or any other Act of Congress.

(2) Adopt and use a corporate seal.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real and personal property necessary or convenient to its business.

(6) Operate under the direction of its board of directors in accordance with this Act.

(7) Subscribe to stock of the Regional Bank of the region in which such District Rural Development Credit Agency is located.

(8) Purchase stock of a Regional Bank held by other District Rural Development Credit Agencies and stock of other such agencies.

(9) Contribute to the capital of such bank or other District Rural Development Credit Agencies.

(10) Invest its funds as may be approved by the appropriate Regional Bank under regulations of the Federal Rural Development Credit Agency and deposit its current funds and securities with such Regional Bank, a member bank of the Federal Reserve System, or any bank insured with the Federal Deposit Insurance Corporation, and may pay fees therefor and receive interest thereon as may be agreed upon.

(11) Buy and sell obligations of or insured by the United States, or of any agency thereof, or obligations of any banks of the Rural Development Credit System.

(12) Borrow money from the appropriate Regional Bank, and with the approval of such bank, borrow from and issue its notes or other obligations to any commercial bank or other financial institution.

(13) Make and participate in loans, accept advance payments, and provide services and other assistance as authorized in this title and charge fees therefor.

(14) Endorse and become liable on loans discounted or pledged to a Regional Bank.

(15) Enter into loss sharing agreements with a Regional Bank and other District Rural Development Credit Agencies.

(16) Prescribe its bylaws through its board of directors and provide in such bylaws for—

(A) the classes of its stock and the manner in which such stock shall be issued, transferred, and retired;

(B) the election or appointment of its officers and employees;

(C) property acquired, held, or transferred;

(D) the conduct of its general business; and

(E) the exercise and enjoyment of the privileges granted to it pursuant to law.

(17) Elect by its board of directors a manager or other chief executive officer, and provide for such other officers or employees as may be necessary, including joint employees with other institutions of the Rural Development Credit System; define their duties and require surety bonds or make other provisions against losses occasioned by employees.

(18) Elect by its board of directors a loan committee with power to approve applications for loans, participations, or purchase of obligations, or, with the approval of the appropriate Regional Bank, delegate the approval of applications for loans or participations within specified limits to other committees or to authorized officers and employees of the agency or to a participating institution chartered under provisions of subtitle C.

(19) Perform any functions delegated to it by a Regional Bank or the Federal Rural Development Credit Agency.

(20) Exercise by its board of directors or authorized officers or employees, all such incidental powers as may be necessary or expedient to carry on the business of the agency.

SEC. 504. CAPITAL STOCK, CLASSES OF STOCK, TRANSFER, EXCHANGE; AND DIVIDENDS.—(a) A District Rural Development Credit Agency may issue voting stock, nonvoting stock, preferred stock, and provide for an equity reserve. Holders of stock and equity reserve shall have such rights, not inconsistent with the provisions of this section, as are set forth in the bylaws of the agency. Stock shall be divided into shares of $5 par value each.

(b) Voting stock may be purchased only by borrowers or participating institutions who are eligible to borrow from or participate in financial operations of the agency. Each holder of voting stock shall be entitled to one vote for each such stock except as otherwise provided in subsection (d) hereof. No voting stock or any interest therein or right to receive dividends thereon shall be transferred by act of the parties or by operation of law, except to another person eligible to hold voting stock, and then only as provided in the bylaws.

(c) Nonvoting stock may be issued to the Executive Director and to other investors.

(d) Preferred stock, which shall be nonvoting, may be issued to the Executive Director and to other investors when authorized by a majority vote of the outstanding shares of the voting stock, by a majority vote of the outstanding shares of nonvoting stock, and by a majority vote of the outstanding shares of preferred stock, except that all stock held by the Executive Director shall be excluded from voting hereunder. The holders of such stock shall be entitled to one vote, in

person, for each share of stock held. The authorization to issue preferred stock shall state the privileges, restrictions, limitations, dividend rights (either cumulative or noncumulative) redemption rights, preferences, and other qualifications affecting said stock, and the total amount of the authorized issue to which it belongs.

(e) Nonvoting stock may be issued to persons eligible to borrow from the agency to whom voting stock is not to be issued and to cooperating financial institutions.

(f) Each borrower from the agency shall be required to own at the time the loan is made voting or nonvoting stock as provided in the bylaws of the agency, in an amount equal in par value, as determined by the agency, to not less than $5 per one hundred dollars or fraction thereof nor more than $10 per one hundred dollars of the amount of the loan. Such stock shall not be canceled or retired upon payment of the loan or otherwise except as may be provided in the bylaws. Notwithstanding any other provision of this section, for a loan in which an agency participates with a commercial bank or other financial institution other than a Regional Bank or another District Rural Development Credit Agency, the requirement that the borrower own stock shall apply only to the portion of the loan which is retained by the agency.

(g) Voting stock shall, within two years after the holder ceases to be a borrower or a participating institution be converted into nonvoting stock at the fair book value thereof, not exceeding par. Consistent with the provisions of this title, and as provided in the bylaws of the agency, each class of stock shall be convertible into any other class of stock except preferred stock.

(h) As a further means of providing capital, a District Rural Development Credit Agency may, as provided in its bylaws, and with the approval of the appropriate Regional Bank, require borrowers and participating institutions to purchase stock in addition to that required in subsection (f) hereof and under subtitle C, or invest in the equity reserve, in an aggregate amount not exceeding $5 per $100 or fraction thereof of the amount of the loan in the case of borrowers and 50 cents per $100 or fraction thereof in the case of participating institutions. Any portion of the amounts invested under this subsection which is no longer required for the purposes of the agency may be returned to the owners thereof by revolving or retirement in accordance with its bylaws.

(i) Dividends shall be paid on preferred stock in accordance with the authorization of the stockholders to issue such stock. Dividends on stock, other than preferred stock, may be paid by a District Rural Development Credit Agency as provided in its bylaws at such rate or rates as are approved by the appropriate Regional Bank in accordance with regulations of the Federal Rural Development Credit Agency established in accordance with provisions of Section 505.

(j) Except with regard to stock held by the Executive Director each District Rural Development Credit Agency shall have a first lien on stock and participation certificates it issues, allocated surplus, and on investments in equity reserve, for any indebtedness of the holder of such capital investments and, in the case of equity reserve, for charges for any such agency losses in excess of reserves and surplus.

(k) In any case where the debt of a borrower is in default, a District Rural Development Credit Agency may retire all or part of the capital investments in such agency held by such debtor at the fair book value thereof, not exceeding par in total or partial liquidation of the debt.

SEC. 505. APPLICATION OF EARNINGS; RESTORATION OF CAPITAL IMPAIRMENT, AND SURPLUS ACCOUNT.—(a) Each District Rural Development Credit Agency at the end of each fiscal year shall apply the amount of its earnings for such year in excess of its operating expenses (including provision for valuation reserves against loan assets) in an amount equal to one-half of 1 per centum of the loans outstanding at the end of the fiscal year to the extent that earnings in such year in excess of other operating expenses permit, until such reserves equal or exceed 3½ per centum of the loans outstanding at the end of the fiscal year, beyond which 3½ per centum further additions to such reserves are not required but may be made, first to the restoration of the impairment, if any, of capital; and second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the appropriate Regional Bank.

(b) When the bylaws of a District Rural Development Credit Agency so provide, available net earnings at the end of any fiscal year may be distributed in stock, or in cash, except that when the Executive Director holds any stock in a District Rural Development Credit Agency the cash distribution shall be such percentage of the earnings as shall be determined under regulations of the Federal Rural Development Credit Agency. Any part of the earnings of the fiscal year in excess of the operating expenses for such year held in the surplus account may be allocated to stockholders.

SEC. 506. LOANS; PARTICIPATION; OTHER FINANCIAL ASSISTANCE; TERMS; CONDITIONS; INTEREST; SECURITY.—

(a) Each District Rural Development Credit Agency under rules and regulations prescribed by the board of directors of the appropriate Regional Bank and approved by the Federal Rural Development Credit Agency may through participating institutions, make, guarantee, or participate with other lenders in making loans and in providing other similar financial assistance, and may buy obligations of borrowers for rural development purposes and other requirements of such borrowers. A District Rural Development Credit Agency is authorized to make loans and provide other authorized assistance under this title directly to any applicant eligible for such assistance in any rural area in which there is no participating or cooperating institution able and willing to supply on reasonable terms and conditions the credit needs of such applicant.

(b) Loans authorized in subsection (a) hereof shall bear such rate or rates of interest as are determined under regulations prescribed by the board of directors of the agency with the approval of the Federal Rural Development Credit Agency, and shall be made upon such terms, conditions, and upon such security, if any, as shall be authorized in such regulations. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers, at the lowest reasonable cost on a sound business basis, taking into account the cost of money to the agency, necessary reserves and expenses of the agency, and services provided to borrowers and participants. The loan documents may provide for the interest rate or rates to vary from time to time during repayment period of the loan in accordance with the rate or rates currently being charged by the agency. Such regulations may require prior approval of the Regional Rural Development Bank or the Federal Rural Development Credit Agency on certain classes of loans; and may authorize a continuing commitment to a borrower or a participant of a line of credit.

SEC. 507. OTHER SERVICES.—Each District Rural Development Credit Agency may provide technical assistance to borrowers, applicants, and participants and may make available to them such financial related services appropriate to their operations as is determined feasible under regulations prescribed by the Federal Rural Development Credit Agency.

SUBTITLE E—REGIONAL DEVELOPMENT CREDIT BANKS

SEC. 601. ESTABLISHMENT; TITLE; NUMBER.—There are established in the Rural Development Credit System ten Regional Rural Development Credit Banks as federally chartered instrumentalities of the United States. Their charters may be modified from time to time by the Federal Rural Development Credit Board, subject to approval of Farm Credit Administration and the Secretary of Agriculture, in any manner not inconsistent with the provisions of this title as may be necessary or expedient to implement this Act. The jurisdictional territory of the Regional Credit Banks shall be divided so as to correspond, to the maximum extent practicable, to the rural areas of the uniform regions established by the President of the United States for operation of Federal agencies, and the headquarters of each such bank shall be located within the rural area which it serves, but not necessarily in the same city which serves as the headquarters city of the uniform region for carrying out programs of Federal agencies. Each bank shall maintain a liaison office in the city, regardless of population, which serves as the headquarters city for the uniform region in which such bank is located. The Board of any Regional Rural Development Credit Bank may establish such branches as may be appropriate for the effective operation of its business, but the territorial jurisdiction of any such branch shall coincide with the boundary of one or more of the uniform multi-jurisdiction planning and development districts, if any, established by the Governor or the legislature of the State concerned. The headquarters of any such branch shall be located within the rural area served.

SEC. 602. CORPORATE EXISTENCE; GENERAL CORPORATE POWERS.—Each Regional Bank shall be a body corporate, subject to the supervision of the Federal Rural Development Credit Agency, and shall have power to—

(1) Adopt and use a corporate seal.

(2) Have succession until dissolved under the provisions of this Act or other Act of Congress.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose and otherwise exercise all the usual incidents of ownership of real and personal, tangible and intangible property necessary or convenient for its business.

(6) Make loans and commitments for credits, accept advance payments, and provide services and other assistance as authorized in this Act, and charge, or not charge fees, therefor.

(7) Operate under the direction of its board of directors.

(8) Elect by its board of directors, a President, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees with the institutions of the Farm Credit System and of other institutions of the Rural Development Credit System, define their duties, and require surety bonds or make other provisions against losses occasioned by employees.

(9) Prescribe its bylaws through its board of directors, and provide in such bylaws, in accordance with rules and regulations of Federal Rural Development Credit Agency, for—

(A) the classes of its stock and the manner in which such stock shall be issued, transferred, and retired;

(B) the election or appointment of its officers and employees, except that the training and practice of appraisal personnel shall be subject to the supervision of the Farmers' Home Administration or, with approval of the Farm Credit Administrator, of the Farm Credit Administration;

(C) property acquired, held, or transferred;

(D) the conduct of its general business; and

(E) the exercise and enjoyment of the privileges granted to it by law.

(10) Borrow money and issue notes, bonds, debentures, or other obligations individually, or in concert with one or more other Regional Banks of such character, terms, conditions, and rates of interest as it may determine.

(11) Accept deposits of securities or of current funds from borrowers and participants and agencies established under this Act, and pay interest on such funds.

(12) Participate with one or more other Regional Banks under this title on such terms as may be agreed upon among such banks and to participate with private banks and other financial institutions in rural areas on such terms as may be agreed upon among such banks or institutions.

(13) Approve, in establishing the eligibility of any District Rural Development Credit Agency for participation in the Rural Development Credit System, the salary scale of the officers and employees of the District Rural Development Credit Agencies and the compensation of the chief executive officer thereof and supervise the exercise by such agencies of the functions vested in or delegated to them under this Act, except that the appointment of the chief executive officer of any such District Rural Development Credit Agency shall be subject to the approval of the Regional Bank concerned so long as the United States holds stock or participation certificates in such Rural Development Bank Agency.

(14) Deposit its securities and its current funds with any member bank of the Federal Reserve System, and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs, upon such regulations as may be prescribed by the Secretary; may be employed as fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.

(15) Buy and sell obligations of or insured by the United States or of any agency thereof, or securities backed by the full faith and credit of such agency, and make such other investments as may be authorized by the Federal Rural Development Credit Agency.

(16) Conduct studies and adopt standards for lending and provide other encouragement for the development of private business enterprise, and for the quality of life, economic earning opportunities and jobs, and public and community works, facilities, and services in the rural area it serves.

(17) Delegate to District Rural Development Credit Agencies and through them to participating institutions such functions vested in or delegated to the bank, as it may determine appropriate, as approved by the Federal Rural Development Credit Agency.

(18) Amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of them.

(19) Perform any function delegated to it by the Federal Rural Development Credit Board or the Federal Rural Development Credit Agency.

(20) Require District Rural Development Credit Agencies and participating and cooperating institutions to endorse those notes and other obligations of their borrowers as are presented to the bank for the purpose of obtaining financial assistance.

(21) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry out the business of the bank.

SEC. 603. RURAL DEVELOPMENT CREDIT BANK STOCK; VALUE; SHARES; VOTING; DIVIDENDS.—(a) The capital stock of each Regional Bank shall be divided into shares of par value of $5 each and may be of such classes as its board of directors may determine with approval of the Federal Rural Development Credit Agency and under rules and regulations established by the Federal Rural Development Credit Board.

(b) Voting stock of each bank shall be held only by Rural Development Credit Agencies and participating institutions and borrowers who obtain financial assistance from such banks, which stock shall not be transferred, pledged, or hypothecated except as authorized pursuant to this title or as authorized under regulations of the Federal Rural Development Credit Agency. Any District Rural Development Bank Agency may elect to receive nonvoting stock in lieu of voting stock.

(c) The Board of each Regional Bank shall from time to time increase its capital stock as may be necessary to permit the issuance of additional shares to borrowers (including participating institutions using financial assistance of District Rural Development Credit Agencies so that borrowers and participating institutions of such agencies may be eligible for loans and other financial assistance from such agencies.

(d) Nonvoting stock may be issued to the Executive Director of the Federal Rural Development Credit Agency and may also be issued to District Rural Development Credit Agencies, other rural financial institutions, and other direct borrowers.

(e) The earnings of a Regional Bank shall be determined in accordance with approved accounting principles and practices, as established by the Federal Rural Development Credit Agency subject to examination by the Farm Credit Administration and subject to the rules and regulations of the Federal Rural Development Credit Board and the General Accounting Office. Earnings shall be distributed as follows:

First, not less than 10 per centum of net earnings for the year shall be paid into the reserve fund of the bank until said reserve fund shall equal 150 per centum of outstanding stock.

Second, not less than 10 per centum of net earnings for the year shall be paid into the capital surplus fund of the bank.

Third, payment of the franchise tax as required by section 614 for any year in which any stock is held by the Executive Director.

Fourth, payment of dividends on nonvoting stock of not to exceed the average cost to the Federal Rural Development Credit Agency of funds obtained through issuance of bonds, debentures, and other evidences of indebtedness in its funding operations.

Fifth, retirement of nonvoting stock and other evidences of indebtedness of the bank held by the Executive Director.

Sixth, payment of dividends on voting stock of the bank as determined by its board of directors, if the bank has retired all of the nonvoting stock of the bank that have been issued to the Executive Director.

(f) Dividends shall not be payable on any stock held by the Executive Director. Noncumulative dividends may be payable on other stock to the extent available from earnings in accordance with subsection (e) of this section, and dividends may be paid on other stock of the bank. The rate of dividends may be different between different classes and different issues of stock on the basis of the comparative contributions of holders thereof to the capital or earnings of the bank by such classes, types, and issues; but no dividends shall be paid on voting stock and no dividends greater than 5 per centum per annum on par value of nonvoting stock until such time as two-thirds of the capital stock subscribed by the Executive Director, in accordance with provisions herein, shall have been retired; otherwise dividends shall be in the order indicated in subsection (e).

(g) Nonvoting stock may be sold by nonborrowers to borrowers or potential borrowers, participating institutions, or District Rural Development Credit Agencies who may convert such nonvoting stock into voting stock at their election at any time prior to final repayment of indebtedness to the bank. Voting stock may be sold only to District Rural Development Credit Agencies, participating institutions, or other borrowers or potential borrowers of the bank. Nonvoting stock may be redeemed at any time by the bank, at the election of the owner, in accordance with a schedule of values published from time to time by the bank. When a District Rural Development Credit Agency reduces its total outstanding indebtedness to the bank, its voting stock may be converted at par value, or such greater value as the bank may from time to time determine, into nonvoting stock, or may be redeemed in cash or as a credit to extinguish final indebtedness at such value as the bank may from time to time determine. The bank may establish, with approval of the Federal Rural Development Credit Agency under rules and regulations established by the Rural Development Credit Board, the terms and conditions for the sale, transfer, and redemption of such other classes of stock and evidences of indebtedness that it may issue from time to time. Nonvoting stock and other evidence of indebtedness of the bank held by the Executive Director may be retired at any time, subject to approval of the Federal Rural Development Credit Board, and shall be retired each year to the extent of the availability of earnings in accordance with the provisions of subsection (e).

SEC. 604. LOANS.—The Regional Banks are authorized to—

(1) make, participate in, extend mortgage insurance in connection with, refinance, discount and redistrict, or guarantee loans, purchase obligations and provide other financing for real or personal property or for working capital and operating expenses in connection with loans made or participated in or obligations purchased by District Rural Development Agencies to finance any rural development purpose project carried out or to be carried out in a rural area served by the bank;

(2) make, participate in, insure mortgages in connection with, refinance, discount and rediscount, or guarantee loans or provide other interim financing provided by District Rural Development Credit Agencies for the construction or improvement of any rural development purpose project to building contractors, leasors, architects, planning and engineering firms or other persons or firms engaged in such work; and

(3) provide or assist a District Rural Development Credit Agency in providing insurance to protect any organization, firm, or individual receiving financing for the construction, improvement, or expansion of any rural development purpose project against damage or casualty loss in connection with such project;

(4) require that District Rural Development Credit Agencies maintain ownership of voting or nonvoting stock in the Regional Banks equal to not less than $5 per $100 of outstanding loans and not more than $10 per $100.

SEC. 605. INTEREST RATES AND OTHER CHARGES.—Loans made, insured, guaranteed, participated in, refinanced, discounted, or rediscounted by a Regional Bank shall bear interest at a rate or rates, and on such terms and conditions, as may be determined by the board of directors of the bank from time to time, with the approval of the Federal Rural Development Credit Agency and under rules and regulations established by the Federal Rural Development Credit Board. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable

cost on a sound business basis, taking into account the cost of money to the bank, the necessary reserves, capital surplus, and expenses of the banks and its District Rural Development Credit Agencies and participating institutions the orderly retirement of the capital subscriptions of the United States, and the cost of providing services to borrowers and stockholders, participating institutions, District Rural Development Credit Agencies and rural communities so that such borrowers may make their maximum contribution to enhancing economic opportunity and the quality of life in the rural area served. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan in accordance with the rates or rates currently being charged by the bank.

SEC. 606. ELIGIBILITY.—The services authorized in this title may be made available directly of through District Rural Development Credit Agencies or participating institutions of the bank, as the situation may require, to public and quasi-public bodies, cooperative associations as defined in the Agricultural Marketing Act (42 Stat. 388; 12 U.S.C. 114j (a)), if such associations are unable to borrow from the banks for cooperatives, other cooperating corporations, partnerships, or individual proprietors which are or become stockholders or owners of nonvoting stock of District Rural Development Bank Agencies or in a Regional Rural Development Bank. Such financial assistance may also be made available to multi-jurisdictional rural governmental planning and development districts established by the legislature or Governor of a State, to persons, firms, owners of rural homes, municipalities, resource conservation and development project sponsors under title II of the Bankhead-Jones Farm Tenant Act, sponsoring associations carrying out projects under the Watershed Protection and Flood Prevention Act, corporate entities established by sponsors of concerted education and training service projects carried out jointly by the Department of Agriculture, the Department of Health, Education, and Welfare, and the Department of Labor, councils of government established under State law if rural areas are included within their jurisdiction, private associations, local development districts organized under the Economic Development Act of 1965, but such eligibility shall be conditioned upon—

(1) review of the loan application by the appropriate body of the multi-jurisdictional government planning and development district, if any, established by the legislature or Governor of the State concerned and a certification by such body that the proposed facility, work or service is not inconsistent with the current comprehensive development plan, if any, for the multi-jurisdictional district;

(2) demonstration by the applicant that the facility, work, or service to be financed from the loan proceeds and rural capital augmentation and rural interest supplement payments will not result in the transfer from another location or firm of employment or business activity now provided by operations of the applicant or a directly competing firm;

(3) demonstration by the applicant that he has been unable within a reasonable time to obtain needed financial assistance from other private or public sources at reasonable rates and conditions;

(4) demonstration by the applicant that, taking into consideration any rural capital augmentation or rural interest supplement payments for which he is eligible under provisions of subtitle G, or other grants in aid, otherwise available, the applicant can meet the principle repayment and interest payments specified in the amortization schedule and loan agreement;

(5) demonstration by the applicant that the facility, work, or service provided by the project will be located in and operate primarily in a rural area to increase the employment of or for the benefit of rural residents and that the proposed project promises to make a net increase in the number of jobs, quality of life, or median family income in the rural area served; and

(6) demonstration and certification by the applicant that neither the facility, work, or service, nor any of the personnel thereof as employees will be used for the purpose of engaging in religious or partisan political activities.

SEC. 607. SECURITY.—Loans made, participated in, insured, guaranteed, discounted, or rediscounted by, or obligations purchased by, Regional Banks shall be secured by all of the best available security owned or to be purchased by the borrower as may be required adequately to secure the loan, and by the endorsement of the appropriate District Rural Development Credit Agency and participating institutions. However, credit factors other than the ratio between the amount of the loan and the security value shall be given due consideration.

SEC. 608. SERVICES RELATED TO BORROWERS OPERATIONS.—The Regional Banks may provide technical assistance to District Rural Development Credit Agencies, participating institutions, applicants for loans, and to other financial institutions in rural areas and may make available to them such financially related and technical services appropriate to their operations as are determined to be feasible, under regulations of the Federal Rural Development Credit Board.

SEC. 609. LOANS THROUGH AGENCIES, AND PARTICIPATING AND COOPERATING INSTITUTIONS.—The Regional Banks shall make financial assistance available to qualified borrowers through District Rural Development Credit Agencies and participating and cooperating institutions in the area served by such bank. If no existing District Rural Development Credit Agency or participating or cooperating institution is available to handle the application, or if no multi-jurisdictional planning and development district is chartered for the area where the loan proceeds will be utilized, the bank may make the loan through such bank, trust company, savings, or other financial institution as it may designate or may make the loan directly to the borrower. Such applicant shall purchase in stock of the Regional Bank an amount equal to not less than $5 and not more than $10 for each $100 of the loan proceeds.

SEC. 610. ELIGIBILITY.—The eligibility of any District Rural Development Credit Agency and of any participating or cooperating financial institution to receive or handle loans from Regional Banks and to serve as agent for such banks must be determined by the Regional Bank on the basis of an application and in accordance with criteria established by the Federal Rural Development Credit Agency under rules and regulations of the Federal Rural Development Credit Board. Such agencies, participating and cooperating institutions, meeting such criteria shall be eligible to borrow from Regional Banks and to discount or rediscount, insure, or obtain guarantee on such eligible obligational paper with or to the banks and shall with the exception of cooperating institutions, be required to purchase bank stocks equivalent to, in the case of District Rural Development Credit Agencies, 5 to 10 per centum, and in the case of participating institutions, 1 per centum, of the amount borrowed, discounted, or sold. Such eligible District Rural Development Credit Agencies shall be authorized to require the borrowers, whose paper they discount, insure, or handle for the bank, to purchase stock of such institutions to the extent that such institutions are required to purchase stocks of a Regional Bank. Only those financial institutions whose volume of loans in rural areas is more than one half of the total volume of all its loans shall be eligible to purchase voting stock of District Rural Development Credit Agencies or of Regional Banks; otherwise the required capital participation shall be acquired in the form of nonvoting stock.

SEC. 611. BOARDS OF DIRECTORS.—(a) Each Regional Bank shall have a Board of Directors consisting of 12 members appointed by the Federal Rural Development Credit Board. Not more than 7 members may be of the same political party and all members shall be legal residents of the rural areas within which the bank is authorized to operate.

(b) During the period in which the Executive Director holds two-thirds or more of the outstanding capital stock of any Regional Bank—

(1) nine members of the board of directors of such bank shall be appointed by the Federal Rural Development Credit Board from a panel of nominees of not less than 20 persons named by the Executive Director from among eligible legal residents of the rural area served by the bank who are not officers or employees of the United States or of any State government or of any institution of the Rural Development Credit System or the Farm Credit System; and

(2) three members shall be appointed by the Federal Rural Development Credit Board from a panel of six nominees elected by the holders of voting stock in such bank, subject to the same legal residence requirements and employment restrictions prescribed in paragraph (1).

(c) During any period in which the Executive Director holds one-third or more but less than two-thirds of the outstanding capital stock of any Regional Bank—

(1) six members of the board of directors of such bank shall be appointed by the Federal Rural Development Credit Board from a panel of not less than 15 nominees named by the President of such bank from among eligible legal residents of the rural area served by the bank subject to the same legal residence requirements and employment restrictions prescribed in subsection (b)(1); and

(2) six members shall be appointed by the Federal Rural Development Credit Board from a panel of 12 nominees elected by holders of voting stock in such bank subject to same legal residence requirements and employment restrictions prescribed in subsection (b)(1).

(d) During any period in which the Executive Director holds less than one-third of the outstanding capital stock of any Regional Bank—

(1) nine members of the board of directors of such bank shall be appointed by the Federal Rural Development Credit Board from a panel of 20 nominees elected by the holders of voting stock in such bank, subject to the same legal residence requirements and employment restrictions prescribed in subsection (b)(1); and

(2) three members shall be appointed by the Federal Rural Development Credit Board from a panel of not less than six nominees named by the President of such bank from among eligible legal residents of the rural areas served by such bank, subject to the same legal residence requirements and employment restrictions prescribed in subsection (b)(1).

(e) During any period in which the Executive Director holds no capital stock in any Regional Bank—

(1) eleven members of the board of directors of such bank shall be appointed by the Federal Rural Development Credit Board from a panel of not less than 25 nominees elected by the holders of voting stock in such bank, subject to the same legal residence requirements and employment restrictions prescribed in subsection (b)(1); and

(2) one member shall be appointed by the Federal Rural Development Credit Board from a panel of not less than 5 nominees named by the President of such bank from among eligible legal residents of the rural area served by the bank.

(f) The board of directors of each Regional

Bank shall elect one of its own members to serve for one year as chairman of the board and shall elect a President of such bank, who shall be an ex officio member of the Board.

(g) The board of directors of each Regional Bank may appoint such other officials and employees as may be required for the necessary and effective operation of the bank subject to regulations established by the Federal Rural Development Credit Board.

(h) Members of the boards of directors of the Regional Banks may receive the sum of $100 for each day or part thereof spent in the performance of their official duties, which compensation shall not be paid for more than 75 days or parts of days in any calendar year and shall not be paid to any board member who is an official of the Government of the United States or of any State. Such members shall be reimbursed for necessary travel, subsistence, and other expenses incurred in discharge of their official duties without regard to the laws with respect to allowances which may be made on account of travel and subsistence expenses of officers and employed personnel of the United States.

SEC. 612. CAPITALIZATION OF THE REGIONAL BANKS.—Subject to the provisions of this title, the President of each Regional Bank is authorized to issue from time to time and to have outstanding voting and nonvoting capital stock of an aggregate par and face value of not to exceed 100 per centum of its pro rata share of the amount of outstanding capital stock of the Rural Development Credit System, as determined by the Federal Rural Development Credit Board, taking into account the geographic distribution among the regions served of the unmet needs for credit for rural revitalization and the initiation of the community facilities and services and public works and industrial and other economic enterprises required to expand jobs, expand income, and improve the quality of life in the areas served by the several Regional Banks. The Executive Director is authorized to purchase and accept nonvoting stock of any Regional Bank not to exceed that bank's pro rata share as determined herein.

SEC. 613. GOVERNANCE OF POLICIES, PROGRAMS, AND PROCEDURES OF REGIONAL BANKS.—The Federal Rural Development Credit Board shall establish and promulgate rules and regulations, not inconsistent with provisions of this title, to govern the policies, programs, and procedures of a Regional Bank during any period in which the Executive Director of the Federal Rural Development Credit Agency holds capital stock in such bank. Any Regional Bank, its board of directors, and its President shall be conclusively presumed to be acting in accordance with such rules and regulations in all their actions and decisions.

SEC. 614. STOCK PURCHASED BY EXECUTIVE DIRECTOR; RETIREMENT; FRANCHISE TAX; REVOLVING FUND.—(a) Any Regional Bank may issue stock which may be purchased by the Executive Director on behalf of the United States as an initial or a temporary investment in the stock of such bank to help such bank to inaugurate lending operations or to meet emergency credit needs of borrowers. During the time such stock is outstanding, the pertinent provisions of the Government Corporation Control Act shall be applicable to such Regional Bank.

(b) The Executive Director shall require the retirement of any stock held by him in any Regional Bank at such time as in his opinion the bank has resources available therefor and the need for such investment is reduced or no longer exists.

(c) For any year or part thereof in which the Executive Director holds any stock in a Regional Bank, such bank, after complying with section 603(e) and before declaring any dividends or patronage distribution, shall pay to the United States as a franchise tax a sum equal to the lower of (1) 25 per centum of its net earnings for the year, or (2) a rate of return on such investment calculated at a rate determined by the Secretary of the Treasury equal to the average annual rate of interest on all public issues of debt obligations of the United States issued during the fiscal year ending next before such tax is due, multiplied by the percentage that the number of days such stock is outstanding is of three hundred and sixty-five days. Such payments shall be deposited in the miscellaneous receipts in the Treasury.

SEC. 615. SUBSCRIPTION BY THE UNITED STATES OF INITIAL AND ADDITIONAL CAPITAL.—(a) The Secretary of the Treasury is authorized, in his discretion and upon the request of the Federal Rural Development Credit Board, to make deposits out of any money in the Treasury not otherwise appropriated, for the temporary use of any Regional Bank. Such bank shall issue to the Secretary of the Treasury a certificate of indebtedness for any such deposit, bearing a rate of interest not to exceed the current rate charged for other Government deposits but not to exceed 5 per centums, to be secured by bonds or other collateral satisfactory to the Secretary of the Treasury. Any such certificate shall be redeemed and paid by such Regional Bank at the discretion of the Secretary of the Treasury.

SEC. 616. POWER TO BORROW, ISSUE NOTES, BONDS, DEBENTURES, AND OTHER OBLIGATIONS.—Each Regional Bank subject to supervision of the Federal Rural Development Credit Agency shall have power to—

(1) Borrow from or loan money to any other Regional Bank, borrow from any commercial bank or other lending institution, issue its notes or other evidence of debt on its own individual responsibility and full faith and credit, and invest its excess funds in such sums, at such times, and on such terms and conditions as it may determine.

(2) Issue its own notes, bonds, debentures, or other similar obligations, fully collateralized by the notes, mortgages, and security instruments it holds in the performance of its functions under this title in such sums, maturities, rates of interest, and terms and conditions of each issue as it may determine with approval of the Executive Director.

(3) Join with any or all banks organized and operating under this title in borrowing or in issuance of consolidated notes, bonds, debentures, or other obligations as may be agreed with approval of the Executive Director.

(4) Join with other Regional Banks in issuance of notes, bonds, debentures, and other obligations in the manner, form, amounts, and on such terms and conditions as may be agreed upon with approval of the Executive Director. Any such issue by two or more Regional Banks and the participation by each such bank shall not exceed the limits to which each such bank is subject in the issuance of its individual or consolidated obligations. Each such issue shall be subject to approval of the Executive Director.

SEC. 617. AGGREGATE OF OBLIGATIONS, SECURITY.—(a) No issue of long-term notes, bonds, debentures, or other obligations by one or more Regional Banks shall be approved in an amount which, when added to the amount of other bonds, debentures, long-term notes, or other similar obligations issued and outstanding, exceeds twenty times the capital and surplus of all the Regional Banks which will be primarily liable on the proposed issue, or such lesser amount as the Federal Rural Development Credit Agency shall establish by regulation.

(b) Each bank shall have on hand at the time of issuance of any long-term notes, bonds, debentures, or other similar obligations, and shall at all times thereafter maintain, free from any lien or other pledge, notes and other obligations representing loans made under the authority of this Act, obligations of the United States or any agency thereof direct or fully guaranteed, other readily marketable securities approved by Federal Rural Development Credit Agency, or cash, in an aggregate value equal to the total amount of long-term notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

SEC. 618. LIABILITY OF BANKS.—(a) Each Regional Bank shall be fully liable on notes, bonds, debentures, or other obligations issued by it individually, and shall be liable for the interest payments on long-term notes, bonds, debentures, or other obligations issued by other Regional Banks operating under provisions of this Act. Each bank shall also be primarily liable for the portion of any issue of consolidated obligations made on its behalf and shall be jointly and severally liable for the payment of any additional sums when called upon by the Federal Rural Development Credit Agency to make payments of interest or principal which any other Regional Bank primarily liable therefor is unable to make. Such calls shall be made upon Regional Banks operating under this title taking into account the capital, surplus, bonds, debentures, or other obligations which each may have outstanding at the time of such assessment.

(b) Each Regional Bank participating in an issue shall by appropriate resolution undertake such responsibility as provided in subsection (a), and in the case of consolidated obligations shall authorize the Executive Director to execute long-term notes, bonds, debentures, or other obligations on its behalf. When a consolidated issue is approved, the notes, bonds, debentures, or other obligations shall be liable thereon as provided herein.

(c) The United States shall not be liable or assume any liability directly or indirectly thereon, except as otherwise provided in this Act.

SEC. 619. FINANCE COMMITTEE.—There shall be established a finance committee for the Regional Banks organized and operated under this title composed of the presidents of such banks. The Committee may have such officers and such subcommittees for such terms and such representation as may be agreed upon by the members of the committee. When appropriate to the performance of their function, the subcommittees, or representatives thereof, shall constitute a subcommittee for consideration of consolidated issues of obligations. The finance committees and subcommittees thereof shall, subject to approval of the Executive Director, determine the amount, maturities, rates of interest, and participation by the several banks in each issue of joint or consolidated obligations.

SEC. 620. BONDS AS INVESTMENTS.—The bonds, participation certificates, and other similar obligations issued under the authority of this title shall be lawful investments for all fiduciary and trust funds and may be accepted as security for all public deposits.

SEC. 621. PURCHASE AND SALE BY FEDERAL RESERVE SYSTEM.—Any member of the Federal Reserve System may buy and sell bonds, debentures, or other similar obligations issued under the authority of this title, and any Federal Reserve bank may buy and sell such obligations to the same extent and subject to the same limitations placed upon the purchase and sale by said banks of State, county, district, and municipal bonds under section 14 (b) of the Federal Reserve Act (12 U.S.C. 355).

SEC. 622. PURCHASE AND SALE OF OBLIGATIONS.—Each regional bank may purchase its own obligations and the obligations of other Regional Banks and may provide for the sale of obligations issued by it, or issued jointly with one or more other banks, through a fiscal agent or agents, by negotia-

tion, offer, bid, or syndicate sale, and to deliver such obligations by book entry, wire transfer, or such other means as may be appropriate. The sales agency of the Farm Credit System shall be utilized on a reimbursable basis by the Regional Banks for the purchase and sale of obligations.

SEC. 623. FISCAL AGENCY.—A fiscal agency shall be established by the Regional Banks for such of their functions relating to the issuance, marketing, and handling of their obligations, and interbank or intersystem flow of funds as may from time to time be required.

SEC. 624. MERGER OF SIMILAR BANKS.—Regional Banks organized or operating under this title, may, upon approval of a majority of their stockholders and the Federal Rural Development Credit Agency, merge with banks in other regions operating under this subtitle.

SEC. 625. BOARD OF DIRECTORS FOR MERGED BANK.—In the event of a merger of two or more banks to serve borrowers in more than one rural development credit region, a new board of directors shall be created for the resulting merged bank. The board thus created shall be composed of directors elected by the boards of the banks being merged. Notwithstanding the foregoing, the bylaws of the merged bank may, with the approval of the Federal Rural Development Credit Agency and subject to rules and regulations established by the Federal Rural Development Credit Board, provide for a different number of directors selected in a different manner. The board so constituted shall have all the powers, functions, and duties as are normally exercised by a regional bank board related to the operations and policies of the banks which were merged.

SEC. 626. DISSOLUTION; VOLUNTARY LIQUIDATION; INSOLVENCY; MERGERS; RECEIVERSHIPS; AND CONSERVATORS.—(a) No institution of the System shall go into voluntary liquidation without the consent of the Federal Rural Development Credit Agency and with such consent may liquidate only in accordance with regulations prescribed by the Federal Rural Development Credit Board.

(b) Upon default of any obligation by a Regional Bank, such bank may be declared insolvent and placed in the hands of a conservator or a receiver appointed by the Executive Director and the proceedings thereon shall be in accordance with regulations of the Federal Rural Development Credit Agency regarding such insolvencies.

SUBTITLE F.—FEDERAL RURAL DEVELOPMENT CREDIT AGENCY

SEC. 701. FEDERAL RURAL DEVELOPMENT CREDIT AGENCY; EXECUTIVE DIRECTOR.—There is hereby established in the executive branch of the Government an independent agency to be known as the Federal Rural Development Credit Agency. There shall be at the head of such agency an Executive Director who shall have such powers and duties as may be prescribed by the Federal Rural Development Credit Board. The Agency shall be responsible for carrying out the programs provided for in this title.

SEC. 702. APPOINTMENT OF EXECUTIVE DIRECTOR; SALARY AND EXPENSE ALLOWANCE.—(a) The Executive Director shall be appointed by and serve at the pleasure of Federal Rural Development Credit Board, except that during any period that the Executive Director holds any stock in any regional bank, his appointment shall be subject to approval of the President of the United States; and the Executive Director shall, during any such period, serve at the pleasure of the President.

(b) The compensation of the Executive Director shall be at the rate prescribed for positions in level IV of the Executive Pay Schedule provided for under subchapter II of chapter 53 of title 5, United States Code. The Federal Rural Development Credit Board shall fix the allowance for his necessary travel and subsistence expenses or per diem in lieu thereof.

SEC. 703. COMPLIANCE WITH BOARD ORDERS.—The Executive Director shall be responsible, subject to the supervision and control of the Federal Rural Development Credit Board, for carrying out the functions of the Agency and the policies of such Board. He shall carry out all orders and directives received by him from the Federal Rural Development Credit Board. All acts of the Executive Director shall be conclusively presumed to be in compliance with the orders and directives of such Board.

SEC. 704. RURAL DEVELOPMENT CREDIT ORGANIZATION.—The Executive Director is authorized, in carrying out the powers and duties now or hereafter vested in him by this title and Acts supplementary thereto, to establish and to fix the powers and duties of such divisions and instrumentalities as he may deem necessary to insure the proper and efficient administration of the functions of the Federal Rural Development Credit Agency. The Executive Director shall have authority to appoint and employ such personnel as may be necessary to carry out the functions of the Agency, including the appointment with the approval of the Federal Rural Development Credit Board of a Deputy Director of the Agency who shall receive compensation at the rate prescribed for positions Level V of the Executive Pay Schedules provided for under Subchapter II of Chapter 53 of Title 5, United States Code. The powers of the Executive Director may be exercised by him through such officers and employees of the Rural Development Credit Agency as he may designate. The Executive Director shall provide on a reimbursable basis such administrative management services other than public information, for the Board and the Rural Development Investment Equalization Administration as shall be mutually agreed upon.

SEC. 705. SEAL.—The Federal Rural Development Credit Agency shall have a seal, as adopted by the Executive Director, which seal shall be judicially noted.

SEC. 706. ADMINISTRATION EXPENSES.—The Federal Rural Development Credit Agency may, within the limits of funds available therefor, make necessary expenditures for personnel services and rent at the seat of Government and elsewhere; contract stenographic reporting services; purchase and exchange law books, books of reference, periodicals, newspapers, expenses of attendance at meetings and conferences; purchase, operation, and maintenance at the seat of Government and elsewhere of motor-propelled passenger-carrying vehicles and other vehicles; printing and binding; and for such other facilities and services, including temporary employment by contract or otherwise, as it may from time to time find necessary for the proper administration of this Act.

SEC. 707. ALLOCATION OF EXPENSES FOR ADMINISTRATIVE SERVICES BY THE FEDERAL RURAL DEVELOPMENT CREDIT AGENCY; DISPOSITION OF MONEY.—(a) The Federal Rural Development Credit Agency shall prior to the first day of each fiscal year estimate the cost of administrative expenses for the ensuing fiscal year in administering this title, including official functions, and shall apportion the amount so determined among the institutions of the System on such equitable basis as such Agency shall determine, and shall assess against and collect in advance the amount so apportioned from the institutions among which the apportionment is made.

(b) The amounts collected pursuant to subsection (a) of this section shall be covered into the Treasury, and credited to a special fund, which fund, augmented by such additional funds as may be required during first five fiscal years of operation is authorized to be appropriated to said Agency for expenditure during each fiscal year for salaries and expenses of said Agency as set forth in appropriation Acts. As soon as practicable after the end of each fiscal year, the Agency shall determine, on a fair and reasonable basis, the cost of operation of the Federal Rural Development Credit Agency during such fiscal year and the portion of such cost which fairly and equitably should be allocated to each Regional Bank and to each of the other institutions of the Rural Development Systems their respective shares of the cost during such fiscal year. If the amount so allocated is greater than the amount collected from any Regional Bank or other institution of the Rural Development System, the difference shall be collected from such bank or other institution, and, if less, shall be refunded from the special fund to the bank or other institution entitled thereto or credited in the special fund to such bank or other institution for use for the same purposes in future fiscal years.

SEC. 708. Enumerated Powers.—The Federal Rural Development Credit Agency shall have the following powers, functions, and responsibilities in connection with the institutions of the Rural Development Credit System and the administration of this Act:

(1) Modify the boundaries of the territory of the Regional Banks, with due regard for the rural development investment and credit needs of the country, as approved by the Rural Development Credit Board and the President of the United States.

(2) Issue, amend, and modify Federal charters of institutions of the System and approve changes in names of banks operating under this Act; approve the merger of Regional Banks when agreed to by the boards of the banks involved and by a majority of the voting stockholders of each of the banks concerned.

(3) Make annual reports to the Congress on the condition of the Rural Development Credit System and its institutions and, from time to time, make recommendations for such Legislative changes as it deems necessary to improve the operation of such system.

(4) Coordinate the activities of the banks in making studies of lending standards, the need for better geographic distribtuion of population and economic opportunity, appraisal and credit standards, and credit requirements of rural industrial and commercial enterprise; approve national and regional standards, procedures, and appraisal forms; prescribe price and cost levels to be used in such standards, appraisals, and lending; supplement the work of the region under the foregoing where necessary to accomplish the purposes of this title.

(5) Prescribe loan security requirements and the types, classes, or number of loans which may be made only with prior approval.

(6) Conduct loan and collateral security review.

(7) Approve the issuance of obligations of the institutions of the Rural Development Credit System and execute on behalf of the Regional Banks consolidated obligations for the purpose of providing finanical assistance for the authorized operations of the institutions of the System, and prescribe collateral therefor.

(8) Approve interest rates paid by institutions of the System on their bonds, debentures, and similar obligations, the terms and conditions thereof, and interest or other charges made by such institutions to borrowers.

(9) Make investments in stock of the institutions of the System out of stock subscribed by the Secretary of the Treasury and require the retirement of such stock and convertible debentures.

(10) Regulate the borrowing, repayment, and transfer of funds and equities between institutions of the Rural Development Credit System.

(11) Coordinate and assist in providing

services necessary for the convenient, efficient, and effective management of the institutions of the Rural Development Credit System.

(12) Undertake research into the rural development and credit needs of the rural areas of the Nation and ways and means of meeting such needs and of funding the operations of the Rural Development Credit System in relation to changing demographic and economic conditions.

(13) Prepare and disseminate information to the general public on use, organization, and functions of the System and to investors on merits of its securities.

(14) Require surety bonds or other provision for protection of the assets of the institutions of the Rural Development Credit System against losses occasioned by employees.

(15) Prescribe rules and regulations necessary or appropriate for carrying out the provisions of this Act.

(16) Exercise such incidental powers as may be necessary or appropriate to fulfill its duties and carry out the purposes of this Act.

Sec. 709. SPECIAL POWERS.—(a) Subject to the provisions of this title, the Rural Development Credit Agency is authorized—

(1) to make commitments, directly or through Regional Banks, District Rural Development Credit Agencies, or participating and cooperating institutions to purchase, and make commitments to purchase, service, and sell, on terms and conditions determined by the Agency, any obligation (or participation therein) of a State or local government issued wholly or partly to finance any rural development purpose project, facility, or service of any kind in any rural area;

(2) to make or guarantee, directly or through Regional Banks, Distirct Rural Development Credit Agencies, or participating institutions, loans to States or local general governments to finance any rural development purpose project, facility, or service of any kind in any rural area (including loans to nonprofit or quasi-governmental organizations and entities to finance the construction of housing, medical facilities, industrial parks, buildings for industrial and business use, and other facilities, other than electric or telephone utilities which are supported by Federal or State programs and are determined by the Federal Rural Development Credit Agency to have the attributes of public facilities); and

(3) to make, directly or through Regional Banks, District Rural Development Credit Agencies, or participating and cooperating institutions, loans for the purpose of facilitating economic, physical, and social development in rural areas.

(b) The Federal Rural Development Credit Agency shall develop criteria to assure that projects assisted by it are not inconsistent with the comprehensive planning, if any, for the development of the multi-jurisdictional districts or other areas in which such projects are proposed to be located, and to assure that such projects will not be disruptive of Federal programs which authorize assistance for the development of like or similar projects in the same rural area.

(c) A loan made, discounted, rediscounted, guaranteed, or participated in under this section may not exceed the total capital cost of the project to be financed.

(d) All obligations purchased and loans made pursuant to this section shall bear interest at a rate determined by the Federal Rural Development Credit Agency.

(e) In any case in which the Federal Rural Development Credit Agency undertakes to provide assistance to a State or local government under subsection (a) for the construction of a project for which any other department or agency of the Federal Government (under another law of the United States) will also provide funds—

(1) the assistance provided by the Rural Development Credit Agency under subsection (a) may be in the full amount needed by the State or local government to finance such project (including the amount of the funds which will be provided by such department or agency), but the funds to be provided by such department or agency with respect to such project shall become payable (notwithstanding any contrary provision in the law under which they are payable) to the Rural Development Credit Agency in lieu of being paid directly to such government, and

(2) the Federal Rural Development Credit Agency may accept in return (A) an obligation or obligations of such State or local government covering only the difference between such full amount and the amount of the funds which are payable with respect to such project by such department or agency, plus (B) a commitment from such department or agency to pay the funds which are to be provided by it and are payable to the Agency as described in paragraph (1), in order to insure that such State or local government will not have to include within its debt limit that portion of the indebtedness incurred for the financing of such construction which is attributable to funds provided by such department or agency.

(f) The Federal Rural Development Credit Agency is authorized to enter into multilateral contracts and other agreements in order to assist and encourage further cooperation among States or among local governments which have common or related developmental problems.

(g) Except as otherwise specifically provided in this title, the Federal Rural Development Credit Agency may impose, or not impose, charges or fees for its services with the objective that all costs and expenses of its operations should be within its income derived from such operations.

(h) No loans, guarantees, or other assistance shall be extended to assist in relocating any business entity from one area to another, except that such limitation shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the Executive Director finds that the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment of the area of original location or in any other area where such entity conducts business operations, unless the Executive Director has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

Sec. 710. Technical Assistance.—The Federal Rural Development Credit Agency shall have, in addition to a staff adequately equipped in the field of development banking, personnel qualified to give advice in the following fields (and in any other field appropriately related to the Agency's activities):

(1) the Federal Government, particularly its organization and operation relating to State and local governments;

(2) the operation and administration of all Federal grant-in-aid programs;

(3) the administration, development, and operation of community facilities; and

(4) technical data and requirements in fields appropriately related to the Agency's activities, including the following:

(A) roads, hospitals, schools, and airports;

(B) urban mass transit systems and bridges;

(C) housing, municipal buildings, open spaces, and parks;

(D) courthouses;

(E) water and sewage facilities and air pollution controls;

(F) industrial and commercial development;

(G) rural manpower development and training;

(H) fishing and fisheries;

(I) forest production, marketing, and processing;

(J) minerals and mining;

(K) tourism and outdoor recreation;

(L) water, and water distribution, and solid waste disposal;

(M) multiple purpose water development;

(N) comprehensive area planning;

(O) community and neighborhood centers; and

(P) cooperative and other non-profit and self-help forms of private enterprise organization.

(b) The Agency shall give or provide for giving "any necessary technical assistance under this section to applicants for assistance under this title. No fees for preliminary advice shall be charged, except that after an application has been accepted for processing, the Agency may charge reasonable fees for continued assistance under this subsection.

(c) The Agency is also authorized to engage in research and information gathering, and to undertake programs to facilitate the exchange of advanced concepts and techniques relating to municipal growth and development among State and local governments.

Sec. 711. Delegation of Duties and Powers to Institutions of the System.—The Federal Rural Development Credit Agency is authorized and directed, by order, rule, or regulation, to delegate to any Regional Bank or any District Rural Development Credit Agency such of the duties, powers, and authority of the Federal Rural Development Credit Agency with respect to such Regional Bank or District Rural Development Credit Agency or the officers and employees thereof, in the region wherein such Regional Bank or District Rural Development Credit Agency is located, as may be determined to be in the interest of effective administration. Any Regional Bank or District Rural Development Credit Agency to which any such duties, powers, or authority may be delegated, or any institution of the Rural Development Credit System to which any duty, power, or authority may be redelegated, is authorized and empowered to accept, perform, and exercise such duties, powers, and authority as may be so delegated to it, and may redelegate such powers, in accordance with rules and regulations of the Federal Rural Development Credit Board, to participating institutions whose major business is conducted in rural areas.

Sec. 712. Agreements for Sharing Losses.—The Federal Rural Development Credit Agency may enter into agreements with Regional Banks for sharing the gains and losses on loans or securities held therefor or acquired in the liquidation thereof, and Regional Banks are authorized to enter into any such agreements.

Sec. 713. First Lien.—The Federal Rural Development Credit Agency, any regional bank, any District Rural Development Credit Agency, or any participating institution shall have a first lien on the stock and certificates of participation it issues, except on such stock and certificates held by the Executive Director or by the Secretary of the Treasury, for the payment of any liability of the stockholder to any such bank, authority, or participant or to any two or all of them.

SUBTITLE G—FEDERAL RURAL DEVELOPMENT INVESTMENT EQUALIZATION ADMINISTRATION

Sec. 801. FINDINGS AND POLICY.—Congress finds that it is essential to the welfare, orderly growth, higher quality of life and domestic tranquility in urban as well as rural areas to bring about a better balanced geographic distribution of improved community facilities, services, and public works as well

as a better balanced geographic distribution of investments for future economic growth, and that, because of the unique disadvantages of higher costs of acquiring raw materials and delivering finished products to the ultimate consumer, more than improved access to national credit markets will be required to bring about a more desirable geographic balance of national growth. To provide the needed incentive for rural community development, in addition to the Rural Development Credit System, it is the policy of Congress to inaugurate and carry out a program of rural equalization incentive payments in lieu of the establishment of a special rural tax exemption or artificially low interest rates, which might be disruptive of national financial markets and orderly administration of Federal tax programs.

SEC. 802. INVESTMENT IN RURAL DEVELOPMENT.—The Federal Rural Development Credit Board shall cause to be established and staffed, under its direction and supervision, a Federal Rural Development Investment Equalization Administration independent of the Federal Rural Development Credit Agency and the Regional Banks to carry out programs of interest supplements and capital augmentation payments as authorized in this title.

SEC. 803. ADMINISTRATOR.—(a) There shall be at the head of the Rural Development Investment Equalization Administration an Administrator who shall be appointed by and serve at the pleasure of the Federal Rural Development Credit Board subject to the approval of the President of the United States and shall serve at the pleasure of the President.

(b) The compensation of the Administrator shall be at the rate prescribed for positions in level IV of the Executive Pay Schedule provided for under subchapter II of chapter 53 of title 5, United States Code. The Federal Rural Development Credit Board shall fix the allowance for his necessary travel and subsistence expenses or per diem in lieu thereof.

SEC. 804. RURAL DEVELOPMENT INTEREST SUPPLEMENTS; ELIGIBILITY AND AMOUNT.—(a) Any private or public borrower of any institution of the Rural Development Credit System who is using the proceeds of the loan for a rural development project, and who cannot pay, from project earnings, in any fiscal year the full amount of the annual interest on his loan shall be eligible to receive, at the end of such fiscal year an interest supplement equivalent to the amount by which the interest due exceeds the greater of (1) the amount which the borrower can pay from project earnings for such year on the enterprise undertaken with the loan proceeds, or (2) an interest payment calculated at an interest rate of 1 per centum per annum.

(b) To establish his eligibility for an interest supplement, an applicant shall be required to prove conclusively that—

(1) the enterprise, community facility, service, or public work with respect to which the interest supplement is to be paid provides a specific addition to the pre-existing volume of capital investment and job opportunities in the Nation and in the rural area where such enterprise, community facility, service, or public work is located and is not a replacement or substitution for investment and job opportunities elsewhere previously provided by the applicant or by a direct competitor;

(2) the enterprise, community facility, service, or public work will make a substantial and definite contribution, by enhancement of the quality of life or increased income and employment in the rural area where located, to the attainment of the goals of a rational policy of balanced national growth, and of the purposes and policies of this title and of this subtitle;

(3) the enterprise is operated according to principles of prudent and efficient management, and in accordance with sound acceptable accounting principles, will sustain a net loss rather than positive earnings, if the full contractual interest rate is paid; and

(4) the amount of interest supplement applied for is, as demonstrated by the audited accounts of the enterprise, not in excess of the amount for which the applicant is eligible in accordance with the provisions of subsection (a) of this section.

(5) the project to be financed will not be in direct competition with another such project that is wholly financed by private enterprise.

(c) No applicant shall be eligible for an interest supplement under this section unless his books of account are open at all times for examination by agents or employees of the Farm Credit Administration and the General Accounting Office.

SEC. 805. RURAL DEVELOPMENT CAPITAL AUGMENTATION PAYMENTS; ELIGIBILITY AND AMOUNT.—(a) Any borrower of any institution of the Rural Development Credit System, who has constructed or acquired improvements to real property and necessary equipment and working capital to establish and operate a new or expanded rural private economic enterprise, or rural community facility, or service, or rural public work to be located and operated in a rural area for the employment of or benefit to rural residents shall be eligible to apply for a rural development capital augmentation payment to be determined in accordance with the provisions of this section.

(b) To establish his eligibility for a rural development capital augmentation payment, an applicant shall be required to prove conclusively that—

(1) the enterprise, community facility, service, or public work to which the capital augmentation shall apply provides a definite addition to the pre-existing volume of capital investment and job opportunities in the Nation and in the rural area where located and is not a replacement of or substitution for investment or job opportunities elsewhere previously provided by the applicant or by a direct competitor;

(2) the enterprise, community facility or service, or public work will make a substantial contribution, through enhancement of the quality of life or increased income and employment in the rural area where located, to the attainment of the goals of a rational policy of balanced national growth and of the purposes and policies of this title and of this subtitle;

(3) the project for which the capital augmentation payment is requested was constructed or acquired in accordance with principles of prudent and efficient management, and the amount was determined in accordance with sound acceptable accounting principles from data in the audited books of record of the applicant; and

(4) that the amount of capital augmentation payment applied for is, as demonstrated by the audited accounts of the enterprise not in excess of the amount for which the applicant is eligible in accordance with the provisions of subsection (c) of this section.

(5) the project to be financed will not be in direct competition with another such project that is wholly financed by private enterprise.

(c) The amount of any rural development capital augmentation payment shall not exceed the current discounted value, at the established interest rate of the Rural Development Credit System in the area, of the amount by which the amount computed under paragraph (1) is greater than the amount computed under paragragh (2):

(1) The annual amortization payment actually due and payable by the applicant on any indebtedness incurred by him in constructing or acquiring the new or expanded improvements of real property or additions to equipment and working capital for which the application is made.

(2) The annual amortization payment, over an amortization period of the same length that could be made out of earnings by a prudent efficient manager who would utilize the facilities, works, equipment, or working capital to fulfill an effective rural development purpose within the capacity of those who will utilize the service, buy the product, or pay user charges, or to value the product at its rural location, taking into account scarcity of population settlement, median family incomes in the area, and the cost of transporting raw materials and finished products, as determined by the Rural Development Investment Equalization Administration under rules and regulations established by the Federal Rural Development Credit Board and approved by the General Accounting Office.

(d) No applicant shall be eligible for a rural development augmentation payment under this section unless his books of account are open at all times for examination by agents or employees of the Farm Credit Administration and the General Accounting Office.

SEC. 806. SUPERVISION BY FARM CREDIT ADMINISTRATION.—The Federal Rural Development Credit Board shall arrange with the Federal Farm Credit Board to utilize the services of the Farm Credit Administration for investigation, accounting, and administrative auditing of the work of the Rural Development Investment Equalization Administration and the Federal Rural Development Credit Agency and the other institutions of the Rural Development Credit System in an orderly, efficient, and effective manner. The Farm Credit Administration is authorized to provide such services on a mutually agreeable reimbursable basis.

SEC. 807. EXAMINATION OF BOOKS OF ACCOUNT.—As a condition of approval of any application, the applicant must agree to keep his books of account open at all times for examination by the Farm Credit Administration and the General Accounting Office.

SUBTITLE H—FEDERAL RURAL DEVELOPMENT CREDIT BOARD

SEC. 901. THE FEDERAL RURAL DEVELOPMENT CREDIT BOARD; NOMINATION AND APPOINTMENT OF MEMBERS; ORGANIZATION AND COMPENSATION.—(a) There is hereby established a Federal Rural Development Credit Board (hereinafter in this subtitle referred to as the "Board") composed of seventeen members, fifteen of whom shall be appointed by the President, by and with the advice and consent of the Senate, not more than eight of whom shall be from the same political party nor more than one from any State. In making appointments to the Board the President shall select persons who are especially qualified to serve on the Board because of their education, training, and experience, and shall attempt to provide a fair representation on the board of the different geographic regions of the United States and the several economic interests in rural development—farming, labor, cooperatives, local government, and private enterprise. The President shall, before making appointments to the Board, receive and consider nominations made by the President pro tempore of the Senate of the United States for five appointments to the Board, not more than three of whom shall be from the same political party and not more than one from any Rural Development Bank Region, and shall receive and consider nominations made by the Speaker of the House of Representatives of the United States for five appointments to the Board not more than three of whom shall be from the same political party and not more than one from any Rural Development Bank Region. One member shall be the representa-

tive of the Secretary of Agriculture on the Farm Credit Board, and one member shall be the Governor of the Farm Credit Administration. The Executive Director and the Administrator of the Federal Rural Development Investment Equalization Administration shall be ex officio members of the Board and shall be eligible to vote on all matters except those affecting the terms of their own employment.

(b) All members of the Board shall be citizens of the United States and all members except the member from the Farm Credit Board and the Governor of the Farm Credit Administration and the ex officio members shall be legal residents of rural areas in which the Rural Development Credit System is authorized by this title to make, participate in, extend mortgage insurance in connection with, or guarantee rural development loans.

(c) The Board shall elect a chairman and vice chairman from among its appointed members. The Board shall elect a Secretary from among its members or from outside its membership. Such officers shall be elected for terms of one year and shall hold office until their successors have been elected.

(d) No member of the Board, other than the member from the Farm Credit Board, the Governor of the Farm Credit Administration, the Executive Director, and the Administrator of the Federal Rural Development Investment Equalization Administration shall, while serving as a member of the Board, be an officer or employee of the United States or of any State or of any of the institutions of the Rural Development Credit System or of the Farm Credit System.

(e) Appointed members of the Board shall be appointed for terms of six years, except that (1) a person appointed to fill an unexpired term shall serve only for the remainder of the term for which his predecessor was appointed, and (2) with respect to the first members appointed to such Board two members appointed by the President, two recommended by the President pro tempore of the Senate, and two recommended by the Speaker of the House of Representatives shall be appointed for terms of six years, as designated by the appointing authorities at the time of appointment, and two members appointed or recommended by each such authority shall be appointed for terms of four years, as designated by the appointing authority at the time of appointment and one member appointed or recommended by each such authority shall be appointed for a term of two years, as designated by the appointing authority at the time of appointment. A vacancy on the Board shall not affect the power of such Board to act and shall be filled in the same manner as originally filled. Members shall serve until their successors are duly appointed and qualified.

(f) The Board is authorized to establish its own rules of procedure for conducting its business, except that a majority of all members of the Board shall constitute a quorum for the transaction of its business.

(g) Each appointed member of the Board shall receive $200 a day for not more than 75 days of meetings each year and all members shall be reimbursed for travel and reasonable expenses incurred in attending meetings of such Board. Nothing in the preceding sentence shall be construed to limit the number of days of meeting each year to 75 days.

(h) the Board shall hold at least four regularly scheduled meetings a year and such additional meetings at such times and places as it may determine. Special meetings shall be held at any time at the call of the chairman or by any three members of such Board.

SEC. 902. POWERS OF THE BOARD.—The Board shall establish the general policy for the guidance of the Federal Rural Development Credit Agency, the Federal Rural Development Investment Equalization Administration, and all institutions of the Rural Development Credit System in carrying out this Act; may require such reports as it deems necessary from the institutions of the Rural Development Credit System; provide for the examination of the condition of and general supervision over the performance of the powers, functions, and duties vested in each such institution, and for the performance of all the powers and duties vested in the Federal Rural Development Credit Agency and in its Executive Director, and in the Rural Development Investment Equalization Administration and in its Administrator which, in the judgment of the Board, relate to matters of broad and general supervisory, advisory, or policy nature. The Board shall function as a unit without delegating any of its functions to individual members, but may appoint committees and subcommittees for studies and reports for consideration by the Board. It shall not operate in an administrative capacity.

SEC. 903. INDIRECT PARTICIPATION BY PRIVATE FINANCIAL SOURCES.—(a) the Board is authorized on behalf of the Regional Banks and other institutions of the Rural Developement Credit System to——

(1) issue bonds, debentures, and such other certificates of indebtedness as it may determine, and issue such securities on a competitive or negotiated basis as the Board may determine;

(2) buy and sell securities it has issued or guaranteed or whose mortgages it has insured or in which it has invested;

(3) invest funds not needed in its financing operations in such property and obligations as the Board may determine; and

(4) guarantee securities in which it has invested for the purpose of facilitating their sale.

(b) The Board shall arrange with the Federal Farm Credit Board to utilize on a reimbursable basis the security selling agency services of the institutions of the Farm Credit System.

(c) Except as hereinafter provided in this subsection, the Secretary of Agriculture (hereinafter referred to in this subsection as the "Secretary") is authorized, upon such terms and conditions as he may deem appropriate, to guarantee the timely payment of principal and interest on such obligations as shall be issued by the Board on behalf of Regional Banks. The Secretary shall collect from the Board a reasonable fee for any guaranty under this subsection and shall make such charges as he may determine to be reasonable for the analysis of any obligation proposed to be issued by the Board. In the event the Board is unable to make any payment of principal of or interest on any obligation guaranteed under this subsection, the Secretary shall make much payment as and when due in cash, and thereupon shall be subrogated fully to the rights satisfied by such payment. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guaranty under this subsection. The Secretary may not guarantee payment of any obligation of the Board issued after the total amount of stock held by the Executive Director in the several Regional Banks is equal to less than 50 per centum of the total obligations of such banks outstanding.

SEC. 904. FEDERAL PAYMENTS TO THE BOARD.—(a) With respect to such amounts of loans of the Regional Banks as may be specified in appropriation Acts, the Secretary of the Treasury is authorized to make, and to contract to make, annual payments to the Board in such amounts as are necessary to reimburse the Rural Development Investment Equalization Agency for needed interest supplements and rural capital augmentation and to subscribe to capital stock of Regional Banks that may be tendered by the Board.

(b) There are authorized to be appropriated to the Secretary of the Treasury such sums as may be necessary to carry out his responsibilities under this Act, including such sums as may be necessary to make payments required by contracts entered into by the Secretary of the Treasury pursuant to subsection (a) of this section.

SEC. 905. FEDERAL INSURANCE OF OBLIGATIONS TO THE BOARD.—(a) The Secretary of Agriculture, upon application by the Board, is authorized to insure any loan made, discounted, guaranteed or insured by the Board including, for purposes of this section, any obligation purchased, insured, or guaranteed by it, and to issue a commitment for the insurance of any such loan prior to the date of its execution or disbursement thereon upon a determination that all of the applicable criteria established by or under this title will be met with respect to such loan.

(b) The insurance of any loan under subsection (a) and any payments pursuant thereto shall be made on such terms and conditions, and in such manner and form, as the Secretary shall by regulations prescribe, and shall provide for the payment in full to the Board of the outstanding principal balance of the loan together with any unpaid interest, upon default by the borrower, in accordance with procedures set forth in such regulations.

(c) The Secretary is authorized to charge and collect premiums for insurance under this section. Such premiums shall be fixed at the lowest possible levels which the Board and the Secretary agree to be reasonable and sufficient to keep the insurance program under this section in a sound and secure condition and maintain the fund established by subsection (d) of this section at a level adequate to meet all anticipated losses.

(d) (1) There is established a revolving fund to be used by the Secretary in carrying out his functions under this section. All premiums charged as provided in subsection (c), and all other receipts from the insurance program under this section shall be deposited in the fund. Moneys in the fund not needed for the payment of current operating expenses or the payment of insurance under the program may be invested in bonds or other obligations guaranteed as to principal and interest by the United States.

(2) There is authorized to be appropriated as initial capital for the revolving fund established by paragraph (1) the sum of $5,000,000.

(e) In the performance of, and with respect to, the functions, powers, and duties vested in him by this title, the Secretary shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties set forth by law with respect to loans insured under the Consolidated Farm and Rural Development Act.

(f) There are authorized to be appropriated to the Secretary of Agriculture such sums as may be necessary to carry out his responsibilities under this title.

SUBTITLE I—GENERAL PROVISIONS

SEC. 1001. FINANCIAL AND OTHER SUPERVISION.—The Rural Development Credit System and all the institutions thereof shall be subject to the supervision of the Farm Credit Administration with respect to all procedures relating to financial operations, including audits; and shall be subject to the supervision of the Administrator of the Rural Enterprise and Community Development Administration of the Department of Agriculture with respect to the appraisal of real and personal property used or to be used as security for loans, obligations, and mortgages insured or guaranteed under this title.

SEC. 1002. EXAMINATIONS AND REPORTS; AUDITS—(a) Except as provided in this Act, each institution of the Rural Development Credit System, and each of its agents, at

such times as the Federal Rural Development Credit Board may determine, shall be examined and audited by examiners of the Farm Credit Administration and by auditors of the General Accounting Office, but in no event shall any such institution be examined and audited less frequently than once a year. If the Executive Director determines it to be necessary or appropriate, the required examinations and audits may be made by independent certified public accountants, certified by a regulatory authority of a State, in accordance with generally accepted auditing standards. Upon request of the Executive Director or any institution of the System, credit examiners shall also make examinations of any organization other than a national bank, to which, or with which, any institution of the Rural Development Credit System contemplates making a loan or discounting paper of such organization or delegating authority under this title. For the purposes of this Act, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act, the Federal Reserve Act, the Federal Deposit Insurance Act, and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law. A report of each audit of the Rural Development Credit System for any fiscal year shall be made by the Farm Credit Administration to the President of the United States and to the Congress not later than six months following the close of such fiscal year. The Farm Credit Administration shall be reimbursed by the Federal Rural Development Credit Agency for the cost of performing such audits.

(b) The Federal Rural Development Credit Board shall make a report to the Congress at the end of each calendar year on the condition of economic growth in geographic areas of the country in which it operates, the condition and experience of the Regional Banks and the Federal Rural Development Investment Equalization Administration. The Board shall include in such report such recommendations for legislative action as it deems necessary to improve the operation of the Rural Development Credit System. The Federal Rural Development Credit Board may require the Federal Rural Development Credit Agency, the Regional Banks and the Federal Rural Development Investment Equalization Administration, and the District Rural Development Credit Agencies to submit to it similar annual reports.

SEC. 1003. CONDITIONS OF OTHER BANKS AND LENDING INSTITUTIONS.—The Comptroller of the Currency is authorized and directed, upon request of the Farm Credit Administration to furnish for confidential use of an institution of the Rural Development Credit System such reports, records, and other information as he may have available relating to the financial condition of national banks through, for, or with which such institution of the System has made or contemplates making discounts, loans, or delegations of power and to make such further examination, as may be agreed, of organizations through, for, or with which such institution of the Rural Development Credit System has made or contemplates making discounts, loans, or delegations of power.

SEC. 1004. CONSENT TO THE AVAILABILITY OF REPORTS AND TO EXAMINATIONS.—Any organization other than State banks, trust companies, and savings associations shall, as condition precedent to securing discount privileges or delegated powers with a bank of the Rural Development Credit System, file with such bank its written consent to examination by Farm Credit Administration examiners as may be directed by the Farm Credit Administration; and State banks, trust companies, and savings associations may be required in like manner to file a written consent that reports of their examination by constituted State authorities may be furnished by such authorities upon the request of the Farm Credit Administration.

SEC. 1005. REPORTS ON CONDITIONS OF INSTITUTIONS RECEIVING LOANS OR DEPOSITS OR REDELEGATED POWERS.—The executive departments, boards, commissions, and independent establishments of the Government of the United States, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Reserve banks are severally authorized under such conditions as they may prescribe, upon request of the Farm Credit Administration, to make available to the Farm Credit Administration or to any institution of the Rural Development Credit System in confidence all reports, records, or other information relating to the conditions of any organization to which such institution of the System has made or contemplates making a loan or for which it has or contemplates discounting paper, or which it is using or contemplates using as a custodian of securities or other credit instruments, or which it is using as or contemplates using as a depository, or to which it has or contemplates delegating powers under this title. The Federal Reserve banks in their capacity as depositories, agents, and custodians for bonds, debentures, and other obligations issued by the banks of the Rural Development Credit System or book entries thereof are also authorized and directed, upon request of the Farm Credit Administration, to make available for audit by farm credit examiners all appropriate books, accounts, financial records, files, and other papers.

SEC. 1006. JURISDICTION.—Each institution of the Rural Development Credit System shall for the purposes of jurisdiction be deemed to be a citizen of the State, commonwealth, or District of Columbia in which its principal office is located. No district court of the United States shall have jurisdiction of any action or suit by or against any unit of local general government or any private financing institution exercising delegated powers under this title, upon the ground that it was incorporated under this title or that the United States owns any stock thereof, nor shall any district court of the United States have jurisdiction, by removal or otherwise, of any suit by or against such institution except in cases by or against the United States or by or against any officer of the United States and except in cases by or against any receiver or conservator of any such institution appointed in accordance with the provisions of this title.

SEC. 1007. STATE LEGISLATION.—Whenever it is determined by the Federal Rural Development Credit Agency, or by judicial decision, that a State law is applicable to the obligations and securities authorized to be held by the institutions of the Rural Development Credit System under this title, which law would provide insufficient protection or inadequate safeguards against loss in the event of default, the Federal Rural Development Credit Agency may declare such obligations or securities to be ineligible as security for the issuance of new notes, bonds, debentures, and other obligations under this Act.

SEC. 1008. TAX EXEMPTION.—The Federal Rural Development Credit Board, the Regional Banks, and the District Rural Development Credit Agencies shall be exempt from Federal, State, and local corporate income taxes and from all other Federal, State, and local taxes except that (1) the real property and tangible personal property of such Board, Banks, and Agencies shall be subject to Federal, State, and local taxation to the same extent, according to its value, as other similar property held by other persons is taxed, (2) the income from any obligations purchased by any such institution of the Rural Development Credit System from any Federal or State governmental or quasi-governmental body, and any obligation issued by any such institution of the Rural Development Credit System shall be subject to Federal, State, and local taxation to the same extent as the income or obligations of private corporations are taxed; and (3) the Regional Banks shall be liable for the franchise tax provided in section 614 of this Act.

SEC. 1009. NATURE OF OBLIGATIONS.—(a) All obligations issued by the Federal Rural Development Credit Board or Regional Banks shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under authority or control of the United States or of any officer or employee thereof. All obligations issued by the Rural Development Credit System pursuant to this Act shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States.

SEC. 1010. AMENDMENTS TO OTHER LAWS.—(a) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

"(95) Executive Director of the Rural Development Credit Agency.

"(96) Administrator of the Rural Development Investment Equalization Administration."

(b) Section 5316 of title 5, United States Code is amended by adding at the end thereof the following:

"(132) Deputy Executive Director of the Rural Development Credit Agency."

SEC. 1011. SEPARABILITY.—If any provision of this Act, or the application thereof to any person or in any circumstances, is held invalid, the remainder of this Act and the application of such provision to other persons or in other circumstances shall not be affected thereby.

SEC. 1012. RESERVATION OF RIGHT TO AMEND OR REPEAL.—The right to alter, amend, or repeal any provision or all of this Act is expressly reserved.

SEC. 1013. APPROPRIATIONS.—(a) There is authorized to be appropriated to the Federal Rural Development Credit Agency not to exceed $200,000,000 annually for not to exceed 10 years for the purchase of capital stock of the Regional Banks.

(b) There is authorized to be appropriated not to exceed $300,000,000 annually to the Federal Rural Development Investment Equalization Administration for interest rate supplements and capital augmentation payments authorized under subtitle G of this title.

(c) In addition to the funds authorized to be appropriated by subsections (a) and (b), there are authorized to be appropriated, without fiscal year limitation, such additional sums as may be necessary to carry out the purposes of this Act.

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

SHORT EXPLANATION

Title I of this bill would amend section 306 of the Consolidated Farmers Home Administration Act of 1961 which now provides for loans and grants for rural water and waste disposal facilities. The bill would extend its application to all other types of rural community development projects. That term would have the same broad meaning under this Title as it has under the Administration's Rural Revenue Sharing bill.

Title II would also provide for loans and grants to borrowers for rural development purposes. This title is modeled after the laws applicable to the cooperative Farm

Credit system, but unlike that system, loans under this title would be limited to borrowers unable to obtain credit elsewhere.

SECTION-BY-SECTION EXPLANATION

Title I—Amendments to the Consolidated Farmers Home Administration Act of 1961

Section 101. *Short Title.* This section would change the title of the Consolidated Farmers Home Administration Act of 1961 to the "Consolidated Farm and Rural Development Act."

Section 102. *Loans for Rural Development Projects.* At present, section 306 of the Consolidated Farmers Home Administration Act authorizes the making or insuring of loans to associations, including corporations not operated for profit, and public and quasi-public agencies for a number of rural development activities, including water and drainage and waste disposal facilities. Section 102 of the bill would preserve this existing authority, but extend it to provide for the making or insuring of loans to any prospective borrower for any rural community development project, including those providing employment for, as well as those serving farmers, ranchers farm demands, farm laborers and other rural residents. Section 104 would impose an additional requirement that loans under this section be not inconsistent with an areawide plan of a multi-jurisdictional planning and development district.

Section 103. *Grants for Rural Development Projects.* Grants at present under section 306 are restricted to water and waste disposal projects. This section would extend the authority for grants to other rural community development projects and increase the maximum amount of grants authorized in any fiscal year from $100 million to $300 million.

Section 104. *Consistency with Comprehensive Plans.* Existing authority now requires the Secretary to determine, before making any grant for a water or waste disposal project, that the project is consistent with planned development under State, county, or municipal plans. Section 104 of the bill would extend this requirement to other rural community development projects and specifically require that for the purposes of loans and grants, all proposed projects be consistent with plans of multi-jurisdictional agencies having jurisdiction over the area in which the proposed project is to be located.

Section 105. *Definitions.* This section—

(1) Redefines rural areas as used in section 306 of the Consolidated Farmers Home Administration Act to exclude any area in any city or town which has a population in excess of 35,000 inhabitants and any urbanized or urbanizing area immediately adjacent thereto. Existing law excludes any area in any city or town which has a population in excess of 5,500 inhabitants; and

(2) Defines the term "rural community development projects" in exactly the terms used in the Administration's Rural Revenue Sharing bill.

Section 106. *Reorganization.* This section would divide the Farmers Home Administration into a Farm Development Administration and a Rural Enterprise and Community Development Administration and place these two Administrations under an additional Assistant Secretary of Agriculture—Rural Development Credit, to be appointed by the President with the advice and consent of the Senate. Like the other Assistant Secretaries he would be compensated at Level IV of the Executive Pay Schedule, which is currently $38,000 per annum. The administrators of the two new Administrations would receive the same compensation as the Administrator of the Rural Electrification Administration. They would be in Level V of the Executive Schedule which is currently $36,000 per annum.

Title II—Federal Rural Development Credit System

Subtitle A—Findings and Purpose, Definitions

Section 201. *Findings and Purpose.* This section makes findings with respect to the importance of farming and forestry and the need of the farm family and the Nation for healthy rural communities with adequate community facilities. It is the purpose of the Act to provide for the financing of such facilities.

Section 202. *Definitions.* This section defines "Rural Development Credit System," "rural area," "rural development purpose," "local general government," "Regional Bank," "region," "Federal Rural Development Credit Board," "District Rural Development Credit Agency," "participating institution," 'Federal Rural Development Credit Agency," "Executive Director," and "financial assistance."

The term "rural area" is defined as any area within a State or the Commonwealth of Puerto Rico which is not part of, or contiguous to, any municipality having a population of 35,000 or more, but this definition may be broadened by regulation by the Federal Rural Development Credit Board after consultation with the Director of the Office of Management and Budget, the Secretary of Agriculture, and the Secretary of Housing and Urban Development, if the Board determines that such action because of special circumstances applicable to such areas is consistent with the purpose of the Act.

The term "rural development purpose" means any public or private project that will contribute to a reasonable national growth policy and to the enhancement of any rural area as a place to live.

The Rural Development Credit System consists of the following—

(1) A supervisory Federal Rural Development Credit Agency whose chief executive officer is called the Executive Director, and whose policy-making board is called the Federal Rural Development Credit Board;

(2) a Federal Rural Development Investment Equalization Administration to provide subsidies for rural development purposes; and

(3) the following institutions which will make loans for rural development purposes:

(a) Participating institutions (also known as Participating Rural Development Financial Institutions)—Any local bank or other financial institution or any unit of local government, which applies to be, and is designated a participating institution under Subtitle C;

(b) District Rural Development Credit Agencies—Any financial agency of a multi-jurisdictional planning and development district or a State upon application to, and designation by the appropriate Regional Rural Development Credit Bank under Subtitle D. These would be chartered as instrumentalities of the United States; and

(c) 10 Regional Banks (also known as Regional Rural Development Credit Banks) established in section 601.

In addition, "cooperating financial institutions" as described in section 404(c) may participate in loans on behalf of District Rural Development Credit Agencies.

Subtitle B—Borrowers and Availability of Loans

Section 301. *Availability of Rural Development Credit.* This section provides that any borrower for a rural development purpose shall be eligible for the credit services of Rural Development Credit System Institutions serving its area.

Section 302. *Eligibility.* The eligibility of potential borrowers is to be determined in accordance with criteria established by the District Rural Development Credit Agency with the approval of the appropriate Regional Rural Development Credit Bank and in accordance with the rules and regulations of the Federal Rural Development Credit Agency and the policies prescribed by the Federal Rural Development Credit Board. Loans are restricted to borrowers who cannot obtain credit elsewhere.

Section 303. *Terms and Conditions.* Loan terms and conditions are to be established by the appropriate Regional Rural Development Credit Bank subject to the rules and regulations of the Federal Rural Development Credit Agency and the policies of the Federal Rural Development Credit Board.

Section 304. *Security.* The amount of security to be required would be determined by the District Rural Development Credit Agency.

Section 305. *Required Purchase of Capital Stock.* This section requires each borrower to purchase stock in the District Rural Development Credit Agency in the amount of 5 to 10 percent of the loan as determined by the Federal Rural Development Credit Board.

Subtitle C—Participating Institutions

Section 401. *Designation.* Any bank or other financial institution making loans in rural areas for rural development purposes and any unit of local general government shall, upon application, be considered for designation as a Participating Rural Development Financial Institution hereinafter called "Participating Institution."

Section 402. *Functions of Participating Institutions.* Participating Institutions are authorized to—

(1) borrow from and make loans for District Rural Development Credit Agencies;

(2) make loans guaranteed or insured by a Regional Rural Development Credit Bank;

(3) issue obligations for purchase by the District Rural Development Credit Agencies; and

(4) perform such other duties as the District Rural Development Credit Agency may delegate.

Section 403. *Endorsement by Participating Institutions.* This section requires participating institutions to endorse and assume full responsibility for obligations discounted by them to the District Rural Development Credit Agency.

Section 404. *Purchase of Capital Stock.* Borrowers from participating institutions are required to purchase stock in the District Rural Development Credit Agency under which the participating institution operates in the amount of 5 to 10 percent of any loan made to them on behalf of the District Rural Development Credit Agency. In addition, the institution would be required to own capital stock in the District Rural Development Credit Agency in an amount equal to one percent of the outstanding loans in which it has participated on behalf of such District Rural Development Credit Agency. Any financial institution making rural development loans may, without designation as a participating institution, (1) purchase voting stock in the District Rural Development Credit Agency, and (2) participate in loans on behalf of such agency as a "cooperating financial institution."

Section 405. *Governance of Participating Institutions.* This section provides for rules and regulations governing participating institutions.

Section 406. *Certificates of Participation.* Each participating institution is to receive a certificate certifying that it is an official participating rural development financial institution. Designation of participating institutions is subject to approval of the Federal Rural Revelopment Credit Board.

Subtitle D—District Rural Development Credit Agencies

Section 501. *Designation and Charters.* Any financial agency of a multi-jurisdictional planning and development district of a State

may upon application to, and approval by, the Regional Rural Development Credit Bank serving its area, be designated a District Rural Development Credit Agency and chartered as an instrumentality of the United States. District Rural Development Credit Agencies may be required to purchase stock in the Regional Rural Development Credit Bank in such amount as may be required by such Bank as a condition of approval. The Executive Director of the Federal Rural Development Credit Agency may veto the approval of, and is to prescribe the organization, management, and conduct of the business of, any District Rural Development Credit Agency.

Sections 502, 503, and 504. *Governing Board, General Corporate Powers, and Capital Stock.* These sections deal with the Boards of Directors, the general corporate powers, and the capital stock of the District Rural Development Credit Agencies. The number, terms, qualifications, and election of Board Members would be in accordance with State law and its Federal charter.

Section 505. *Application of Earnings.* This section provides for the manner in which earnings of District Rural Development Credit Agencies after providing for valuation reserves against loan assets, shall be applied to the restoration of capital impairment, establishment and maintenance of surplus accounts and stock participation or cash distributions.

Section 506. *Loans by District Rural Development Credit Agencies.* This section authorizes District Rural Development Credit Agencies to make loans for rural development purposes through participating institutions or directly in any rural area in which there is no participating institution able and willing to supply the credit needs of the applicant. Loans would bear interest and be subject to other terms and conditions determined under regulations prescribed by the Board of Directors of the Agency with the approval of the Federal Rural Development Credit Agency.

Section 507. *Other Services.* This section authorizes each District Rural Development Credit Agency to provide technical assistance and financial related services to borrowers, applicants and participants.

Subtitle E—Regional rural development credit banks

Section 601. *Establishment, Title, Number.* This section provides for the establishment of ten Regional Rural Development Credit Banks.

Section 602. *Corporate Powers.* This section provides for the corporate powers of each Regional Rural Development Credit Bank.

Section 603. *Regional Rural Development Credit Bank Stock.* This section provides for the issuance by the Bank of various classes of voting and non-voting stock and evidences of indebtedness, and for the application of the earnings of the Bank.

Section 604. *Loans.* The Regional Rural Development Credit Banks are authorized to—

(1) finance real or personal property, working capital, and operating expenses in connection with loans of the District Rural Development Credit Agencies to finance any rural development purpose project;

(2) provide financing for the construction or improvement of any rural development purpose project; and

(3) insure rural development purpose project construction improvement or expansion borrowers against damage or casualty loss in connection with such project.

Section 605. *Interest Rates and Other Charges.* Financing by Regional Rural Development Credit Banks shall bear interest and be on such other terms and conditions as may be determined by the Board of Directors of the Bank, it being the objective to provide such financing at the lowest reasonable cost on a sound business basis.

Section 606. *Eligibility.* Financing and insurance provided by this title would be made available to any applicant therefor if—

(1) the application is endorsed by the multi-jurisdictional governmental planning and development district, if any, established by the legislature or Governor of the State certifying that the proposed project is consistent with the current comprehensive development plan for such district;

(2) the applicant demonstrates that the project will not result in the geographic transfer of employment or business activities now provided by the applicant;

(3) the applicant demonstrates that he has been unable to obtain needed financial assistance from other private or public sources at reasonable rates and conditions;

(4) the applicant demonstrates that he can meet the scheduled payments;

(5) the applicant demonstrates that the project will operate primarily in a rural area for the benefit of rural residents and promises to make a net increase in number of jobs, quality of life, or median family income in the rural areas served;

(6) the applicant demonstrates and certifies that neither the project nor its personnel or employees will be used for the purpose of engaging the religious or partisan political activities.

Section 607. *Security.* Loans are to be secured by the best security available and by the endorsement of the appropriate District Rural Development Credit Agency and participating institution.

Section 608. *Services Related to Borrowers' Operations.* This section authorizes the Regional Rural Development Credit Banks to provide technical assistance to District Rural Development Credit Agencies, participating institutions, loan applicants, and other financial institutions in rural areas.

Section 609. *Loans Through Agencies, Participating Institution.* The Regional Rural Development Credit Banks are to make financial assistance available to eligible borrowers through District Rural Development Credit Agencies and participating institutions in the area served by such bank. If no District Rural Development Credit Agency or participating institution is available to handle the application, the bank may make the loan through any other financial institution or directly to the borrower. The applicant shall purchase stock of the bank in an amount equal to not less than $5.00 and not more than $10.00 for each $100 of the loan proceeds.

Section 610. *Eligibility of Financial Institutions.* The eligibility of any financial institution to receive or handle loans for any Regional Rural Development Credit Bank is to be determined by such bank on the basis of an application and in accordance with criteria established by the Rural Development Credit Agency under rules and regulations of the Rural Development Credit Board. Such institutions shall be eligible to borrow from such Regional Bank.

Section 611. *Boards of Directors.* This section provides for a 12-member bipartisan Board of Directors for each Regional Rural Development Credit Bank. Different methods are provided for their appointment depending upon the amount of stock in the bank held by the Executive Director. The Board would elect a chairman from among its members and would elect a President who would be an ex-officio member of the Board and such other officials and employees as may be required for the necessary and effective operation of the Bank. Members would receive $100 for each day spent in the performance of their official duties, but not more than $7,500 in any year. A Board member who was an official of the United States or of any State would not receive pay.

Section 612. *Capitalization of Regional Rural Development Credit Banks.* This section authorizes the President of each Regional Rural Development Credit Bank to issue its pro rata share of the amount of outstanding capital stock of the Rural Development Credit System as determined by the Federal Rural Development Credit Board. The Executive Director is authorized to purchase non-voting stock in the same amount the Bank is authorized to issue.

Section 613. *Governance of Policies, Programs and Procedures of Regional Rural Development Credit Banks.* The Federal Rural Development Credit Board is to establish regulations to govern the programs and procedures of the Regional Rural Development Credit Banks during any period in which the Executive Director holds stock in such bank, but the banks are conclusively presumed to be acting in accordance with such regulations in all their actions.

Section 614. *Stock Purchased by Executive Director, Retirement, Franchise Tax, Revolving Fund.* This section authorizes the Executive Director on behalf of the United States to purchase stock in any Regional Rural Development Credit Bank to help such bank inaugurate lending operations, or meet emergency credit needs of borrowers. The Executive Director may require the bank to retire this stock whenever it has resources available and the need for such investment is reduced for any year or part thereof in which the Executive Director holds stock in the bank. The bank, after, making provision for reserve and surplus funds as provided in section 603(e), shall pay to the United States a franchise tax equal to the lower of, (1) 25 percent of its net earnings, or (2) a rate of return based on the average annual rate of interest on certain public debt issues of the United States and the number of days such stock is outstanding during the year.

Section 615. *Subscription by the United States of Initial and Additional Capital.* This section authorizes the Secretary of the Treasury to deposit any money in the Treasury not otherwise appropriated for the temporary use of any Regional Rural Development Credit Bank to earn interest at a rate not exceeding the current rate charged for other Government deposits or 5 percent, whichever is lower.

Section 616. *Power to Borrow, Issue Notes, Bonds, Debentures and Other Obligations.* This section authorized each Regional Rural Development Credit Bank to borrow money in such sums as it may determine.

Section 617. *Aggregate of Obligations, Collateral.* This section limits the long term obligations of Regional Rural Development Credit Banks to twenty times the capital and surplus of all the Regional Banks primarily liable thereon, or such lesser amount as the Federal Rural Development Credit Agency shall establish by regulation.

Each bank is to maintain free from any lien or other pledge notes representing loans made under the authority of this Act, obligations of the United States, other readily marketable securities or cash in an aggregate value equal to the total amount of long-term obligations for which the Bank is primarily liable.

Section 618. *Liability of Banks.* Each Regional Rural Development Credit Bank would be liable on its own obligations and for interest payments on obligations of other Regional Rural Development Credit Banks. In addition each such Bank would be primarily liable for the portion of any issue of consolidated obligations made on its behalf and jointly and severally liable for the payment of any additional sums when called upon the Federal Rural Development Credit Agency to make payments of interest or principal which any other such bank primarily liable therefor is unable to make.

Section 619. *Finance Committee.* This section provides for a finance committee composed of the Presidents of the Regional Rural Development Credit Banks to determine the amount, maturities, rates of interest and par-

ticipation by the several banks in each issue of joint or consolidated obligations.

Section 620. *Bonds as Investments.* Bonds and other similar obligations issued under the authority of this title shall be lawful investments for a fiduciary and may be accepted as security for all public deposits.

Section 621. *Purchase and Sale by Federal Reserve System.* Obligations issued under this title may be bought and sold by any member of the Federal Reserve System; and (to the same extent and subject to the same limitations as are placed upon the purchase and sale of State, county, district and municipal bonds under section 14(b) of the Federal Reserve Act) by any Federal Reserve Bank.

Section 622. *Purchase and Sale of Obligations.* Each Regional Rural Development Credit Bank may purchase its own obligations and the obligations of any other such bank and may provide for the sale of obligations issued by it or issued jointly with one or more other such banks. The sales agency of the Farm Credit System is to be utilized on a reimbursable basis for the purchase and sale of these obligations.

Section 623. *Fiscal Agency.* This section provides for a fiscal agency to be established by the Regional Rural Development Credit Banks to carry out such of their functions relating to the issuance, marketing and handling of obligations as may be required.

Section 624. *Merger of Similar Banks.* This section authorizes merger of Regional Rural Development Credit Banks upon approval of the majority of their stockholders and the Federal Rural Development Credit Agency.

Section 625. *Board of Directors for Merged Bank.* The board of directors for a merged bank shall be composed of directors elected by the boards of the banks being merged; but the bylaws of the merged bank may, with the approval of the Federal Rural Development Credit Agency and subject to rules and regulations established by the Federal Rural Development Credit Board provide for a different number of directors, selected in a different manner.

Section 626. *Voluntary Liquidation, Insolvency.* This section prohibits any institution of the system from going into voluntary liquidation without the consent of the Federal Rural Development Credit Agency and for appointment by the Executive Director of a conservator for any Regional Rural Development Credit Bank which becomes insolvent.

Subtitle F—Federal Rural Development Credit Agency

Section 701. *Federal Rural Development Credit Agency. Executive Director.* This section establishes an independent agency to be known as the Federal Rural Development Credit Agency to be headed by an Executive Director and to be responsible for carrying out the programs provided for in this title.

Section 702. *Appointment of Executive Director, Salary and Expense Allowance.* The Executive Director is to be appointed by the Federal Rural Development Credit Board, except that during any period in which he holds stock in any Regional Rural Development Credit Bank his appointment shall be subject to approval by the President and he shall serve at the pleasure of the President. His compensation would be fixed at the rate prescribed for positions in level IV of the Executive Pay Schedule which currently is $38,000 per annum.

Section 703. *Compliance with Board Orders.* The Executive Director is to carry out the policies of the Federal Rural Development Credit Board.

Section 704. *Rural Development Credit Organization.* The Executive Director is authorized to appoint and employ personnel.

Section 705. *Seal.* This section provides for a seal of the Federal Rural Development Credit Agency to be adopted by the Executive Director and to be judicially noted.

Section 706. *Administrative Expense.* This section authorizes the Federal Rural Development Credit Agency to make necessary expenditures for proper administration of the Act.

Section 707. *Allocation of Expenses.* This section provides for the assessment of the institutions of the system for their appropriate share of the cost of administering this title. During the first five fiscal years of operation appropriations would be authorized to augment such assessments. At the end of each fiscal year, the Agency would redetermine the appropriate assessment for each institution and appropriate adjustments would be made.

Section 708. *Enumerated Powers.* This section enumerates the powers, functions, and responsibilities of the Federal Rural Development Credit Agency. In general they provide for the supervision and direction of the system. They include provisions for modifying the territory of any Regional Rural Development Credit Bank, issuing Federal charters for institutions of the system, and making investments in stock of the institutions of the system out of stock subscribed by the Secretary of the Treasury, and requiring the retirement of such stock.

Section 709. *Special Powers.* This provision authorizes the Federal Rural Development Credit Agency to purchase or sell any obligation of a State or local government issued wholly or partly to finance any rural development purpose project, facility or service; otherwise finance any such project; facility or service; or make loans to facilitate economic, physical and social development in rural areas.

Section 710. *Technical Assistance.* This section requires the Federal Rural Development Credit Agency to employ personnel qualified in a number of specific fields related to the agency's activities, and to give, or provide for giving, necessary technical assistance to applicants for assistance under this title.

Section 711. *Delegation of Duties and Powers to Institutions of the System.* This section authorizes the Federal Rural Development Credit Agency to delegate to any Regional Rural Development Credit Bank or any District Rural Development Credit Agency any of its duties with respect to such bank or agency, and provides for the redelegation of any duties of any institution of the Rural Development Credit System.

Section 712. *Agreements for Sharing Losses.* This section authorizes the Federal Rural Development Credit Agency to enter into agreements with Regional Rural Development Credit Banks to share gains and losses on securities held therefor or acquired in liquidation thereof.

Section 713. *First Lien.* The Federal Rural Development Credit Agency, the Regional Rural Development Credit Banks, the District Rural Development Credit Agencies, and participating institutions are each given a first lien on stock issued by them (except in the case of stock held by the Executive Director or the Secretary of the Treasury) for the payment of any liability of the stockholder to any such entity or entities.

Subtitle G—Federal Rural Development Investment Equalization Administraton

Section 801. *Findings and Policy.* This section finds that incentive payments are needed for rural community development and declares it to be the policy of Congress to carry out a program of such payments.

Section 802. *Investment in Rural Development.* This section provides for the establishment by the Federal Rural Development Credit Board of a Federal Rural Development Investment Equalization Administration, independent of the Federal Rural Development Credit Agency and Regional Rural Development Credit Banks, to carry out programs of interest supplements and capital augmentation payments.

Section 803. *Administrator.* The Rural Development Investment Equalization Administration would be headed by an Administrator appointed by the Federal Rural Development Credit Board, except that during any period that the Executive Director holds any stock in any of the Regonal Rural Development Credit Banks, his appointment would be subject to the approval of the President and he would serve at the pleasure of the President. He would be compensated at Level IV of the Executive Pay Schedule, which currently is $38,000 per annum.

Section 804. *Rural Development Interest Supplements, Eligibilty and Amount.* Any borrower of any institution of the Federal Rural Development Credit System who cannot pay from project earnings in any fiscal year the full amount of the annual interest on his loan shall be eligible to receive at the end of such fiscal year an interest supplement equivalent to the amount by which the interest due exceeds the greater of (1) the amount which can be paid from project earnings, or (2) one percent of the loan.

Section 805. *Rural Development Capital Augmentation Payments, Elgibility and Amount.* Any borrower or person eligible to borrow from any institution of the Rural Development Credit System who has constructed or acquired improvements to real property and necessary equipment and working capital to establish and operate a new or expanded rural community facility or service may apply for a Rural Development capital augmentation payment. The amount of any such payment shall not exceed the current discounted value of the amount by which—

(1) the annual amortization payment actually due on any indebtedness exceeds;

(2) the annual amortization payment that could be made out of earnings from prudent operation of the project.

Section 806. *Supervision by Farm Credit Adminstration.* Investigating, accounting, and administrative auditing services of the Farm Credit Administration would be utilized on a reimburseable basis by the Federal Rural Development Investment Equalization Administration and the Federal Rural Development Credit Agency.

Section 807. *Examination of Books of Account.* As a condition of approval of any application the applicant would be required to keep his books of account open at all times for examination by the Farm Credit Administration and the General Accounting Office.

Subtitle H—Federal Rural Development Credit Board

Section 901. *Federal Rural Development Credit Board.* This section creates a bipartisan Federal Rural Development Credit Board composed of 17 members. Fifteen members, each from a different State, would be appointed by the President with the advice and consent of the Senate. One member would be the representative of the Secretary of Agriculture on the Farm Credit Board, and one member would be the Governor of the Farm Credit Administration. The Executive Director and the Administrator of the Federal Rural Development Investment Equalization Administration would be ex-officio members.

Appointed members would serve for terms of six years except that in case of the first members appointed, six would be appointed for terms of six years, six would be appointed for terms of four years, and three would be appointed for terms of two years. Appointed members would receive $200 per day for not more than 75 days of meetings each year.

Section 902. *Powers of the Board.* The Board would establish the general policy for all institutions of the Rural Development Credit System.

Section 903. *Indirect Participation by Private Financial Sources.* The Board is authorized on behalf of the Regional Rural Development Credit Banks and the other insti-

tutions of the System to issue bonds, debentures and other obligations, buy and sell securities it has issued or guaranteed, invest funds not needed in its financing operations in such property as the Board may determine, and guarantee securities in which it has invested for the purpose of facilitating their sale. The Board would utilize on a reimbursable basis the security selling agency services of the Farm Credit System.

The Secretary of Agriculture would be authorized to guarantee the obligations issued by the Board on behalf of Regional Rural Development Credit Banks. The full faith and credit of the United States is pledged to the payment of all amounts so guaranteed.

Section 904. *Federal Payments to the Board.* With respect to such amounts of loans of the Regional Rural Development Credit Banks as may be specified in appropriation Acts, the Secretary of the Treasury is authorized to make and to contract to make annual payments to the Board in such amounts as are necessary to (1) reimburse the Federal Rural Development Investment Equalization Administration for needed interest supplements and rural capital augmentation, and (2) subscribe to stocks of Regional Rural Development Credit Banks that may be tendered by the Board.

Section 905. *Federal Insurance of Obligations to the Board.* This section authorizes the Secretary of Agriculture to insure any obligation insured or purchased by the Board. Five million dollars is authorized to be appropriated as initial capital for a revolving fund to be used to carry out such insurance. All premiums charged for such insurance would be deposited in the fund. In carrying out his functions under this title, the Secretary would have the same functions, powers and duties as under the Consolidated Farm and Rural Development Act, and such sums are authorized to be appropriated to the Secretary for the Agricultural Credit Insurance Fund as may be necessary to carry out his responsibilities under this title.

Subtitle I—General Provisions

Section 1001. *Financial and Other Supervision.* The Rural Development Credit System would be subject to the supervision of the Farm Credit Administration with respect to all procedures relating to financial obligations, including audits, and would be subject to the supervision of the Administrator of the Rural Enterprise and Community Development Administration with respect to the appraisal of real and personal property for security purposes.

Section 1002. *Examinations and Reports, Audits.* This section provides for examinations and audits by Farm Credit Administration examiners and General Accounting Office auditors, and reports to Congress by the Farm Credit Administration and the Federal Rural Development Credit Board.

Section 1003. *Conditions of Other Banks and Lending Institutions.* The Comptroller of the Currency is required upon request of the Farm Credit Administration to—

(1) furnish for confidential use of any institution of the Rural Development Credit System any information he may have relating to the financial condition of national banks through which such institution makes loans; and

(2) make such further examination as may be agreed of organizations through which such institution makes loans.

Section 1004. *Consent to the Availability of Reports and to Examinations.* This section requires any organization seeking discount privileges or delegated powers from a bank of the Rural Development Credit System to consent to examination by Farm Credit examiners or, in the case of State banks, trust companies and savings associations, to permit State authorities to furnish reports of their examinations upon request of the Farm Credit Administration.

Section 1005. *Reports on Conditions of Institutions Receiving Loans or Deposits or Redelegated Powers.* This section authorizes various agencies to furnish information to the Farm Credit Administration or any institution of the Rural Development Credit System.

Section 1006. *Jurisdiction.* Each institution of the Rural Development Credit System shall for the purposes of jurisdiction be deemed to be a citizen of the State, Commonwealth, or District of Columbia in which its principal office is located.

Section 1007. *State Legislation.* This section authorizes the Federal Rural Development Credit Agency to declare obligations or securities to be ineligible as collateral under this Act where the State law applicable to such obligations provides insufficient protection in the event of default.

Section 1008. *Tax Exemption.* The Federal Rural Development Credit Board, the Regional Rural Development Credit Banks, and the District Rural Development Credit Agencies are to be exempt from Federal, State, and local corporate income taxes and from all other Federal, State, and local taxes, except that—

(1) their real and tangible personal property shall be subject to Federal, State, and local taxation to the same extent according to its value as other similar property held by other persons;

(2) the income from any obligations purchased by them from any Federal or State governmental or quasi governmental body and from obligations issued by them shall be subject to Federal, State, and local taxation to the same extent as the income or obligations of private corporations are taxed; and

(3) the Regional Rural Development Credit Banks are liable for the franchise tax provided for in section 614 of this Act.

Section 1009. *Nature of Obligations.* All obligations issued by the Federal Rural Development Credit Board or Regional Rural Development Credit Banks shall be lawful investments for all fiduciaries.

Section 1010. *Compensation.* This section amends title 5 of the United States Code to place the Executive Director of the Rural Development Credit Agency and the Administrator of the Rural Development Investment Equalization Administration in Level IV of the Executive Schedule which currently is $38,000 per annum, and to place the Deputy Executive Director of the Rural Development Credit Agency in Level V of the Executive Schedule which currently is $36,000 per annum.

Section 1011. *Separability.* This section provides that if any provision of the Act is held invalid, the remainder of the Act shall not be affected thereby.

Section 1012. *Reservation of Right to Amend or Repeal.* This section reserves the right to alter, amend, or repeal any provision of the Act.

Section 1013. *Appropriations.* This section authorizes the appropriation of—

(a) $200 million annually for not to exceed 10 years for the purchase of capital stock in the Regional Banks by the Federal Rural Development Credit Agency;

(b) $300 million annually to the Federal Rural Development Investment Equalization Administration for interest supplements and capital augmentation payments; and

(c) such additional sums as may be necessary without fiscal year limitation to carry out the purposes of the Act.

HOW THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT WOULD WORK

The legislation puts major emphasis on regional planning by rural counties for their own, mutual good.

It would give each of these district planning agencies a financial office.

This office would process applications for loan assistance for new industry, community facilities, or such things as housing developments by non-profit organizations.

Local bankers, who have a big stake in the success of rural development, could become members of the system, and become centers for initial processing of loans.

Let's assume that a manufacturer wanted to build a small factory in Alma, Georgia. He would make application to the member bank of his choice.

Many small town banks do not have the financial resources to handle major capital loans, but the banker then goes to the district finance office to see if he can get help in financing the loan.

If the manufacturer cannot qualify for normal loan assistance, and cannot find a local banker member of the system, he can go directly to the finance agency of the regional county planning agency's finance office.

When the loan proposal is filed with the regional development agency of a group of counties, it will be checked to see if the type of development desired is consistent with the overall plan of the multi-county district.

The local bank can then make a portion of the loan, and the district financial office picks up what would probably be the largest share.

Or, the local banker could discount the loan paper with the financial office.

Or, instead of a participating loan, the financial agency could handle the entire amount, rather than having the local banker try to sell the loan on the money market.

The local bank could also ask the finance agency to guarantee the loan of the borrower, or insure repayment of the principle and interest, or provide mortgage insurance for the loan.

Cities and counties eligible which wanted to improve community facilities would go directly to the multi-county finance agency.

The multi-county finance offices will really have no money except for their capital stock, reserves and surplus, so these agencies would go in turn to one of the ten regional banks set up under the system and seek the same terms the local banker asks for.

Working under exactly the same principle as the Farm Credit System, which has been so successful for so long, the Treasury would subscribed to a certain amount of capital stock in each multi-county district finance agency.

Each borrower who gets a loan would have to buy 5–10 percent of his loan proceeds in capital stock of the multi-county finance agency.

The local banks or the counties involved would have to put up an additional one percent of the loan proceeds for the same purpose.

Reserves and surpluses of the multi-county finance agencies would come from these earnings, and these earnings would be used to retire the U.S. Treasury subscription so that eventually the entire system can become borrower owned, and participant owned, just as the Farm Credit System is today.

A percentage of the earnings of the multi-county finance agencies would first be put in reserve, then another percentage would be added to the surplus, then the agency would pay a franchise tax, in lieu of income tax, and then it would retire the federal capital. Any additional amount would be used to pay a dividend to the stock holders or pay interest to those holding participating certificates.

The ten regional banks would have the authority to sell their own bonds and debentures on the money market at the going interest rate. The regional banks could also consolidate their paper to handle a transaction. But if it is to be sold on the money market, it would be through the Farm Credit Administration Security Sales Agency, which is already so efficient.

The Rural Development Credit Agency

would perform the function of governing the local agencies, as the Farm Credit system now operates.

Another agency, the Rural Development Investment Equalization Administration, would handle the subsidy end of this proposal. It would be handled separately to avoid problems of getting loan and grant money mixed into the same financial pot.

It has been alleged by those who claim that industry will not move to rural America that it costs more money to operate away from the population centers, and as a result, the chance for a major dispersal of industry is doomed to failure.

The sponsors of the Consolidated Farm and Rural Development Act do not necessarily agree with this conclusion, but a number of states have proved that investment incentives do draw industries.

Rather than provide under-the-table or backdoor subsidies, this legislation would make open subsidies available, but only under stringent and controlled circumstances, and this would be done on a *national* basis rather than the state-by-state effort now going on.

It must be stressed that these would not be relief payments to fiscally healthy industries, but they would be incentives to American industry to disperse.

There would be two kinds of subsidies:

1. *Interest supplements:* If a firm cannot pay its interest out of local earnings without dipping into its capital, the company can be given an interest supplement by the Rural Development Investment Equalization Administration. The payment could not bring the firm's interest level lower than one-percent.

2. *Rural Development Capital Augmentation Payments:* If a community wanted to build a sewer system, a calculation would be made of how much such a system would cost, and then it would be determined how much the people in the community could reasonably be expected to pay for it. The difference between these two figures would be the Rural Development Capital *Augmentation* payment. The same formula could be used for development of new industry, but again it must be stressed that this procedure would be under strict controls so that this money would not be used for fly-by-night or doomed-to-fail businesses.

THE REORGANIZATION

Under this bill farm and non-farm credit would come under a new Assistant Secretary of Agriculture. Under him, in two separate agencies, would be the Farm Development Administration, which now handles all farm credits (under the title Farmers Home Administration) and the Rural Enterprise and Community Development Administration, which would handle all non-farm rural credit.

The new assistant secretary would be assigned to no other duties than to oversee all rural credit. At present, the assistant secretary handling this task, must also supervise a wide range of other activities.

The 19 members of the Rural Development Credit Board would have five members appointed by the President of the United States; five nominated by the President Pro tempore of the Senate; and five nominated after consideration of the recommendations of the Speaker of the House.

The Secretary of Agriculture would appoint the same person who is his representative to the Farm Credit Board. The governor of the Farm Credit Administration would be another member of the board. The Executive Director of the Rural Development Credit Agency, and the Rural Development Investment Equalization Administration would sit on the board as ex-officio members.

By Mr. COOPER:

S. 2224. A bill to amend the National Security Act of 1947, as amended, to keep the Congress better informed on matters relating to foreign policy and national security by providing it with intelligence information obtained by the Central Intelligence Agency and with analysis of such information by such agency. Referred jointly to the Committees on Armed Services and Foreign Relations, by unanimous consent.

Mr. COOPER. Mr. President, the formulation of sound foreign policy and national security policy requires that the best and most accurate intelligence obtainable be provided to the legislative as well as the executive branch of our Government. The approval by the Congress of foreign policy and national security policy, which are bound together, whose support involves vast amounts of money, the deployment of weapons whose purpose is to deter war, yet can destroy all life on earth, the stationing of American troops in other countries and their use in combat, and binding commitments to foreign nations, should only be given upon the best information available to both the executive and legislative branches.

There has been much debate during the past several years concerning the respective powers of the Congress and the Executive in the formulation of foreign policy and national security policy and the authority to commit our Armed Forces to war. We have experienced, unfortunately, confrontation between the two branches of our Government. It is my belief that if both branches, executive and legislative, have access to the same intelligence necessary for such fateful decisions, the working relationship between the Executive and the Congress would be, on the whole, more harmonious and more conducive to the national interest. It would assure a common understanding of the purposes and merits of policies. It is of the greatest importance to the support and trust of the people. It is of the greatest importance to the maintenance of our system of government, with its separate branches, held so tenuously together by trust and reason.

It is reasonable, I submit, to contend that the Congress, which must make its decisions upon foreign and security policy, which is called upon to commit the resources of the Nation, material and human, should have all the information and intelligence available to discharge properly and morally its responsibilities to our Government and the people.

I send to the table a bill amending the National Security Act of 1947, which, I hope, would make it possible for the legislative branch to better carry out its responsibilities.

I read the amendment at this point:

To amend the National Security Act of 1947, as amended, to keep the Congress better informed on matters relating to foreign policy and national security by providing it with intelligence information obtained by the Central Intelligence Agency and with analysis of such information by such agency.

That section 192 of the National Security Act of 1947, as amended (50 U.S.C. 403), is amended by adding at the end thereof the following new subsections:

"(g) It shall also be the duty of the Agency to inform fully and currently, by means of regular and special reports to, and by means of special reports in response to requests made by, the Committees on Armed Services and Foreign Affairs of the House of Representatives and the Committees on Armed Services and Foreign Relations of the Senate regarding intelligence information collected by the Agency concerning the relations of the United States to foreign countries and matters of national security including full and current analysis by the Agency of such information.

"(h) Any intelligence information and any analysis thereof made available to any committee of the Congress pursuant to subsection (g) of this section shall be made available by such committee, in accordance with such rules as such committee may establish, to any member of the Congress who requests such information and analysis. Such information and analysis shall also be made available by any such committee, in accordance with such rules as such committee may establish, to any officer or employee of the House of Representatives or the Senate who has been (1) designated by a Member of Congress to have access to such information and analysis, and (2) determined by the committee concerned to have the necessary security clearance for such access."

The bill would, as a matter of law, make available to the Congress, through its appropriate committees, the same intelligence, conclusions, facts, and analyses that are now available to the executive branch. At the present time, the intelligence information and analyses developed by the CIA and other intelligence agencies of the Government are available only to the executive as a matter of law. This bill would not, in any way, affect the activities of the CIA, its sources or methods, nor would it diminish in any respect the authority of already existing committees and oversight groups, which supervise the intelligence collection activities of the Government. My bill is concerned only with the end result—the facts and analyses of facts. It would, of course, in no way inhibit the use by the Congress of analyses and information from sources outside the Government. It is obvious that with the addition of intelligence facts and their analyses, the Congress would be in a much better position to make judgments from a much more informed and broader perspective than is now possible.

The National Security Act of 1947 marked a major reorganization of the executive branch. This reorganization made it possible for the executive branch to assume more effectively the responsibilities of the United States in world affairs and the maintenance of our own national security. The National Security Act of 1947 created the Department of Defense and the unified services as we now know them.

Section 102 of the National Security Act of 1947, established the Central Intelligence Agency under a Director and Deputy Director, appointed by the President, by and with the advice and consent of the Senate. Under the direction of the National Security Council, it was directed to advise the National Security Council on matters relating to national security and "to correlate and evaluate intelligence relating to national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities."

The language does not specifically bar the dissemination of intelligence to the Congress, but it does not provide that

Congress shall be informed as a matter of law.

I ask unanimous consent that "Title I—Coordination for National Security," sections 101 and 102, be printed in the RECORD at this point in my remarks.

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

TITLE I—COORDINATION FOR NATIONAL SECURITY

NATIONAL SECURITY COUNCIL

SEC. 101. (a) There is hereby established a council to be known as the National Security Council (hereinafter in this section referred to as the "Council").

The President of the United States shall preside over meetings of the Council: *Provided*, That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of the President; the Secretary of State; the Secretary of Defense, appointed under section 202; the Secretary of the Army, referred to in section 205; the Secretary of the Navy; the Secretary of the Air Force, appointed under section 207; the Chairman of the National Security Resources Board, appointed under section 103; and such of the following named officers as the President may designate from time to time: The Secretaries of the executive departments, the Chairman of the Munitions Board appointed under section 213, and the Chairman of the Research and Development Board appointed under section 214; but no such additional member shall be designated until the advice and consent of the Senate has been given to his appointment to the office the holding of which authorizes his designation as a member of the Council.

(b) In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council—

(1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and

(2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith.

(c) The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President, and who shall receive compensation at the rate of $10,000 a year. The executive secretary, subject to the direction of the Council, is hereby authorized, subject to the civil-service laws and the Classification Act of 1923, as amended, to appoint and fix the compensation of such personnel as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions.

(d) The Council shall, from time to time, make such recommendations, and such other reports to the President as it deems appropriate or as the President may require.

CENTRAL INTELLIGENCE AGENCY

SEC. 102. (a) There is hereby established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence, who shall be head thereof. The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among the commissioned officers of the armed services or from among individuals in civilian life. The Director shall receive compensation at the rate of $14,000 a year.

(b) (1) If a commissioned officer of the armed services is appointed as Director then—

(A) in the performance of his duties as Director, he shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than would be operative with respect to him if he were a civilian in no way connected with the Department of the Army, the Department of the Navy, the Department of the Air Force, or the armed services or any component thereof; and

(B) he shall not possess or exercise any supervision, control, powers, or functions (other than such as he possesses, or is authorized or directed to exercise, as Director) with respect to the armed services or any component thereof, the Department of the Army, the Department of the Navy, or the Department of the Air Force, or any branch, bureau, unit or division thereof, or with respect to any of the personnel (military or civilian) of any of the foregoing.

(2) Except as provided in paragraph (1), the appointment of the office of Director of a commissioned officer of the armed services, and his acceptance of and service in such office, shall in no way affect any status, office, rank, or grade he may occupy or hold in the armed services, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. Any such commissoned officer shall, while serving in the office of Director, receive the military pay and allowances (active or retired, as the case may be) payable to a commissioned officer of his grade and length of service and shall be paid, from any funds available to defray the expenses of the Agency, annual compensation at a rate equal to the amount by which $14,000 exceeds the amount of his annual military pay and allowances.

(c) Notwithstanding the provisions of section 6 of the Act of August 24, 1942 (37 Stat. 555), or the provisions of any other law, the Director of Central Intelligence may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States, but such termination shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the United States Civil Service Commission.

(d) For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council—

(1) to advise the National Security Council in matters concerning such intelligence activities of the Government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the Government as relate to the national security;

(3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities: *Provided*, That the Agency shall have no police, subpena, law-enforcement powers, or internal-security functions: *Provided further*, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: *And provided further*, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;

(4) to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct.

(e) To the extent recommended by the National Security Council and approved by the President, such intelligence of the departments and agencies of the Government, except as hereinafter provided, relating to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as relates to the national security and is possessed by such departments and other agencies of the Government, except as hereinafter provided, shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination: *Provided, however*, That upon the written request of the Director of Central Intelligence, the Director of the Federal Bureau of Investigation shall make available to the Director of Central Intelligence such information for correlation, evaluation, and dissemination as may be essential to the national security.

(f) Effective when the Director first appointed under subsection (a) has taken office—

(1) the National Intelligence Authority (11 Fed. Reg. 1337, 1339, February 5, 1946) shall cease to exist; and

(2) the personnel, property, and records of the Central Intelligence Group are transferred to the Central Intelligence Agency, and such Group shall cease to exist. Any unexpended balances of appropriations, allocations, or other funds available or authorized to be made available for such Group shall be available and shall be authorized to be made available in like manner for expenditure by the Agency.

Mr. COOPER. The Congress has yet to fully organize itself to meet its responsibilities for foreign policy and national security. By following the general pattern taken by the executive branch in the National Security Act of 1947, the bill would enable the Congress to be better able to share with the executive its constitutional responsibilities in the making of our national security policies—policies for national security founded upon a proper ordering of priorities between our domestic and foreign policy needs.

The question of the security of classified information is important. To meet this issue, under my proposed bill, legislators and those members of Senate and congressional staffs working on national security matters would be subject to similar security requirements as those levied on the executive. Members of the Legislative branch should have the responsibility to maintain security as well as access to intelligence.

In this way, by making the best intelligence information available to both the legislative and the executive, the respective capabilities for reasoned judgments of both branches of Government, deemed so necessary by the framers of the Constitution to prevent authoritarian rule by either branch, can be strengthened. Experience has underlined this necessary provision for the legis-

lature to meet its constitutional responsibilities.

In the Nation's interest it will make basic intelligence required for sound national security policy available to both the executive and the legislative, and it will do much to strengthen the balance of responsibility for foreign and security policy formulation between the two branches. It will help, I believe, to correct the present imbalances in our governmental structure and be of great assistance in developing the best possible foreign and national security policies. The bill does not touch directly upon the difficult constitutional questions which have recently been under consideration by the United States Supreme Court but, indirectly, if enacted into law, it would result, I believe, in much declassification of information for the Congress and the public as a whole.

At this point, I would interpolate that some members of the Supreme Court, in their separate opinions, pointed out that it was the responsibility of Congress to legislate in this field, and to provide standards. I think this measure follows that suggestion.

I ask unanimous consent that this bill be referred jointly to the Committees on Foreign Relations and Armed Services.

The ACTING PRESIDENT pro tempore (Mr. ALLEN). Without objection, it is so ordered.

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

Mr. COOPER. I yield.

Mr. SYMINGTON. Mr. President, I would hope that the Senate will give serious consideration to this legislation as proposed by the distinguished Senator from Kentucky. The able Senator has long been interested in this subject of adequate intelligence information being received by the Senate prior to its authorization and appropriation of taxpayers funds so as to carry on with our various activities all over the world.

No secret has been made of the fact that for some time we on such committees as Foreign Relations and Armed Services have not been satisfied with intelligence information we have been able to obtain.

May I add that it is a refreshing experience to serve on the Joint Atomic Energy Committee, where, under the law, it is the responsibility of the Atomic Energy Commission to keep the Joint Committee informed. The Committee does not have to go after the information because the information is volunteered.

Based on this rapidly changing world some new procedure could only be to the advantage of the country. Does not the Senator agree that under his proposed legislation, there would be more opportunity to obtain far more pertinent information?

Mr. COOPER. Yes, I wholly agree with the statement of the distinguished Senator from Missouri, who is in a unique position, with his responsibilities as the only member of the Senate who serves upon the Armed Services Committee, the Committee on Foreign Relations, and the Joint Committee on Atomic Energy, of having had the opportunity to compare the intelligence received by the three committees.

Also, I might say that the amendment which I have offered today grew out, in great measure, of the experience which I have had in serving on the Senator's subcommittee of the Committee on Foreign Relations to reviewing our commitments around the world. In the course of that investigation, wherein the Senator has so ably served as chairman, we found numerous commitments or quasi-commitments throughout the world which might not have been undertaken if full information had been made available to the Congress at the time. I think the Senator will agree with my statement.

Mr. SYMINGTON. No question about it.

Mr. COOPER. I would like to make this further comment: This amendment does not attempt to reach directly the larger constitutional questions which have recently been before the Supreme Court concerning information which shall be made available to the country as a whole. As I analyzed, as best I could, the holding of the Supreme Court, a majority of the members held that there is some limitation upon the first amendment with respect to national security. Some Justices called attention to the lack of standards, and suggested that Congress should act.

I have offered this amendment, not to attempt to deal primarily with that larger problem, but to deal with the specific problem of providing information to Congress, and particularly the appropriate committees—the Armed Services Committee in both bodies, the House Foreign Affairs Committee and the Senate Foreign Relations Committee, which deal with foreign policy and with national security policy, and which must recommend to the House and Senate, measures which commit our resources and in some cases our men, to war. It seems to me absolutely essential, that Congress have the facts—the best intelligence, when it is called upon to act.

The PRESIDING OFFICER (Mr. GRAVEL). The time of the Senator from Kentucky has expired.

Under the previous order, the Chair recognizes the Senator from North Dakota.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order recognizing the distinguished Senator from North Dakota (Mr. YOUNG) be vacated and that, in substitution therefor, the distinguished Senator from Missouri (Mr. SYMINGTON) be recognized for not to exceed the usual 15 minutes.

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

Mr. SYMINGTON. I thank the able assistant majority leader.

May I again respectfully commend the Senator from Kentucky for his typically thoughtful and constructive effort in the presentation of this bill.

When the present law, the National Security Act of 1947, was passed, I was involved as a member of the executive branch; and there never was any intention in the passage of that law for intelligence information to be as closely held from the Congress as it is being held today, to the point where committees, such as Foreign Relations and Armed Services, are not receiving information essential to accurate consideration prior to making decisions which affect the security, the very future, of this country.

As the Senator from Kentucky so well points out, as a result, often the Congress operates in the blind.

I appreciate the Senator saying that this is no effort on his part to release additional classified information to the public; no specific relationship to the recent problems which the Government apparently has had with the press. On the other hand, if the proper committees in executive session are not acquainted with this information, it is difficult to understand how the people we represent can expect us to function properly; actually, how we can so function.

One example is that we now know troops have been going from Thailand into Laos, trained and paid for by the United States. The best legal opinion we can obtain states is this is a violation of the Fulbright amendment. In any case, whether it is or not in turn is not the point of discussion this morning. Again, this information was only found out by our able staff executives actually going into Laos and finding out the truth out there on the ground. If we had been told something about this, we would have been in a much better position to make determinations about the use of the taxpayers' money.

It is rather paradoxical that at times we have been told, when we ask why we did not get the information, that we did not ask for it. It is difficult to ask for information about a particular subject in any detail when one knows nothing about the subject at hand.

It will interest the able senior Senator from Kentucky, for whom we all have very great respect, that I have written a letter today to the chairman of the Committee on Armed Services, with a copy to the chairman of the Committee on Foreign Relations and the chairman of the Committee on Appropriations, in which letter I have made certain suggestions which perhaps are pertinent to the legislation the Senator from Kentucky is proposing.

So I would hope that something along these lines would be carried through in practical fashion. It is never pleasant to be making decisions about how to utilize other people's money when one does not have adequate information so as to know whether his decision is right or wrong.

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

Mr. SYMINGTON. I am glad to yield to the distinguished Senator from Maryland.

Mr. MATHIAS. I should like to associate myself with the comment that the Senator from Missouri has just made, because I believe that what he is suggesting is exactly right—that we are being asked to make legislative decisions of great substantive importance to the American people without all the facts.

What the Senator from Kentucky has done is to suggest that we acquire a legis-

lative tool which will make Congress more effective in dealing with the problems of our time.

But I would go one step further. I would come as close to disagreeing with the Senator from Kentucky as I ever have by saying that when he says this suggestion has nothing whatever to do with the recent exposés——

Mr. COOPER. I did not mean that. It is a specific proposal concerning the Executive and the Congress.

Mr. MATHIAS. This would make a difference in spirit; because, as the Senator from Missouri has suggested, if there is not that feeling of mutual confidence and there is an interchange, there is a desire either to make or to receive leaks. I think the Senator from Kentucky is making a very important contribution.

Mr. SYMINGTON. I thank the able Senator.

It is interesting that the Secretary of Defense, in open session, testified he was not conducting any military operations in Laos. That means the only other agency which could be conducting such operations is the Central Intelligence Agency—an agency which reports, through the National Security Council, directly to the President.

If these types and characters of problems continue, we could be fighting additional secret wars all around the world; wars which Congress not only has not approved, but about which it has little or no information.

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

Mr. SYMINGTON. I am glad to yield the floor to the distinguished Senator from Arkansas.

Mr. FULBRIGHT. I wish to associate myself with the comments of the Senator from Missouri and the statement by the Senator from Kentucky.

I think the Senator from Kentucky has incorporated a very fine idea in this new proposal. As I understood him, he asked unanimous consent that the measure be referred jointly to the Armed Services Committee and the Foreign Relations Committee.

Mr. COOPER. Yes.

Mr. FULBRIGHT. How does the Senator anticipate that this will be handled—in a joint session or severally?

Mr. COOPER. Both committees have functions in this field. The 1947 Act came out of the Armed Services Committee. I would assume that both committees would conduct hearings, make its judgments, and then it might be up to a parliamentary decision as to which would have the authority to report the bill.

Mr. FULBRIGHT. I was hoping that our committees would have an opportunity to study it and make suggestions. I have no objection to it being considered jointly. I was trying to clarify the procedure to be followed.

I think the Senator has made a very good suggestion. It goes to the root of the problem that has resulted in the so-called Pentagon papers.

I believe it was the feeling on the part of a great many people, some in and some out of government, that Congress as well as the people did not know what had been going on for many years, had not been informed as to the origin of the war and all that took place during that period, which was quite true.

With regard to what the Senator from Missouri said, I do not accept as easily the idea that the whole National Security Council is covered by executive privilege. This is a grey area. On the 27th of this month, the subcommittee of which Senator Ervin is chairman will hold hearings on the matter of executive privilege.

I only say this: I do not want to associate myself with that statement, because I do not accept the finality of the idea that this great bureau that has now been created is covered by executive privilege.

Mr. SYMINGTON. The statutory members of the National Security Council, just about all our heads of departments do have the obligation to appear before the Congress. In the Defense Production Act of 1947, the National Security Council was created as an advisory board to the President. The very fact that the case is one reason why we have not only obtained relatively little information about this secret war, but also why many other secret activities we are only now finding out are going on all over the world.

I did not mean to be talking of all members of the National Security Council—members such as the Secretary of State, Secretary of Defense, Secretary of the Treasury, the Chairman of the OEP, and so forth. They are all members of the National Security Council, and none of them take executive privilege.

Mr. FULBRIGHT. As a caveat to that, in addition to the members of the National Security Council, there is this very large bureau which the papers have recently stated number between 110 to 120 employees. It is the growth of a new bureau comparable and in function very similar to the Department of State. This was what I was raising, that we should be concerned with. I believe that the bill introduced by the Senator from Kentucky will be a vehicle through which just such questions can be examined. It will be a healthy movement, justified if for no other reason by the fact that we can learn by the lesson of the Pentagon papers a great deal that we should have learned long ago at the time the incidents were occurring.

Mr. COOPER. I thank the Senator from Arkansas, the Senator from Missouri, and the Senator from Maryland for their comments.

Mr. JAVITS. Mr. President, I believe that this is a most admirable initiative of the Senator from Kentucky, to enable Congress to share with the President and members of the executive the intelligence information furnished by the CIA. He is seeking to amend the National Security Act to accomplish that purpose.

This matter having been referred to the Committee on Foreign Relations and the Armed Services Committee by unanimous consent, I shall have an opportunity, as a member of the former committee, to act in respect of it.

Mr. President, I know that the tradition of modesty which so becomes the distinguished Senator from Kentucky (Mr. Cooper). It will enable him to debate this when it comes before the committee. I believe he has introduced this amendment for the purpose, obviously, of raising this critical issue of the right of Congress to have the same information as the President. The closer we can get to that state of affairs the more secure the United States is likely to be, in my judgment, and the less likely are we to get into improvident ventures like the undeclared Vietnam war. and second major purpose is to avoid embarrassment that one or some of the people's representatives are privy to information which is not the information also of others of the people's representatives. This has been the case at times, in recent years, and has been to effect the disposition of legislation.

The responsibility which will come from being entrusted with this particular type of information could be a big problem for us. It involves the question of what rule XXXVI of the Senate rules really means. It involves the question of the responsibility to which we shall be held, as it may not be enough for us to be responsible to our constituents after the fact. It involves the question of immunity from persecution which is presented by the Constitution. It involves the questions of the power of the Executive by means of having the power to classify and thereby to also have the power to suppress. It also involves the very-much-debated question of Executive privilege, by which the Executive can literally countermand the effect of a congressional subpena, even in executive session. We have actually faced that experience in the Committee on Foreign Relations.

Mr. President, I am not trying to dismiss any of these questions. They are critical and they are real. But with the publication of the so-called Pentagon papers, a new day has dawned in America. The people and the people's representatives in Congress will insist on sharing with the Executive not only the power with respect to war—and that is the subject of my own war powers bill as well as the similar war power bills of the Senator from Missouri (Mr. EAGLETON) and the Senator from Mississippi (Mr. STENNIS)—but also the ability to act intelligently, which depends upon having complete and accurate information.

Mr. President, we are all indebted to the Senator from Kentucky (Mr. COOPER) for phrasing this matter in legislative terms and giving us an opportunity to deal at long last with the intelligence and information side of the CIA. I have offered a bill in the Senate and legislation will be offered in the other body to reassert Congress' war powers with respect to the initiation of undeclared war and which is the only way in which war is likely to be waged in the foreseeable future. If we settle these two issues, we will assure that the Senate will be able to act intelligently in events such as that in Vietnam which has resulted in the expenditure of such a mountain of treasure and so much blood of Americans and so much dissension in our own country.

By Mr. MATHIAS:

S. 2225. A bill to restore the income tax credit for investment in certain depreciable property at a rate of 6 percent of the qualified investment. Referred to the Committee on Finance.

Mr. MATHIAS. Mr. President, in a statement given on the Senate floor June 21, I expressed grave concern for the state of our economy. Our unemployment, inflation, interest rate, international trade, and the value of the American dollar together depict an economy which desperately is in need of a healthy kick in the pants.

On June 21, I introduced S. 2105, legislation which would establish a Prices and Incomes Commission to monitor the economy. The bill is designed to create an economic intelligence unit to facilitate the public's awareness of and the Government's ability to respond to recognized economic deficiences. In short, S. 2105 would create a cadre of professionals who would keep a close watch on the Nation's incomes and prices and disseminate information on any significant changes to the public, Congress, and the Executive, along with appropriate recommendations.

Today I introduce a bill which I feel is a logical companion to S. 2105, for, if enacted, it will give the sluggish economy an immediate push toward economic recovery. This legislation will restore to American business the investment tax credit. Such a restoration will benefit all Americans—big business, small business, and the entire farming community.

The alleviation of the lack of confidence which the public has in the regulation of our economic system and in the Government's ability to respond within the system is a major goal of the bill. It is absolutely essential that the Government have the flexibility to react to economic indicators—indicators which will hopefully become more distinct and sophisticated with the passage of S. 2105.

In 1962, Congress adopted an investment tax credit for the purpose of providing an incentive to business to modernize and expand the Nation's plants and equipment, to raise productivity, increase employment, accelerate economic growth and strengthen our competitive position in world markets. This tax credit continued, except for a brief suspension period, until 1969, when it was eliminated in the Tax Reform Act of 1969. It is apparent that the Nation once again needs such an economic stimulant.

In 1969, when we enacted the Tax Reform Act of 1969, we did not have the opportunity to fully debate either in a hearing or on the Senate floor the subject of tax investment credits and its subsequent revocation. Let us now provide such an opportunity; this subject is too important not to devote our full attention and involvement.

I ask unanimous consent to insert in the RECORD at this time the full text of the bill.

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

S. 2225

A bill to restore the income tax credit for investment in certain depreciable property at a rate of 6 percent of the qualified investment

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 "Investment Credit Restoration Act of 1971".

SEC. 2. (a) Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to rules for computing credit for investment in certain depreciable property) is amended by adding at the end thereof the following new section:

"SEC. 50. RESTORATION OF CREDIT.

"Notwithstanding the provisions of section 49, for purposes of this subpart, the term 'section 38 property' includes property—

"(1) the physical construction, reconstruction, or erection of which is completed on or after the date of the enactment of the Investment Credit Restoration Act of 1971, or

"(2) which is acquired by the taxpayer on or after such date.

In applying section 46(c)(1)(A) in the case of property described in paragraph (1) which, but for the provisions of this section, would not be section 38 property, there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection on or after the date of the enactment of the Investment Credit Restoration Act of 1971."

(b) The table of sections for such subpart is amended by adding at the end thereof the following new item:

"SEC. 50. RESTORATION OF CREDIT."

(c) Section 46(b)(5) of the Internal Revenue Code of 1945 (relating to certain taxable years) is amended—

(1) by inserting after "The amount" in the matter preceding subparagraph (A) "attributable to property placed in service before the date of the enactment of the Investment Credit Restoration Act of 1971"; and

(2) by inserting after "taxable year" in subparagraph (A) "attributable to property placed in service before the date of the enactment of the Investment Credit Restoration Act of 1971".

(d) Section 47(a)(4) of such Code (relating to property destroyed by casualty, etc.) is amended by inserting before the period at the end thereof the following: ", and before the date of the enactment of the Investment Credit Restoration Act of 1971, unless on or after such date, section 38 property is placed in service by the taxpayer to replace the property described in subparagraph (A)".

(e) Section 47(a)(5) of such Code (relating to certain property replaced after April 18, 1969) is amended by striking out "property which" in subparagraph (B) and inserting in lieu thereof "property which is not section 38 property but which".

(f) Section 49(c) of such Code (relating to leased property) is amended by inserting ", and before the date of the enactment of the Investment Credit Restoration Act of 1971" after "April 18, 1969".

(g) Section 49(d) of such Code (relating to property placed in service after 1975) is repealed.

SEC. 3. (a) Section 46(a)(1) of the Internal Revenue Code of 1954 (relating to determination of amount of credit) is amended to read as follows:

"(1) General rule.—The amount of the credit allowed by section 38 for the taxable year shall be equal to—

"(A) with respect to section 38 property placed in service before the date of the enactment of the Investment Credit Restoration Act of 1971, and with respect to section 38 property which is pretermination property, 7 percent of the qualified investment (as defined in subsection (c)), and

"(B) with respect to section 38 property placed in service on or after such date (other than pre-termination property), 6 percent of the qualified investment."

(b) Section 46(c)(3)(A) of such Code (relating to public utility property) is amended to read as follows:

"(A) In the case of section 38 property which is public utility property, the amount of the qualified investment shall be—

"(i) with respect to such property placed in service before the date of the enactment of the Investment Credit Restoration Act of 1971, and with respect to such property which is pretermination property, 3/7 of the amount determined under paragraph (1), and

"(ii) with respect to such property placed in service on or after such date (other than pretermination property), ½ of the amount determined under paragraph (1)."

SEC. 4. The amendments made by this Act shall apply to taxable years ending on or after the date of the enactment of this Act.

By Mr. HRUSKA (for himself, Mr. BAYH, Mr. BURDICK, Mr. FONG, Mr. GURNEY, Mr. HART, Mr. MATHIAS, Mr. SCOTT, and Mr. TUNNEY):

S. 2228. A bill to amend chapter 235 of title 18, United States Code, to provide for the appellate review of sentences imposed in criminal cases arising in the district courts of the United States. Referred to the Committee on the Judiciary.

APPELLATE REVIEW OF CRIMINAL SENTENCES

Mr. HRUSKA. Mr. President, I introduce for myself and eight additional members of the Committee on the Judiciary (Mr. BAYH, Mr. BURDICK, Mr. FONG, Mr. GURNEY, Mr. HART, Mr. MATHIAS, Mr. SCOTT, and Mr. TUNNEY) a bill to amend chapter 235 of title 18 of the United States Code, to provide for the appellate review of Federal criminal sentences. I ask unanimous consent that the full text of the bill be printed at the conclusion of my remarks and that the bill be appropriately referred.

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

(See exhibit 1.)

Mr. HRUSKA. Mr. President, this legislation is identical to S. 1561 which I introduced in the 91st Congress and S. 1540 which was passed unanimously by the Senate in the 90th Congress. It is my sincere hope that both the Senate and the House will promptly consider and pass this bill this session.

Mr. President, the Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee is presently considering a total reform of the Federal Criminal Laws. This project stems from the work of the National Commission on Reform of Federal Criminal Laws which issued its final report on January 7 of this year. This Senator was very privileged to have been a member of that commission, along with my distinguished colleagues from Arkansas (Mr. MCCLELLAN) and North Carolina (Mr. ERVIN).

The final report of this group embraced the concept of appellate review of sentencing with this suggested amendment of title 28:

§ 1291. "The courts of appeal shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands, except where direct review may be held in the Supreme Court. *Such review shall in criminal cases include the power to review the sentence and to modify or set it aside for further proceedings.*" (Amendment Italicized.)

This simple amendment reflects the commission's view that there should be some form of appellate review of sentences. It does not set forth the form that the review should take nor the contours of its jurisdiction. However, the entire sentencing scheme recommended by the commission is predicated on the idea that appellate review of sentences will be included in the revised code. I am introducing this bill today so that the Subcommittee on Criminal Laws and Procedures may examine it and consider including it in the total revision of the Federal criminal code as implementation for the idea set forth in section 1291.

The bill will correct one of the greatest single injustices existing in our Federal criminal process today: The lack of authority and machinery to review unreasonable sentences. Extensive studies have shown that unreasonably harsh sentences are imposed on many individuals who stand convicted of a violation of our laws. Many of these unreasonable sentences are imposed on individuals with fine families and good backgrounds, on individuals who strayed from the path on a single occasion and under trying circumstances, on individuals whose only offense was minor in comparison to those of others who have yet received far lesser sentences.

The problem of disparity of sentences has concerned Congress, bar associations and legal societies, students, and workers in the field of penology and, indeed, the executive branch of our Government and the courts for many years.

Putting aside what may be the ultimate or most desirable goals of a rational and humane sentence, we have in modern times been receding from the practice of enacting statutes calling for a mandatory fixed sentence. A greater number of our criminal laws now provide for a wide range of permissible sentences. The practical effect of this is obvious. As the final determining factor in the sentence to be imposed, the judge's discretionary power becomes increasingly important.

By and large the wisdom of this policy of delegating the function to the trial judge has been clearly demonstrated. Our district judges are exceedingly conscientious, knowledgeable, and experienced. They are best able, informed, and qualified to deal fairly with the convicted defendant. However, they are the first to recognize the inadequacies in the present system. The exercise of judgment in this delicate area is not easy.

The responsibility for determining the proper sentence is so great as to justify and warrant the means of review. There is little wonder that judges have openly commented on the incongruity of the situation that the power to impose a sentence is the only discretionary power vested in the Federal trial judge which is not subject to appeal.

A study of the Federal statutes and the interpretation given them by the courts establishes that no authority exists for an appellate review of the sentence imposed by the judge in a criminal case so as to determine whether the sentence is excessive. A sentence will be modified only when it is unauthorized by law as not being within the limits fixed by a valid statute.

In the 85th Congress the concern about the problem of sentence disparities brought about pioneering legislation: the Sentencing Act of 1958 which provided for institutes and joint councils on sentencing. Their value cannot be overestimated. The institutes have been described as giving "the Federal judges themselves an opportunity to assume the initiative in eliminating sentences which may appear biased, capricious, or the result of defective judgment."

However, this and other related legislation have not been a complete answer to the problem. The Judicial Conference of the United States rejected appellate review legislation in 1958, reconsidered it in 1961, and then approved appellate review legislation in 1964. When we review the actions of the Judicial Conference, it is logical to ask what caused such a substantial shift in judicial opinion. While a redraft of the bill and increased interest in the problem may have played a part in this change, it is clear that the original objection of the Judicial Conference was to the principle of appellate review, and not the language of any particular bill. In retrospect, it seems that a consensus in favor of the principle did not develop until it became manifest that the problem of excessive sentences was not going to be resolved by the extensive use of the facilities provided in the Sentencing Act of 1958 or by other existing legislation.

Twelve years of experience under the act has demonstrated that such procedures and techniques are not enough.

Nor has indeterminate sentencing proven to be the answer to the problem. For various reasons, many judges have declined to impose indeterminate sentences, or have imposed such sentences only infrequently.

To adequately cope with the problem of excessive sentences—to correct injustices once they have occurred—the practice of appellate review is required.

In order to illustrate the injustices which this bill attempts to correct, let me cite some fiscal year 1970 statistics regarding average sentences imposed by U.S. district courts. The table below lists seven types of crimes over which Federal courts have jurisdiction. Besides them are stated the figures—in months—for the district with the highest and the district with the lowest average sentence given, as well as the national average sentence for all convictions in each category in fiscal year 1970. These statistics are for districts which had 25 or more convictions in each of these categories during this period.

AVERAGE FISCAL YEAR 1970 SENTENCES (IN MONTHS BY TYPE OF OFFENSE

(25 or more convictions per district)

Offense	Shortest average district	Longest average district	National average all sentences
Bank robbery	68	184	140
Auto theft	26	52	36
Forgery	26	52	33
Marihuana	45	56	47
Narcotics	55	101	80
Immigration	2	16	7
Liquor laws (Internal Revenue)	6	23	14

Just to take the figures for bank robbery sentences as an example, should a person be tried and convicted in district A, he could expect to receive a sentence in the neighborhood of 68 months. But should he be unfortunate enough to have committted the same offense in district B, he could expect to receive a sentence approximately three times as long, or some 184 months. While it should be noted that all of these sentences were lawful within the limits stated by Congress, it seems somehow unfair for similar crimes to receive such disparate sentences from one district to another. This bill would permit, but not require, that sentences like that imposed in district B could be reviewed by the circuit courts of appeal in order to bring about a greater consensus regarding length and severity of sentences imposed for a particular type of offense. I believe that these figures just cited give graphic illustration of the great disparity of sentences that exist.

In the past when speaking of the need for appellate review of sentences, I have cited specific cases where the sentence seemed to be out of line with the facts of the case. I believe that these average figures are more meaningful and illustrative of the need for this legislation than isolated examples for which special explanation may be available.

Mr. President, excessive and disparate sentencing prevent the rehabilitation of those who have been unjustly sentenced, they contribute to disorder in our prisons, and they increase disrespect for our criminal process which weakens the moral fiber of our citizens and which can only result in increasing violations of our laws.

As Justice Potter Stewart wrote in 1958, prior to the time of his appointment to the Supreme Court of the United States:

Justice is measured in many ways, but to a convicted criminal its surest measure lies in the fairness of the sentence he receives.

The importance of the sentencing process is evident when it is observed that in fiscal 1970, 24,111 defendants were convicted in our district courts by pleas of guilty and nolo contendere, whereas only 4,067 defendants were convicted by jury and court trials.

Mr. President, the real anomaly and injustice of the existing lack of review of sentences was pinpointed by the introductory statement of the tentative draft of the American Bar Association's Advisory Committee on Sentencing and Review, "Standards Relating to Appellate Review of Sentences" when it stated:

One of the most striking ironies of the law involves a comparison of the methods for determining guilt and the methods of determining sentence. The guilt-determination process is hedged in with many rules of evidence, with many procedural rules, and, most importantly for present purposes, with a carefully structured system of appellate review designed to ferret out the slightest error. Yet in the vast majority of criminal convictions in this country—90 percent in some jurisdictions; 70 percent in others—the issue of guilt is not disputed.

What is disputed and, in many more than the guilty-plea cases alone, what is the only real issue at stake, is the question of appropriate punishment. But by comparison to the care with which the less-frequent problem of guilt is resolved, the protections in most jurisdictions surrounding the determination of sentence are indeed miniscule.

The protections in our Federal courts surrounding the determination of sentences are indeed miniscule and the situation must be corrected.

Mr. President, the concept of appellate review of sentences is not new to criminal law in the United States. Prior to 1891 the Federal Code provided a right to appeal a case on the basis of disproportionately severe sentence. However, due to an oversight or inadvertence, a revision of the statute in 1891 did not mention sentences and the courts subsequently held that the power had been withdrawn by Congress.

The situation that presently prevails in the Federal courts stands in marked contrast to the practice of 17 States, many foreign nations, including England and Canada and our military courts. Indeed, the Federal jurisdiction is a singular example of an advanced system of jurisprudence that does not allow review of sentences.

Under our existing Federal law the determination of the sentence in a criminal case is the only matter that is left to the unsupervised discretion of the district judge before whom the case is pending. As long as the sentence imposed is within the statutory limits provided by the law, the sentence is unreviewable by appeal. No matter how excessive or unjust the sentence might be, an appellate court is legally powerless to modify it in any way.

The basic shortcoming in our criminal procedure is unique to our judicial system and has allowed serious inequities and disparities in the sentences which have been imposed.

Another unfortunate aspect of the present practice is that harsh and irrational sentences have often led appeal courts to reverse convictions on technical or minor points and on strained interpretations of the law, interpretations which will serve justice and society in future cases.

I do not suggest that this bill will solve all of the difficult problems in the determination of proper sentences. However, it will provide a significant tool for improving the sentencing process and for correcting unjust sentences when they are imposed. It also will facilitate the development of proper sentencing practices and standards. In other words, an important gap in the present system will be closed.

Other phases of the work of trial judges are subject to appellate review and supervision. Only sentencing errors are immune to correction on appeal. The reasons for such a gap are for the most part historical. Such reasons are becoming irreconcilable with the standards of due process and are not in step with the need for a fair and just sentencing system.

This legislation will not allow one judge or a panel of judges, simply to substitute their judgment for that of the trial judge. Mere whim or fancy will be insufficient reason to modify the sentence. Only when it reasonably appears from the circumstances that a sentence was excessive will the appellate court act. Although the system will be made flexible by allowing review, it will remain the trial judge's duty to weigh the facts and appraise the defendant.

Valid reasons exist for variations in sentences for the same crime. Certainly a sentence which may be quite proper in a case involving one defendant and one set of circumstances may be grossly inadequate in dealing with the same offense committed by a different type of individual or under aggravated circumstances. But where the same crime has been committed by similar offenders under similar circumstances, the punishment should be reasonably uniform. Disparities based solely upon the personality of the judge passing sentence are unjust.

The determination of a proper sentence involves many considerations. Sentencing is not nor can it be reduced to an exact science. The exercise of sound judgment is an indispensable part of the process, but that does not justify arbitrary determinations. When judgments cannot be reconciled with reason, the appellate courts will be empowered to prevent a miscarriage of justice.

Mr. President, it is my hope that Congress will correct this injustice. Every effort has been made to produce a bill in the best form possible. Briefly, it provides as follows:

Subsection (a) provides that a defendant may apply to the court of appeals for leave to appeal a felony sentence of imprisonment or death imposed by a district court.

Subsection (b) provides that the court of appeals may in its sole discretion grant or deny an application for leave to appeal a sentence. A denial of leave to appeal is final in the matter. If leave to appeal is granted, the court may review the sentence to determine if it is excessive.

Under subsection (c) the court of appeals is authorized to take or direct any action on the sentence that it believes is required under the circumstances of the case, except to increase the sentence.

Subsection (d) provides that the appeal procedure is to be synchronized with the appeal rules generally and if an appeal is taken from an order of conviction as well, it allows the matter to be heard at the same time.

Subsection (e) provides that the defendant shall have the same access to presentence reports on appeal as he had at the district court. The sentencing judge is required to state for the record his reasons for selecting the particular sentence imposed in each felony case where a felony sentence of imprisonment or death is imposed.

Subsections (f) through (i) insure that appellate review does not complicate other phases of criminal procedure. Subsection (f) defers the time for filing an application for leave to appeal whenever a diagnostic study is ordered prior to imposing sentence. Subsection (g) makes certain that credit is given for time served during the pendency of a sentence appeal. Subsection (h) makes explicit that bail opportunities would not be enlarged by the enactment of the bill. Subsection (i) provides that the act shall apply only to sentences imposed 6 months after the effective date of the act. This latter provision avoids the argument about retroactivity and affords the courts time to prepare for the new procedures.

Mr. President, there are two scholarly writings in favor of an improved sentencing procedure which I wish to bring to the Senate's attention today. They are: "Appellate Review of Sentences: To Make the Punishment Fit the Crime." 20 Stanford Law Review 405 (1968) by Hon. Stanley A. Weigel; and "Appellate Review of Legal but Excessive Sentences: A Comparative Study," 21 Vanderbilt Law Review 411 (1968) by Prof. Gerhard O. M. Mueller and Fre La Poole. Mr. President, I ask unanimous consent that these two law review articles be printed in the RECORD at a point immediately following the printing of the bill in the RECORD.

Mr. President, I also ask unanimous consent that a brief appendix, which I have prepared listing several additional examples of cases where excessive sentences have been imposed, be printed in the RECORD immediately following the close of my remarks here on the floor.

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

(See exhibit 2.)

Mr. HRUSKA. Mr. President, as a member of the Judiciary Committee, I have authored and coauthored a number of proposals concerning crime and improvements in our legal system. Many of these bills have been designed to assist the prosecution in bringing criminals to justice. At the same time, I have been concerned with the rights of the defendant. We must strive to insure that the criminal legal process is at all times fair and just.

Excessive sentences, which are inexplicable by any circumstances or logic, are an injustice to the individual and are a discredit to the entire criminal justice system. This is why the principle of appellate review is supported by the Judicial Conference of the United States and the American Bar Association, and why appellate review is the practice in many foreign nations, including England and Canada, in our Armed Forces, and in 17 of the States.

This bill is intended to correct this injustice.

Again, I express the sincere hope that the Senate and the House both will promptly consider and pass this needed legislation.

EXHIBIT 1

S. 2228

A bill to amend chapter 235 of title 18, United States Code, to provide for the appellate review of sentences imposed in criminal cases arising in the district courts of 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 235 of title 18, United States Code, is amended by inserting immediately after section 3741 thereof the following new section:

"§ 3742. Appeal from sentence

"(a) An application for leave to appeal from the district court to the court of appeals the sentence of imprisonment or death imposed may be filed by a defendant with the clerk of the district court in any felony case in the following instances:

"(i) after a finding of guilt by a judge or jury, whether following a trial or the acceptance of a plea;

"(ii) after the revocation or modification of an order suspending the imposition or execution of a sentence or placing the defendant on probation;

"(iii) after a resentence under any other applicable provision of law.

"(b) Upon granting leave to appeal, the court of appeals may review the merits of the sentence imposed to determine whether it is excessive. This power shall be in addition to all other powers of review presently existing or hereafter conferred by law. If the application for leave to appeal is denied by the court of appeals, the decision shall be final and not subject to further judicial review.

"(c) Upon consideration of the appeal, the court of appeals may dismiss the appeal, affirm, reduce, modify, vacate, or set aside the sentence imposed, remand the cause, and direct the entry of an appropriate sentence or order or direct such further proceedings to be had as may be required under the circumstances. If the sentence imposed is not affirmed or the appeal dismissed, the court of appeals shall state the reasons for its action. The defendant's sentence shall not be increased as a result of an appeal granted under this section.

"(d) The application for leave to appeal from sentence shall be regarded as a notice of appeal for all purposes, and the procedure for taking an appeal under this section shall follow the rules of procedure for an appeal to a court of appeals. A denial of the application for leave to appeal on the ground that the sentence imposed is excessive shall not prejudice any aspect of the appeal predicated on other grounds. If the application is granted all issues on appeal shall be heard together.

"(e) When an application for leave to appeal is filed, the clerk of the district court shall certify to the court of appeals such transcripts of the proceedings, records, reports, documents, and other information relating to the offense or offenses of the defendant and to the sentence imposed upon him as the court of appeals by rule or order may require. Any report or document contained in the record on appeal shall be available to the defendant only to the extent that it was in the district court. In each felony case in which sentence of imprisonment or death is imposed the judge shall state for the record his reasons for selecting that particular sentence.

"(f) When a judge has adopted the sentencing procedure set forth in section 4208 (b) of title 18, United States Code, an application for leave to appeal may only be filed after a judgment or order is entered by the judge following the completion of the study provided by such section.

"(g) The provisions of section 3568 of title 18, United States Code, shall be applicable to any defendant appealing under this section.

"(h) This section shall not be construed to confer or enlarge any right of a defendant to be released following his conviction pending a determination of his application for leave to appeal or pending an appeal under this section.

"(i) This section shall become effective six months after its approval and shall apply only to sentences imposed thereafter."

(b) The analysis of chapter 235 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"3742. Appeal from sentence."

EXHIBIT 2

[From the Stanford Law Review, February 1968]

APPELLATE REVISION OF SENTENCES: TO MAKE THE PUNISHMENT FIT THE CRIME

(By Stanley A. Weigel*)

Unjustifiable disparities in the sentencing of criminal offenders have become a matter of serious concern to many observers of the criminal process.[1] The key word is "unjustifiable." Reasonable disparity is necessary to achieve the purposes of sentencing, which include prevention of further criminality on the part of the offender, rehabilitation, and deterrence of the commission of similar offenses by others. Such purposes cannot be achieved without providing some range of sentencing alternatives to allow adjustment for the special facts of each crime as well as the record and character of each convicted individual.

These considerations are reflected in the broad discretion allowed the sentencing judge by statute in the federal and in many state jurisdictions. However, most of these jurisdictions, including the federal, fail to provide any effective remedy for abuse of that discretion.

The absence of such a remedy is a serious defect in the sound administration of the criminal law, even though the number of unjust or aberrant sentences may be very few. In the words of Mr. Justice Stewart, "It is an anomaly that a judicial system which has developed so scrupulous a concern for the protection of a criminal defendant throughout every other stage of the proceedings against him should have so neglected this most important dimension of fundamental justice." [2]

The seriousness of that neglect is underscored by the fact that sentencing is the only significant adjudication performed by the trial judge in the overwhelming majority of criminal cases. This is so because the overwhelming majority of criminal defendants plead guilty or nolo contendere.[3] Moreover, sentencing is generally the most difficult determination a judge must make, one made even more difficult by the increasing variety of possible dispositions and by the paucity of meaningful guidelines to assist the judge in his choice.

In light of the foregoing, it is indeed surprising that few American jurisdictions offer meaningful remedies to the victims of unjustified severity in sentencing. This absence is all the more striking in that a comparison with other nations indicates that those American jurisdictions failing to provide a remedy stand largely alone in this respect.[4]

Recognizing that inequitable and disparate sentences constitute "a major and justified complaint against the courts," [5] the President's Commission on Law Enforcement and Administration of Justice has recommended that "[p]rocedures for avoiding and correcting excessive, inadequate, or disparate sentences should be devised and instituted." [6] Progress has been made in the federal judiciary in recent years to encourage the development of rational, uniform sentencing criteria and practices. There are sentencing institutes for district judges,[7] and a number of district courts have set up a system of panels to assist the sentencing judge in his determination of the proper sentence.[8] However, there is a need to supplement these practices with procedures designed for the correction of grossly inequitable sentences.

I. DISPARITY AND INEQUITY IN FEDERAL SENTENCING

The past few years, then, have been marked by increasing concern over the breadth of the disparities in sentences meted out for the same crimes.[9] This concern is especially applicable to the federal system, in which the wide range of sentencing alternatives available to its trial courts [10] and a great regional diversity tend to invite sentencing disparities.

Congress has, over the years, added significantly to the choices available to district courts in setting sentences.[11] A brief summary will be illuminating.

(1) Imprisonment for a determinate length of time. Offenders so sentenced are eligible for parole after having served one-third of the sentence.[12]

(2) Imprisonment of indeterminate length. Under this alternative the sentencing court may reduce or eliminate minimum terms for parole eligibility, leaving the release of the offender to the discretion of the board of parole.[13]

(3) Probation. Probation cannot exceed a period of 5 years but may otherwise be granted upon "such terms and conditions as the court deems best." [14]

(4) Split sentence. This procedure allows a court to split a sentence between confinement of up to 6 months in a penal or treatment institution and probation for the remainder of the sentence.[15]

(5) Youth Corrections Act. This Act [16] is applicable to offenders under the age of 22 and, at the discretion of the sentencing judge, to those between 22 and 26.[17] Offenders sentenced under the Act may be placed on probation, committed for treatment and supervision for fixed or indeterminate terms, or sentenced under any other applicable penal provision.[18]

(6) Juvenile Delinquency Act. This Act [19] applies to offender under the age of 18.[20] Proceedings under the Act are regarded as adjudications of status rather than as criminal trials.[21] Juveniles found to be delinquent may be placed on probation for a period not exceeding their minority, or committed to special custody and treatment for a term not exceeding their minority or the maximum term for the offense committed, whichever is less.[22]

(7) Other dispositions. These include fines, suspended sentence, deportation, and disqualification. In addition, a district court may defer sentencing and commit an offender for a period of study, by the Bureau of Prisons, not to exceed 6 months.[23]

In my view, the number of incidents of unjustifiable disparities in sentencing by federal district judges is very small in relation to the large number of offenders sentenced.[24] Nevertheless, that such disparities do occur despite all efforts to eliminate them is suggested by a number of relevant facts.

There have been significant variations in the terms of imprisonment imposed by federal district court judges [25] and in the use of the various sentencing alternatives that are available. Average terms of imprisonment for all offenses vary widely from circuit to circuit [26] and from district to district within the circuits.[27] There is great deviation in the average terms for specific types of offenses.[28] Similar variations are to be found in the

---

Footnotes at end of article.

frequency of use of split sentences [29] and indeterminate sentences,[30] in the application of provisions of the Youth Corrections Act [31] and Juvenile Delinquency Acts [32] and in the use and duration of probation.[33] To some extent these disparities may be attributable to variations in the types of offenses committed within particular districts or circuits. The Administrative Office of the United States Courts has devised weighted averages, however, which take account of such variations and which show disparities of a magnitude almost equal to those indicated by the raw data.[34]

Certainly, careful analysis of these incidents of disparity would reveal rational justifications for a great majority of the sentences imposed. It would show, for instance, that many similarities between offenders and offenses are more apparent than real, and that many sentencing deviations result from proper considerations of factors unique to individual defendants. But such analysis would certainly also expose a small but important residue of cases in which the disparities are so excessive and the facts so similar that they preclude such justifications. That such cases do exist is confirmed by the reports of federal judges who regularly point to cases from their own experience in which substantially different treatment was accorded offenders with similar records, ages, and backgrounds who had committed the same or similar offenses.[35]

The principal reason for the existence of inequities is clear. They occur because each judge, just as each person he sentences, is a unique individual. Each judge is the product of a different inheritance and life experience. It follows inexorably that there are differences among judges in senses of values, reactions, predilections, and points of view.

There are at least some judges who tend habitually to "lay it on" convicted or confessed offenders.[36] They may do so out of antiquated or misguided notions about the functions of sentencing, or as a consequence of more obscure personal factors. Whatever the reasons for their actions, the results are aberrant and unfair sentences. These few judges do not seem to respond to persuasion or reason in regard to their sentencing practices. Since most of them are excellent judges in every other respect, discipline or removal would be a remedy worse than the disease and, if applied to the federal judiciary, would unwisely undermine its independence.

There are also a few judges who apparently regard one type of offense as particularly heinous. They may, for example, impose the maximum sentence allowable in every instance of narcotics violation or bank robbery. Their appraisals of the danger or evil of these crimes may be quite right, but the automatic imposition of the maximum penalty for a particular crime contradicts the judgment of Congress in providing for a range of punishment, and contributes to irrational disparities in the system as a whole. Differences in regional attitudes toward certain crimes may similarly contribute to disruption of the uniform implementation of national penal policies.

Finally, the best of judges make mistakes. Some federal judges in metropolitan districts sentence as many as 1,000 defendants in a single year, and rare indeed is the federal judge in any district who sentences fewer than 100. In each case the judge must study carefully the presentence reports, make his personal assessment of the defendant, and appraise the sentencing alternatives available to him. Not only is this judgmental task complex, but the judge can turn to few standards to guide him. The limited statutory criteria are nebulous,[37] and because there is no relevant appellate review, no common-law standards have evolved. It is hardly surprising, therefore, that seriously inequitable disparity is occasionally to be found in the sentences imposed.

Sentencing disparities create serious problems for the federal courts and correctional institutions quite apart from the manifest unfairness of subjecting some offenders to inordinately severe penalties. The recipient of an excessive sentence will learn, through comparison of his own sentence with those of his fellow prisoners, that he has been the victim of injustice.[38] His resentment inevitably breeds unrest and disciplinary problems,[39] and, in addition, may well undermine his reformation.

Furthermore, the impossibility of direct challenge to unfair sentences results in a great volume of appeals on tenuous technical grounds [40] and a corresponding tendency on the part of the appellate courts to find merit in otherwise questionable allegations of error, or to find error prejudicial where it would normally be considered harmless.[41] Needless to say, these attempts to redress indirectly the inequity of excessive sentences make bad law.

Finally, public confidence in the judicial system must suffer when grossly unfair sentences go unredressed, in visible violation of a most basic principle of legal justice—that similarly situated individuals be treated alike. This loss of public confidence becomes particularly troublesome where members of minority groups interpret uncorrected disparities as a form of legally sanctioned discrimination.

II. PRESENT MEANS FOR ALLEVIATING SENTENCING ERRORS IN THE FEDERAL SYSTEM

The federal system does provide for some limited means of correcting inequitable sentences. While they have been used more frequently in recent years than in the past, analysis will indicate they are inadequate.

A. The present scope of appellate review

Federal defendants may, of course, obtain redress for illegal sentences [42] such as those that exceed statutory limits for the offense charged,[43] or are ambiguous with respect to the time and manner in which the term is to be served,[44] or do not adequately specify punishment for individual counts.[45] However, where the trial judge remains within statutory bounds and observes formal and procedural requirements, review of his sentencing discretion is sharply limited.

In the 19th century the circuit courts as then constituted exercised review over the sentences imposed by federal trial courts.[46] Save for that brief historical exception, federal appellate courts have consistently refused to review the sentencing discretion of district-court judges if sentences were within the prescribed statutory limits.[47] They have occasionally suggested in dicta that they might intervene if a trial court were to exercise extreme abuse of its legal discretion,[48] but such extreme abuse has apparently never been discovered. The refusal to review district-court sentences is more commonly stated in absolute terms: "If there is one rule in the federal criminal practice which is firmly established, it is that the appellate court has no control over a sentence which is within the limits allowed by a statute." [49]

A few limited exceptions to the rule of nonreview have developed over the years. Where an offense has no statutory maximum penalty, as in the case of criminal contempt, the appellate courts will review the discretion of the sentencing court.[50] This review is justified on the grounds that "where Congress has not seen fit to impose limitations on the sentencing power . . . [a]ppellate courts have . . . a special responsibility for determining that the power is not abused, to be excised if necessary by revising themselves the sentences imposed." [51]

Additional exceptions have been recognized by the courts of appeals as a result of the decisions of the Seventh Circuit in *United States* v. *Wiley*.[52] In that case the trial judge refused to consider probation for Wiley, one of several codefendants, because he would not plead guilty on charges of possession of property stolen from an interstate shipment.[53] The circuit court reversed this "arbitrary" refusal to consider Wiley's application for probation, but the trial judge, on remand, considered and denied Wiley's application and reinstated his term of imprisonment. In a second appeal the Seventh Circuit again set aside the sentence and remanded, this time on the ground that the district court had arbitrarily sentenced Wiley more severely than it had his codefendants who had pleaded guilty.[54]

Although several federal courts have limited the *Wiley* doctrine to cases of disparity among codefendants based upon different pleas,[55] the language of *Wiley* supports the broader proposition that any demonstrably arbitrary disparity among codefendants may require remand for resentencing.[56] While *Wiley* has failed to provide the basis for any significant review of disparate sentences, it has obliged a number of courts to hear challenges similar to those in *Wiley* and to assess the reasons for the disparities involved in those cases.[57]

Arbitrary refusal to utilize diagnostic procedures provided by statute may also constitute grounds for appellate review of sentencing.[58] Lastly, in a series of recent cases, several courts of appeals have held that increases of sentence on retrial must be acceptably justified and will be reversed if arbitrary.[59]

These exceptions to the rule of nonreview are important steps in developing means of redress for sentencing inequities in very limited areas. But even if they were firmly established in all the circuits, these exceptions would reach only a small fraction of all the disparities that demand consideration.

A few commentators and judges [60] have argued that the federal appellate courts have always had authority to review all sentences by virtue of section 2106 of the Judicial Code, which empowers them to "affirm, modify, vacate, set aside or reverse any judgment, decree, or order . . . and direct the entry of such appropraite judgment . . . as may be just under the circumstances." Others have argued that review and correction of disproportionate sentences is constitutionally required, either because excessive and irrational sentences constitute cruel and unusual punishment [61] or because unreasonable disparity in the treatment of essentially similar defendants violates the equal protection clause.[62]

Whatever the merits of such arguments, federal courts have shown little inclination to adopt them. For the present, federal appellate judges are likely to continue to express the view, perhaps with some reluctance that "[u]nless we are to over-rule sixty years of undeviating federal precedents, we must hold that an appellate court has no power to modify a sentence," [63] and that problems relating to the power of the judiciary to review sentences are "peculiarly questions of legislative policy." [64]

B. Some nonappellate remedies

1. Indeterminate Sentencing

Indeterminate sentencing might appear, at first glance, to provide a solution to the problem of disparate sentences. Because the judge simply sentences the defendant to "the term prescribed by law," [65] he is relieved of the responsibility for any disparities in the length of imprisonment. But the real effect of the indeterminate sentence is to shift the burden of social justice from the judge to a parole board or parole authority. While I have the highest respect for such bodies, I believe that for some time to come, in view of the

Footnotes at end of article.

methods of their appointment and the shortage of qualified personnel to assist them,[66] they will certainly be no more competent to determine lengths of imprisonment than is a conscientious and independent judge. Moreover, because parole authorities of necessity operate on a committee basis, have relatively little time for each prisoner, and use more or less standard classifications, they are likely to be less responsive to the special situation of a particular offender than is a single judge concerned solely with the case before him.

The day may come when the quality, qualifications, and quantity of prison personnel and of assisting psychiatrists and sociologists, and the methods of their selection and tenure, will combine to make the indeterminate sentence the best means of avoiding unjustifiable disparity in sentencing. But that day is not here nor likely soon to be. The great majority of district-court judges apparently agree, if one may judge by the reluctance of so many to impose indeterminate sentences.[67]

2. Panels of Judges for Advance Consideration of Sentences

Various district courts have experimented with "sentencing councils," in which panels of judges regularly consider dispositions proposed by the sentencing judge and offer nonmandatory recommendations for his consideration.[68] This is a step in the right direction, but, for several reasons, it is not the best solution now available.

To begin with, nearly half of the federal districts have fewer judges than are required for such a system.[69] In these districts, to convene sentencing panels would entail travel, delay, and other complications. Even in districts with enough judges, such panels would encroach upon the working time of already overburdened jurists. Furthermore, those judges most in need of such guidance would likely be those least affected by the views of their peers.

III. THE CASE FOR APPELLATE REVIEW

The reasons that have been stated for supporting appellate review in the federal system are not claimed to be novel or unique. So much has been said and written on the general subject that there are few new arguments for or against it.[70] The best that a trial judge can offer is a point of view that is part the product of personal experience and part a personal evaluation of the considerations urged both for and against appellate review.

I am convinced that sentencing, at least for the present, ought to remain a judicial function. Courts should not abdicate their powers or responsibilites in this area. At the same time, they should be armed with every means of assuring wise, reasonable, and just exercise of this heavy power to deprive individuals of property and freedom. At present, trial judges are granted very broad discretion by Congress in the sentencing of criminals. Surely that discretion over the fate of human beings should not be held sacrosanct, particularly since no such immunity attends the exercise of discretion by trial judges in civil cases.

Some contend that appellate judges are not qualified to ascertain whether a trial judge has abused his discretion in imposing sentence.[71] This argument seems to me to be invalid. For one thing, many judges of the courts of appeals serve there after long experience on the trial bench. For another, it seems to me to be plainly desirable, in case of harsh sentences, to permit review by a group of jurists detached from the pressures and immediacies of the trial courtroom. The passage of time between sentencing and review may afford a better perspective. There is nothing so esoteric about sentencing that the decision of one man should be held sacred and beyond the proper scope of appellate review.

Footnotes at end of article.

Some have argued that the trial judge is better acquainted with the true character of the defendant because of personal contact or observation.[72] For a number of reasons, this contention cannot withstand careful scrutiny. Frequently the judge's contact with the defendant is limited to visual observation because, in many cases, defendants do not testify. But whether the observation is exclusively visual or is supplemented by an assessment of the defendant's testimony and demeanor on the witness stand, is it really a reliable basis on which to judge whether the defendant should be imprisoned for 2 years or for 20? Who, as a defendant, would want to have that vital determination turn upon one man's assessment of his personality under such unusual and difficult circumstances? My admiration for my brothers on the federal trial bench throughout the country and for their exceptional insights into human beings is second to none, but it has not convinced me that they or I possess some unique capacity to make a sentence fit the crime on the basis of personal observation of a defendant during the course of his trial.

One more consideration should be adduced against the argument that the judge's opportunity to observe the defendant is a *sine qua non* for justice in sentencing. The great majority of defendants convicted of federal crimes have pleaded guilty.[73] In these cases, the "eyeball-to-eyeball" confrontation between judge and defendant, including the colloquy involved in the defendant's right of allocution,[74] is usually a matter of 10 or 15 minutes at the most. I do not urge that this person-to-person communication is without value. It has worth to all concerned. But great as that value is, it is not a sound predicate for the notion that, lacking such confrontation, an appellate court cannot adequately review a sentence imposed by a trial judge. So far as justice in sentencing turns upon appraisal of the defendant's personal traits, I doubt that there is a worse time to make that evaluation than when that always anxious, often frightened, individual stands before the judge for sentencing.

The federal trial judges recognize this. The principal sentencing aid for nearly all is the written presentence report of trusted and independent probation officers.[75] If these reports are available to the court of appeals along with the full record of the lower court proceedings, the appellate court will have before it all the material most significant to the trial court's imposition of sentence.

I should add that the trial judge, in his consideration of the presentence report, can and often does confer informally with the probation officer who prepared it. These conferences aid the judge in a better understanding and evaluation of the presentence report. The court of appeals might not have the benefit of these informal conferences. But such a lack, even if it were substantial, would not negate the wisdom of appellate review. To have an adequate basis for wise and effective review, an appellate court need only have sufficient information to examine intelligently what the trial court did. Then, giving due weight to the advantages that the trial court had in making its original decision, the appellate court can determine whether the trial court abused its discretion. The courts of appeals can be given more than sufficient information to make such a determination in the review of sentencing.

Furthermore, it is highly unlikely that any court of appeals would regularly substitute its judgment of the proper sentence in a case for that of the federal trial judge. On the contrary, exercise of the power to change a sentence imposed by a district judge would undoubtedly be restricted to those relatively infrequent—but extremely serious—instance where the sentence imposed was clearly excessive. Such a scope of review would no more demean the power and dignity of the federal trial judge than does the similar scope of review now exercised by the courts of appeals over innumerable rulings and decisions that are generally within the discretion of the district courts.

One hears the argument made against appellate review of sentencing that to allow it would be to open the gates to a flood of frivolous appeals. The best answer to this contentions.[75] If it be true, as I think it is not, that Appellate courts review trial-court sentences regularly in 15 states and occasionally in others; [76] the same practice has been a regular feature of other civil-law and common-law jurisdictions for many years.[77] There has been no such flood of appeals in these jurisdictions.[78] If it be true, as I think it is not, that a very large number of defendants are victimized by excessive sentences, then justice would call for a great number of appeals. And even if there were many frivolous appeals, I have observed no incapacity in our courts of appeals to make short shrift of them.

In fact, I think it is likely that appellate review will ultimately reduce the total number of appeals. As mentioned above,[79] many appeals on the merits are generated only because of the imposition of an unduly harsh sentence, and many appellate courts, dealing with an appeal on the merits where the sentence has been unduly severe, are prone to seize upon error in the trial as a sufficient ground for reversal and retrial. Provision for review of trial-court sentences would eliminate any need for unmerited appeals and for reversals motivated primarily by the harshness of the sentences involved.

IV. PROPOSALS FOR APPELLATE REVIEW IN THE FEDERAL SYSTEM

In recent years a number of proposals to permit review of sentences by the courts of appeals have been introduced in Congress.[80] The last of these was reported favorably by the Senate Committee on the Judiciary [81] and passed in the Senate on June 29, 1967.[82] The Advisory Committee on Sentencing and Review of the American Bar Association has also suggested statutory provisions for appellate review.[83] Each of these proposals would empower appellate courts to review sentences appealed on the ground of excessiveness. They differ, however, in the categories of sentences made reviewable, the powers of the reviewing court, and the procedures for review of sentences.

A. Sentences reviewable

The ABA advisory committee's report on appellate review of sentences recognized that although "[i]n principle, judicial review should be available for all sentences imposed in cases where provision is made for review of the conviction . . . it may be desirable, at least for an initial experimental period, to place a reasonable limit on the length and kind of sentence that should be subject to review." [84]

The first five of the recent series of bills would have permitted review of all convictions where no mandatory sentence was required by law.[85] Each of the other bills would limit review to sentences of imprisonment or death in felony cases,[86] or to sentences of imprisonment exceeding specified periods.[87]

Appellate review would probably not prove very useful in correcting excesses in short sentences. Given present workloads and appellate procedures, most defendants who have been sentenced to terms of less than 1 year will have been freed for good behavior before their appeals can be heard. Furthermore, however invalid the argument that the courts of appeals would be overwhelmed by a flood of appeals, it may be wise initially to limit review to sentences of appreciable severity, where the more critical disparities would occur.[88] Review could readily be extended to lesser periods of imprisonment, terms of probation, fines, and commitments under the Youth Corrections and Juvenile

Delinquency Act[89] as the courts of appeals acquire experience in handling such cases and develop techniques for the prompt disposition of frivolous claims.[90]

E. Powers of the reviewing court

The ABA Advisory Committee on Sentencing and Review has recommended that courts reviewing sentences be empowered to remand for resentencing or to substitute any disposition of the offender originally available to the sentencing court—except that the offender's sentence could not be increased either on appeal or on remand.[91] All of the proposed bills[92] would permit reduction of sentences by the courts of appeals. Several would permit modification of sentences,[93] and of these almost all would permit increase of sentences within limits.[94] The most recent bill would authorize the reviewing court to "dismiss the appeal, affirm, reduce, modify, vacate, or set aside the sentence imposed, remand the case, and direct the entry of an appropriate sentence or order or direct such further proceedings to be had as may be required under the circumstances," but would forbid any increase in sentences.[95]

The reviewing court should be empowered to select from the full range of statutory alternatives open to the district courts, but neither the reviewing court nor the trial court on remand should be empowered to increase the original sentence. To do so would raise serious constitutional objections, particularly in view of the recent line of federal cases holding increases of sentences on retrial unconstitutional.[96] Also, because of the threat of an increase in sentences, such a procedure would deter legitimate appeals and thus make appellate review illusory for many aggrieved defendants. Finally, experience in those jurisdictions that permit review but deny power to increase sentences indicates that, contrary to the argument urged in favor of allowing longer resentences, the absence of this threat does not result in a flood of frivolous appeals.[97] The courts of appeals can readily control the volume of appeals in other, less objectionable, ways—through limitations on the category of cases subject to review and procedural techniques in the handling of appeals.

C. Review procedures

The ABA advisory committee recommended that all appeals from sentences be of right except to courts with discretion to refuse consideration of appeals from convictions.[98] A few of the bills in Congress likewise specified that all appeals from sentences would be of right.[99] However, other bills, including the latest, require defendants to seek and be granted leave to appeal by the courts of appeals.[100] Although it may be thought that aggrieved defendants should have an appeal of right against the severity of their sentences, it is undoubtedly wise as an initial step to give the courts of appeals disrcetionary review to allow adjustment to and control over the new caseloads that might be generated by sentence review.[101] Similarly, at first the decisions of the courts of appeals should be final,[102] at least until experience under the new procedures demonstrates that such an added caseload can be handled without further overburdening the Supreme Court and that the problem of disparity among the circuits deserves the Supreme Court's attention.[103]

The ABA advisory committee[104] and the last few bills in Congress[105] would require the sentencing judge to state reasons for the imposition of each sentence that might later be subject to review. The object of these provisions, of course, is to encourage carefully considered and reasoned sentences by the trial judge and to inform the reviewing court of the factors that led to the particular sentence imposed. However, I doubt that these objectives would be very well served by such a requirement. Most judges do state their reasons for sentences, and these statements are readily available to the courts of appeals.[106] To require a statement of reasons in every case might well focus concern on making a record rather than on matters of substance. Plausible rationalizations can often be adduced to support excessive sentences and, conversely, infelicitous reasoning can confuse and cast doubt upon reasonable sentences. I think that the possibility of review will in itself do enough to ensure more careful and complete consideration by trial judges of all relevant factors. It should be sufficient to authorize the courts of appeals to order statements by the sentencing judge where such statements are deemed particularly useful.

Finally, special provision is made in nearly all of these proposals empowering the reviewing court to order the production of all materials available to the sentencing judge.[107] This is, of course, undoubtedly desirable as a general proposition and is usually feasible. Special problems arise, however, with respect to material given in confidence to the sentencing judge by probation officers. There has been great controversy over the propriety and constitutionality of withholding such reports from defendants.[108] Nonetheless, while these reports must of course be available to the courts of appeals, they should not be disclosed to defendants without prior consultation with the probation officers who prepared them.[109] Such precaution is necessary to prevent family bitterness or even violence, which might result if a defendant learned the source of frank information given in confidence, and to avoid drying up confidential sources. I realize that, although the defendant usually knows the facts about himself and his actions that are revealed by such reports, there is some unfairness in withholding from the defendant any of the factors that may have been taken into account in sentencing. I realize, too, that "confidential" information is often not worth much and that trial judges are little influenced by it. On balance, I think it best to provide the probation officer with an opportunity to acquaint the reviewing court with the possible consequences of disclosure.

In all other respects, procedures for review of sentences should be identical to procedures for review of convictions, and all appeals on the same case should be considered together. This would eliminate the possibility of confusion and of fragmented appeals. The most recent proposals so provide.[110]

CONCLUSION

There are many good reasons for adopting a means of appellate review of federal district-court sentencing: It would right serious wrongs to individuals. It would promote public respect for and confidence in the law and the judiciary. It would ease the problems of discipline in prison and aid in the rehabilitation of those prisoners who otherwise might be permanently alienated from society by the knowledge that a cruel wrong imposed on them had not been righted. It would encourage greater rationality in sentencing practices. Overall, the institution of general appellate review would bring needed improvement in an important aspect of the administration of criminal justice. The latest bill before Congress, with the few modifications I have outlined, would appear to be a sound vehicle for achieving this much-needed reform.

FOOTNOTES

*A.B. 1926, J.D. 1928, Stanford University, Judge, United States District Court for the Northern District of California. The author wishes to acknowledge the research assistance of Michael John Matheson, editor, *Stanford Law Review*.

[1] The problem of disparity in sentencing is treated generally in JOINT COMM. ON CONTINUING LEGAL EDUCATION OF THE ALI AND THE ABA, THE PROBLEM OF SENTENCING 56-77 (1962); M. PAULSEN & S. KADISH, CRIMINAL LAW AND ITS PROCESSES 162–68 1962); *id.* at 55–56 (Supp. 1967); McGuire & Holtzoff, *The Problem of Sentence in the Criminal Law*, 20 B.U.L. REV. 423 (1940); Rubin, *Disparity and Equality of Sentences*, 40 F.R.D. 55 (1966).

[2] Shepard v. United States, 257 F.2d 293, 294 (6th Cir. 1958).

[3] During fiscal year 1964, 91.2% of all cases ending in conviction were concluded without trial. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, FEDERAL OFFENDERS IN THE UNITED STATES DISTRICT COURTS 1964, at 15, table 8 (1965).

[4] *See Hearings on S. 2722 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 89th Cong., 2d Sess. 83–102 (1966).

[5] PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 145 (1967).

[6] *Id.* at 146.

[7] The Judicial Conference of the United States is authorized under 28 U.S.C. § 334 (1964) to convene institutes and councils of federal judges to study sentencing.

[8] *See generally* Smith, *The Sentencing Council and the Problem of Disproportionate Sentences*, FED. PROBATION, June 1963, at 5; Doyle, *A Sentencing Council in Operation*, FED. PROBATION, Sept. 1961, at 27.

[9] *E.g., Hearings on S. 2722, supra* note 4, at 10–54, 69–82, 109–22; Address by Mr. Chief Justice Warren, American Law Institute Annual Meeting, May 18, 1960, *reprinted in* 25 F.R.D. 213 (1960).

[10] For an analysis of the sentencing structures of American jurisdictions see Note, *Statutory Structures for Sentencing Felons to Prison*, 60 COLUM. L. REV. 1134 (1960).

[11] Congress has authorized the following procedures: in 1925, the use of probation in lieu of imprisonment. Act of Mar. 4, 1925, ch. 521, § 1, 43 Stat. 1259, 18 U.S.C. §§ 3651–58 (1964); in 1938, special custody and treatment for juvenile offenders, Federal Juvenile Delinquency Act, ch. 486, § 4, 52 Stat. 765 (1938), 18 U.S.C. § 5034 (1964); in 1950, special custody and treatment for youth offenders under the age of 22, Federal Youth Corrections Act, ch. 1115, § 2, 64 Stat. 1087 (1950), 18 U.S.C. §§ 5006(e), 5011 (1964); in 1958, indeterminate sentencing, special commitments for study by the Bureau of Prisons, and commitments of offenders under the age of 26 as youth offenders, Act of Aug. 25, 1958, Pub. L. No. 85–752, §§ 3–4, 72 Stat. 845–46, 18 U.S.C. §§ 4208–09 (1964); and, finally, in 1966, special confinement and treatment of offenders addicted to narcotics, Act of Nov. 8, 1966, Pub. L. No. 89–793, § 201, 80 Stat. 1443, 18 U.S.C. § 4253 (Supp. II, 1965–66).

[12] 18 U.S.C. § 4202 (1964).

[13] 18 U.S.C. § 4208(a) (1964).

[14] 18 U.S.C. § 3651 (1964). The power of the court to impose conditions of probation is fairly broad. *Compare* Berra v. United States, 221 F.2d 590 (8th Cir. 1955) (employment or office holding in labor union forbidden), *and* United States v. Worcester, 190 F. Supp. 548 (D. Mass. 1961) (disclosure of evidence required), *with* Karrell v. United States, 181 F.2d 981 (9th Cir. 1950) (restitution of funds in transaction not involved in indictment improper).

[15] 18 U.S.C. § 3651 (1964).

[16] 18 U.S.C. §§ 5005–26 (1964).

[17] 18 U.S.C. §§ 4209, 5006(e) (1964).

[18] 18 U.S.C. §§ 5010, 5017 (1964).

[19] 18 U.S.C. §§ 5031–37 (1964).

[20] 18 U.S.C. § 5031 (1964).

[21] *See* United States v. Borders, 154 F. Supp. 214 (N.D. Ala. 1957), *aff'd*, 256 F.2d 458 (5th Cir. 1958).

[22] 18 U.S.C. § 5034 (1964).

[23] 18 U.S.C. § 4208(b) (1964).

[24] Others have been of the opinion that the frequency of unjustifiable disparities is rela-

tively great. *See* authorities cited note 1 *supra; Hearings on S. 2722, supra* note 4, at 10–54, 69–82, 109–22. Mr. Chief Justice Warren, for example, expressed concern in 1960 about "the wide diversity in the use of probation and other sentencing practices in our several courts and the great disparity in the sentences pronounced by our judges." Address by Mr. Chief Justice Warren, *supra* note 9, at 215.

[25] *See* Glueck, *The Sentencing Problem*, FED. PROBATION, Dec. 1956, at 15, 17–18; Note, *Due Process and Legislative Standards in Sentencing*, 101 U. PA. L. REV. 257, 259–60 (1952); Note, *Appellate Review of Primary Sentencing Decisions: A Connecticut Case Study*, 69 YALE L.J. 1452, 1458–59 (1960).

[26] The average sentence in each of the circuits for all persons committed to federal institutions in fiscal year 1965 varied from 28.3 months in the First Circuit to 45.1 months in the Seventh Circuit, *Hearings on S. 2722, supra* note 4, at 150–53.

[27] The range of lowest and highest districts in average sentences for all offenses within the various circuits is as follows: First Circuit, 21.9 months to 40.3 months: Second Circuit, 16.6 months to 37.2 months; Third Circuit, 18.0 months to 45.1 months; Fourth Circuit, 19.4 months to 57.0 months; Fifth Circuit, 20.9 months to 44.8 months; Sixth Circuit, 22.1 months to 49.6 months; Seventh Circuit, 27.7 months to 50.0 months; Eighth Circuit, 23.4 months to 63.5 months; Ninth Circuit, 0.5 month to 67.4 months; Tenth Circuit, 30.3 months to 44.3 months. *Id.*

[28] For example, the average sentence for narcotics violations varied from 44.4 months in the Third Circuit to 82.3 months in the Eighth Circuit and 82.8 in the Tenth Circuit; for forgery, from 15.8 months in the First Circuit to 35.9 months in the Eighth Circuit; for liquor violations, from 8.4 months in the Ninth Circuit to 22.3 months in the Third Circuit. Variations among individual districts were even more extensive. *Id.*

[29] The frequency of use of split sentences in fiscal year 1964 varied from 2.5% of all convictions in the Fifth Circuit to 7.4% in the Fourth Circuit, and more widely among districts within the circuits. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, *supra* note 3, at 76–77.

[30] Use of indeterminate sentences varied from 1.7% of all convictions in the First Circuit to 8.0% in the Sixth Circuit, with wider variations among the districts. *Id.*

[31] Use of the Youth Corrections Act varied from 1.7% of all convictions in the First Circuit to 7.8% in the Tenth Circuit, with wider variations among the districts. *Id.*

[32] Use of the Juvenile Delinquency Act varied from 0.3% of all convictions in the First Circuit to 8.6% in the Tenth Circuit, with wider variations among the districts. *Id.*

[33] Use of probation in fiscal year 1965 varied from 44.3% of all convictions (excluding violations of immigration laws, wagering tax laws, and federal regulatory acts) in the Sixth Circuit to 63.8% in the Third Circuit, with wider variations among the districts. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, PERSONS UNDER THE SUPERVISION OF THE FEDERAL PROBATION SYSTEM, FISCAL YEAR 1965, at 102–05 (1967). The percentage of probationers under supervision for less than 2 years varied from 69.3% in the Fourth Circuit to 83.7% in the First Circuit. *Id.* at 94–95.

[34] *See* ADMINISTRATION OFFICE OF THE U.S. COURTS, *supra* note 3, at 26–27, 32–33, 78–83. A total of 20 districts exceeded or fell short of the national weighted average by 20% or more in the use of probation, and 19 districts by a similar percentage in the overall severity of sentences. *Id.*

[35] As examples of possible abuses, Judge Sobeloff of the Court of Appeals for the Fourth Circuit points to the 15-year sentence imposed upon a first offender who wrote a $58 bad check to pay for rent, food, and his ailing wife's medical bills, and to the sentence of life imprisonment without parole given a feeble-minded 20-year-old Mexican boy who sold a shot of narcotics to his 17-year-old friend. *Hearings on S. 2722, supra* note 4, at 25–26. For examples of abuses in consecutive sentencing on multiple counts *see id.* at 14; 46 IOWA L. REV. 159 (1960).

[36] *See* Glueck, *The Sentencing Problem*, FED. PROBATION, Dec. 1956, at 15, 17.

[37] The following standards are typical of the statutory criteria governing the use of the various sentencing alternatives: "when in its opinion the ends of justice and best interests of the public require . . . ." 18 U.S.C. § 4208(a) (1964) (indeterminate sentencing); "when satisfied that the ends of justice and the best interest of the public . . . will be served . . .," 18 U.S.C. § 3651 (1964) (probation); "[i]f the court is of the opinion that the youth offender does not need commitment . . . ," 18 U.S.C. § 5010(a) (1964) (probation for youth offenders).

[38] *See* Ashe, *A Warden's Views on Inequality in Sentences*, FED. PROBATION, Jan.-Mar. 1941, at 26–27.

[39] *See Hearings on S. 2722, supra* note 4, at 166–67. *But see* Ashe, *supra* note 38, at 27.

[40] *Hearings on S. 2722, supra* note 4, at 11, 35.

[41] *See, e.g.*, United States v. Hoffman, 137 F.2d 416, 422 (2d Cir. 1943).

[42] 28 U.S.C. § 2255 (1964) states: "A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence."

Furthermore, under FED. R. CRIM. P. 35, a court "may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner" within 120 days of the imposition of sentence, dismissal of appeal, or denial of review by the Supreme Court.

[43] *See, e.g.*, Herndon v. United States, 207 F.2d 412 (4th Cir. 1953); United States v. Baldwin, 128 F. Supp. 739 (S.D. Ohio 1953).

[44] *See* Scarponi v. United States, 313 F.2d 950 (10th Cir. 1963) (dictum).

[45] *See* Benson v. United States, 332 F.2d 288 (5th Cir. 1964).

[46] Act of Mar. 3, 1879, ch. 176, § 1, 20 Stat. 354, which remained in effect until the appellate jurisdiction of the circuit courts was transferred to the circuit courts of appeals in 1891, was interpreted as empowering the circuit courts to modify excessive sentences on appeal. *See* Bates v. United States, 10 F. 92 (C.C.N.D. Ill. 1881). *See generally* Hall, *Reduction of Criminal Sentences on Appeal*, 37 COLUM. L. REV. 521 (1937).

[47] *See, e.g.*, Gore v. United States, 357 U.S. 386, 393 (1958); United States v. Baysden, 326 F.2d 629 (4th Cir. 1964); Boerngen v. United States, 326 F.2d 326 (5th Cir. 1964); Martin v. United States, 317 F.2d 753 (9th Cir. 1963). For an exhaustive compilation of cases denying review in each of the circuits see 10 DEPAUL L. REV. 104, 105 n.8 (1960).

[48] *See* United States v. Hetherington, 279 F.2d 792, 796 (7th Cir. 1960) ("manifest abuse"); Livers v. United States, 185 F.2d 807, 809 (6th Cir. 1950) ("gross abuse"); Tincher v. United States, 11 F.2d 18, 21 (4th Cir.), *cert. denied*, 271 U.S. 664 (1926) ("gross or palpable abuse").

[49] Guerera v. United States, 40 F.2d 338, 340–41 (8th Cir. 1930).

[50] *See* Yates v. United States, 356 U.S. 363 (1958); Green v. United States, 356 U.S. 165 (1958) (dictum); *cf.* United States v. United Mine Workers, 330 U.S. 258 (1947).

[51] Green v. United States, 356 U.S. 165, 188 (1958).

[52] 267 F.2d 453 (7th Cir. 1959); 278 F.2d 500 (7th Cir. 1960) (second appeal).

[53] The trial judge stated flatly: "Had there been a plea of guilty in this case probably probation might have been *considered* under certain terms, but you are all well aware of the standing policy here that once a defendant stands trial that element of grace is removed from the consideration of the Court in the imposition of sentence." United States v. Wiley, 184 F. Supp. 679, 681 (N.D. Ill. 1960) (emphasis in original).

[54] Wiley, a minor participant in the crime, received a sentence of 3 years, while the ringleader and three other minor participants received terms of from 1 to 2 years. Wiley's criminal record was less serious than those of some of his codefendants. *See* United States v. Wiley, 278 F.2d 500 (7th Cir. 1960).

[55] *See* United States v. Martell, 335 F.2d 764, 766 (4th Cir. 1964); Ellis v. United States, 321 F.2d 931, 933 (9th Cir. 1963); *In re* Cohen's Petition, 217 F. Supp. 240, 244 (E.D.N.Y. 1963).

[56] The Court of Appeals for the Seventh Circuit stated that "where the facts appearing in the record point convincingly to the conclusion that the district court has, without any justification, arbitrarily singled out a minor defendant for the imposition of a more severe sentence than that imposed upon the co-defendants, this court will not hesitate to correct the disparity." United States v. Wiley, 278 F.2d 500, 503 (7th Cir. 1960). However, "the presumption is that the court acted reasonably," and an appellant "must make allegations at least indicating some unreasonable basis for the disparity of sentences." Simpson v. United States, 342 F.2d 643, 645 (7th Cir. 1965).

[57] *See, e.g.*, United States v. West Coast News Co. 357 F.2d 855 (6th Cir. 1966); United States v. Gargano, 338 F. 2d 893, 897 (6th Cir. 1964); United States v. Vita, 209 F. Supp. 172, 173 (E.D.N.Y. 1962).

[58] *See, e.g.*, Leach v. United States, 334 F. 2d 945 (D.C. Cir. 1964) (refusal to order mental examination of prisoner under previous psychiatric care); Peters v. United States, 307 F. 2d 193 (D.C. Cir. 1962) (unreasonable refusal to order presentence investigation).

[59] Patton v. North Carolina, 381 F.2d 636 (4th Cir. 1967); Marano v. United States, 374 F.2d 583 (1st Cir. 1967); Short v. United States, 344 F.2d 550 (D.C. Cir. 1965).

[60] *See, e.g.*, Smith v. United States, 273 F. 2d 462, 468 (10th Cir. 1959) (Murrah, C. J. dissenting).

[61] *Cf.* Rudolph v. Alabama, 375 U.S. 889 (1963) (Goldberg, Douglas, Brennon, J.J., dissenting from the denial of certiorari), which suggests that the imposition of a sentence of death upon a convicted rapist might constitute cruel and unusual punishment.

[62] *See* Rubin, *supra* note I, at 62–69.

[63] United States v. Rosenberg, 195 F. 2d 583, 604 (2d Cir. 1952).

[64] Gore v. United States, 357 U.S. 386, 393 (1958).

[65] *Eg.*, CAL. PENAL CODE § 1213.5(b)(3) (West 1956).

[66] For a discussion of the problems of the lack of adequate resources and qualified personnel available to parole authorities see D. DRESSLER, PRACTICE AND THEORY OF PROBATION AND PAROLE 231–34 (1959).

[67] About 6% of the federal offenders sentenced in fiscal year 1965 received indeterminate sentences. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, *supra* note 3, at 18.

[68] *See* authorities cited note 8 *supra*.

[69] *See Hearings on S. 2722, supra* note 4, at 13.

[70] *See, e.g., Hearings on S. 2722, supra* note 4, at 2–3, 7–8, 34–38, 61–66, 111–12; ABA, STANDARDS RELATING TO APPELLATE REVIEW OF SENTENCES 21–31 (1967); *Sobeloff, A Recommendation for Appellate Review of Criminal Sentences*, 21 BROOKLYN L. REV. 2 (1954).

For a complete bibliography see *Hearings on S. 2722, supra* note 4, at 146–49.

[71] *See Hearings on S. 2722, supra* note 4, at 127.

[72] *Id.*

[73] *See* note 3 *supra.*

[74] FED. R. CRIM. P. 32(a)(1) provides: "Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment."

[75] FED. R. CRIM. P. 32(c) requires a presentence investigation and report "unless the court otherwise directs." The report must contain "any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court."

[76] ABA, *supra* note 70, at 13. A more complete survey of the law in the various states may be found in Mueller, *Penology on Appeal: Appellate Review of Legal but Excessive Sentences,* 15 VAND. L. REV. 671, 688–97 (1962).

[77] *Hearings on S. 2722, supra* note 4, at 83–100.

[78] Students of several such jurisdictions have been made and in no case was there found to be an excessively troublesome problem of administering numerous frivolous appeals. In Britain, only 8% of convicted prisoners appeal their sentences. *Id.* at 29. In Massachusetts, procedures for sentence review have apparently even reduced the number of appeals taken with regard to the merits of criminal cases. *Id.* at 163. *See also* Note, *Appellate Review of Primary Sentencing Decisions : A Connecticut Case Study,* 69 YALE L.J. 1453, 1464 (1960).

[79] *See* notes 40–41 *supra* and accompanying text.

[80] *See* S. 1540, 90th Cong., 1st Sess. (1967); S. 2722, 89th Cong. 1st Sess. (1965); S. 823, 88th Cong., 1st Sess. (1963); S. 2879, 87th Cong. 2d Sess. (1962); S. 1692, 87th Cong., 1st Sess. (1961); S. 3914, 86th Cong., 2d Sess. (1960); H.R. 270, 85th Cong., 1st Sess. (1957); S. 1480, 84th Cong., 1st Sess. (1955); H.R. 4932 84th Cong., 1st Sess. (1955).

[81] S. REP. No. 372, 90th Cong., 1st Sess. (1967).

[82] 113 CONG. REC. S132–33 (daily ed., June 29, 1967).

[83] *See* ABA, *supra* note 70.

[84] *Id.* at 13 States permitting review of sentences generally limit the scope of review according to the length or type of sentence; the type of proceeding for determining guilt or sentence, or the general authority of the reviewing court. *Id.* at 15–16.

[85] S. 1692, 87th Cong., 1st Sess. (1961); S. 3914, 86th Cong., 2d Sess. (1960); H.R. 270, 85th Cong., 1st Sess. (1957); S. 1480, 84th Cong., 1st Sess. (1955); H.R. 4932, 84th Cong., 1st Sess. (1955).

[86] S. 1540, 90th Cong., 1st Sess. § 3742(a) (1967).

[87] S. 2722, 89th Cong., 1st Sess. (1965) (aggregate of more than 1 year); S. 823, 88th Cong., 1st Sess. (1963) (5 years or more); S. 2879, 87th Cong., 2d Sess. (1962) (5 years or more).

[88] About ¾ of all possibly appealable sentences of imprisonment exceed 1 year; about ¼ exceed 5 years. *Hearings on S. 2722, supra* note 4, at 39. It has been estimated that a 1-year limit would reduce the average volume of sentence appeals to 88 annually for each circuit, and that a 5-year limit would further reduce it to about 32 per circuit. *Id.* at 29.

[89] *See* text accompanying notes 16–22 *supra.*

[90] The courts of appeals should, of course, have authority to review sentences imposed after revocation of orders suspending sentence or granting probation, and after periods of confinement for study. The latest congressional bill specifically provides for such review. *See* S. 1540, 90th Cong., 1st Sess. §§ 3742 (a), (f) (1967).

[91] ABA, *supra* note 70, at 53–55.

[92] *See* authorities cited note 80 *supra.*

[93] S. 1540, 90th Cong., 1st Sess. (1967); S. 2722, 89th Cong., 1st Sess. (1965); H.R. 270, 85th Cong., 1st Sess. (1957); S. 1480, 84th Cong., 1st Sess. (1955); H.R. 4932, 84th Cong., 1st Sess. (1955).

[94] S. 2722, 89th Cong., 1st Sess. (1965); H.R. 270, 85th Cong., 1st Sess. (1957); S. 1480, 84th Cong., 1st Sess. (1955); H.R. 4932, 84th Cong., 1st Sess. (1955).

[95] S. 1540, 90th Cong., 1st Sess. § 3742(c) (1967).

[96] *See* Patton v. North Carolina, 381 F. 2d 636 (4th Cir. 1967); *cf.* Marano v. United States, 374 F. 2d 583 (1st Cir. 1967); United States v. Russell, 260 F. Supp. 265 (M.D. Pa. 1966). *See also* 80 HARV. L. REV. 891 (1967).

[97] All but three of the states that provide for review permit no increase of sentences by the reviewing court. *Hearings* on *S. 2722, supra* note 4, at 38. The Uniform Code of Military Justice provides for mandatory review of the sentences of courts-martial without possibility of increase, 10 U.S.C. § 871 (1964), and this system appears to have functioned without difficulty. *See Hearings on S. 2722, supra* note 4, at 140. European jurisdictions rarely permit increases in appeals by defendants, and then only with careful safeguards such as a requirement of unanimity on the part of the reviewing court. *Id.* at 85. After 60 years of experience with a system of sentence review permitting increases, the British Parliament withdrew from its appellate courts the power to increase sentences imposed at trial. Criminal Appeal Act 1966, § 4(2), c. 31.

[98] ABA, *supra* note 70, at 36.

[99] H.R. 270, 85th Cong., 1st Sess. (1957); S. 1480, 84th Cong., 1st Sess. (1955); H.R. 4932, 84th Congress., 1st Sess. (1955).

[100] S. 1540, 90th Cong., 1st Sess. (1967); S. 1692, 87th Cong., 1st Sess. (1961); S. 3914, 86th Cong., 2d Sess. (1960).

[101] At the very least, the courts of appeals should not be required to grant a full hearing on all such appeals. *See* S. 2722, 89th Cong., 1st Sess. (1965); S. 823, 88th Cong., 1st Sess. (1963); S. 2879, 87th Cong., 2d Sess. (1962).

[102] The latest bill in Congress provides specifically that the court of appeals' denial of appeal is final. S. 1540, 90th Cong., 1st Sess. § 3742(b) (1967).

[103] *See* notes 26–28 *supra.*

[104] ABA, *supra* note 70, at 42.

[105] S. 1540, 90th Cong., 1st Sess. (1967); S. 2722, 89th Cong., 1st Sess. (1965); S. 823, 88th Cong., 1st Sess. (1963); S. 2879, 87th Cong., 2d Sess. (1962).

[106] At present, the court reporter is required to transcribe and certify all "proceedings in connection with the imposition of sentence in criminal cases. . . ." 28 U.S.C. § 753(b) (Supp. II, 1965–66). This transcript would be available to the courts of appeals through FED. R. CRIM. P. 39(b), and also through provisions, in most of the bills, authorizing the courts of appeals to order the production of all trial documents. *See* S. 1540, 90th Cong., 1st Sess. (1967); S. 2722, 89th Cong., 1st Sess. (1965); S. 823, 88th Cong., 1st Sess. (1963); S. 2879, 87th Cong., 2d Sess. (1962); S. 1692, 87th Cong., 1st Sess. (1961); S. 3914, 86th Cong., 2d Sess. (1960).

[107] *See* S. 1540, 90th Cong., 1st Sess. (1967); S. 2722, 89th Cong., 1st Sess. (1965); S. 823, 88th Cong., 1st Sess. (1963); S. 2879, 87th Cong., 2d Sess. (1962); S. 1692, 87th Cong., 1st Sess. (1961); S. 3914, 86th Cong., 2d Sess. (1960); ABA, *supra* note 70, at 42.

[108] *Compare* Smith v. United States, 223 F.2d 750, 754 (5th Cir. 1955), *and Hearings on S. 2722, supra* note 4, at 117–18, *with* United States v. Durham, 181 F. Supp. 503 (D.D.C. 1960), *and* Barnett & Gronewold, *Confidentiality of the Presentence Report,* FED. PROBATION, Mar. 1962, at 26.

[109] Two of the bills in Congress specifically require the courts of appeals to "take such appropriate measures as may be necessary to safeguard the secrecy of any such presentence reports and other evaluations." S. 823, 88th Cong., 1st Sess. (1963); S. 2879, 87th Cong., 2d Sess. (1962).

[110] *See* S. 1540, 90th Cong., 1st Sess. (1967); S. 2722, 89th Cong., 1st Sess. (1965).

[From the Vanderbilt Law Review, May 1968]

APPELLATE REVIEW OF LEGAL, BUT EXCESSIVE SENTENCES: A COMPARATIVE STUDY

(By Gerhard O. W. Mueller* and Fré Le Poole**)

(The American criminal statutes do not generally establish criteria to be followed by the trial judges in sentencing; therefore, the right of judicial review of sentences as a matter of law is largely unavailable due to the almost total exercise of judicial discretion in the sentencing process. The authors will examine and evaluate the continental system in which the criminal codes generally provide sentencing guidelines, thus enabling sentence review to be obtained as a matter of law.)

I. EMERGENCE OF SENTENCE REVIEW

Classical penology was conceived in France in the eighteenth century,[1] and then eclipsed all over the world in the nineteenth, when Lombroso conjured up the picture of the born criminal. It was finally laid to rest in the United States in the twentieth century. Its basic tenet had been simple enough: the legislature in its infinite wisdom would seek and find the appropriate punishment for every crime. This can be accomplished if a crime is defined narrowly enough, perhaps by the creation of subcategories of that crime, so as to encompass all potential perpetrators who will each incur the same amount of criminal guilt. All perpetrators in the same subcategory are then entitled to the exact same amount of punishment in expiation of their criminal guilt. This system, so it was thought, ideally adjusts the punishment to achieve a balance between the crime and its harm and the criminal and his guilt, without going into undue subtleties of minute variations in the guilt of perpetrators in the same subcategory. Consequently the codes of the eighteenth and nineteenth centuries could satisfy themselves with defining and categorizing crimes in terms of the harm created and the specific means are in question.

The punishments in such a scheme of things, being almost entirely designed to serve the goals of retribution and deterrence of all nondescript members of a class, could be almost entirely stereotyped. A system which does not admit of variation among members of its various categories of perpetrators needs little variability of its punishments. Therefore, whether in an American state or European nation in the nineteenth century, nearly all first degree murderers were rewarded with death, and nearly all thieves received a stereotyped penitentiary sentence. To the extent that the need for variability was recognized, such variability—like its historical ancestor, the benefit of clergy—was regarded primarily as a matter of mercy to be dispensed by the sovereign. However, in nearly all countries the legislative scheme of crimes and punishments did permit a minimum of variation, usually in terms of alternate punishments, or sometimes regarding the quantum of punishment. "The duration and quantity of [fine and imprisonment] must, says Blackstone, frequently vary from the aggravations, or otherwise of the offence, the quality and con-

---

Footnotes at end of article.

dition of the patries, and from innumerable other circumstances . . ."[2]

In a system of relatively stereotyped punishments for static guilt and harm, practically no question of reviewability of sentence can arise as long as each sentence is within the narrow legislative frame. However, such an arrangement could not survive a recognition that the infinite variety of subjective and objective factors, which exist in the personality of every offender, and in the harm and guilt, must be reflected in the criminal sanction. Likewise, the criminal sanction must be adjusted to serve the needs of a variety of aims of penal policy. While the new variants in the personality of the perpetrator and in the aims of penal policy were first scientifically recognized and stated in Europe, especially by the Italian positivists, it was in this country that the first significant breaks with the established stereotyped and static penal scheme occurred. Among the devices of the new penology we find the following: (1) the mini-max statute, which allows the court to choose an appropriate sentence within a framework of a minimum and maximum sentence provided by the legislature; (2) the alternate sentence, providing for either one form of punishment or another, or both; (3) additional sentences, *e.g.*, forfeiture of office, added to imprisonment; (4) the open-ended sentence, which allows the court to individually fix either the minimum or the maximum and to make the other limit to the sentence depend on subsequent factors; (5) good conduct and good time provisions, resulting in deductions from initial punishment; (6) parole rights and duties; (7) probation; and (8) an infinite variety of commitments to special institutions.

With such a potpourri of penal dispositions available, the modern judge needs a degree of guidance unimagined in the nineteenth century. Now, a significant choice has to be made in every case, a choice which was generally not possible a few decades ago. Therefore, it seems that a legal machinery is needed to guard against the wrong choice. How does the law usually protect the defendant against a wrong choice on the part of a judge? It grants appellate review. But our system has not yet adapted itself to the novelty. Appellate review is largely unavailable to question the exercise of sentencing discretion. While a system without appellate review of criminal sentences was workable and lawful in the nineteenth century, it can be neither proper nor lawful at the present time. It can be attributable only to chance or ignorance that the American system, which permits no review of judicial choice in sentencing, has not been declared unconstitutional.

Elsewhere we have demonstrated that a movement is underfoot to provide American convicts with a machinery for the review of criminal sentences alleged to be excessive, though lawful. From the modest beginning of a single American jurisdiction which granted such review in 1858, we now have reached the point at which such remedies are available in fifteen jurisdictions, albeit on a very limited scale.[3] It does not take much courage to predict that in the foreseeable future, all American jurisdictions will adopt sentence review procedures.

II. THE LACKING CRITERIA OF SENTENCE REVIEW AT HOME

While the need for reviewing the exercise of judicial choice in sentencing may be quite apparent, what makes one pause is the lack of criteria by which we can measure the propriety of a given choice. It must be noted that we are here interested primarily in the judicial choice. There is also a legislative choice, which is subject to review. Thus, the constitutionality of a statute permitting any prison sentence from one day to life and/or a fine of any magnitude for the crime of shoplifting may well be subject to some doubt. Indeed, the supreme courts of the nineteenth century at first were considerably hesitant to uphold as constitutional, against charges of uncertainty and vagueness, statutes allowing penological variety which seemed to permit the exercise of judicial choice, unguided by fixed legislative criteria. For all practical purposes, the legislatures have not provided the judiciary with criteria to guide them in exercising sentencing discretion. If there are no criteria to begin with, how can it be charged that the wrong criteria have been used? Our system has muddled along with vague expressions like "the sound exercise of judicial discretion," "recognition of the crime and the criminal," "the gravity of the deed," "the guilt of the perpetrator," and "the protection of society." None of these slogans is law. Appellate review, however, has been customarily available for judicial violations of law—not slogans, and it is arguable that slogans are not entitled to appellate review.

Elsewhere we have endeavored to state the real criteria which have prompted courts to play with the legislative choices in sentencing and which we found to be conditioned by the infinite variety of life, manifested in the perpetrator and his crime, but always limited by the scope of the penal purposes. This limitation, designed to protect society from initial or repeated harm through crime, extends to vindication of the law, retribution for the wrong committed, penitence of the perpetrator, neutralization of the still dangerous actor, deterrence of potential wrongdoers, and above all, resocialization of the offender.[4] While these observations may properly describe reality, they are not positive law. There is a need for appellate review of criminal sentences. But upon what criteria should such review proceed and to what end?

To solve these perplexing problems we have turned to the experience of other members of the family of civilized nations. While their experiences are not likely to be dispositive of our problems, they are likely to be helpful, for all nations are endeavoring only to find the most appropriate method of insuring the establishment and continuance of the most effective sentencing policies. Although these problems appear predominantly theoretical at first glance, they have the potential of becoming explosively practical in the not-too-distant future. The Supreme Court of the United States recently held unconstitutional for vagueness a statute which permitted the jury to impose costs upon an acquitted criminal defendant, *without guidance as to when costs were or were not to be imposed.*[5] By dictum the majority added that the distribution of varying punishments based solely upon the reprehensibility of a convicted offender would certainly violate the due process clause. Mr. Justice Stewart, concurring, contended that much of the reasoning in the opinion cast grave constitutional doubt upon the settled practice of many states to allow the jury in its unguided discretion to determine the nature and degree of punishment to be imposed.[6] Also, consideration must be given to the problem of the judge's use of his unguided discretion in the sentencing process. It appears that in the near future sentencing criteria and the aims of penal policy may become matters of positive law and, therefore, subject to appellate review as questions of law. By looking at the advanced continental experience, we may be able to delineate the course that we should follow.

III. GENERAL SCHEME IN CIVIL LAW COUNTRIES

As in our system, continental code provisions contain sentencing alternatives and sentence ranges. Many foreign codes set some guidelines for the exercise of sentencing discretions, both in the penal provisions and in special sentencing sections of the more general parts of the codes. These sentencing frames and criteria have become matters of positive law, and, like all other matters of law, are subject to appellate review. However, there are many code and statutory provisions which contain no criteria for guiding sentencing choice; frequently these are found in cases where a crime category (*e.g.*, homicide) has been subdivided into minute subcategories which are descriptive of different offender types. Thus, the old, but still subsisting German Penal Code provides in section 211 that "murder shall be punished by confinement in a penitentiary for life." This stereotype sentence for all murderers is understandable only if it is considered that this provision also describes a murderer in terms of specific personality characteristics and that the murder provision is followed by eight subsequent provisions on homicide which are descriptive of other stereotypes, including: manslaughter (section 212); manslaughter under extenuating circumstances (section 213); mercy killing (section 216); infanticide (section 217); genocide (section 220a); negligent homicide (section 222); and assault and battery with fatal consequences (section 226). Each of these variations from the basic form of criminal homicide carries its own penal sanction which differs from that of the basic form. Some of these penal sanctions also allow a certain amount of variation (*e.g.*, for "mitigating circumstances," as in section 216.2, or for "serious cases," as in section 212.2).[7]

By far the most frequent sentencing variables which the continental codes place at the disposition of judges are in terms of minimum-maximum sentences and alternative sentences. For example, under the Italian Penal Code the punishment for mercy killing is "confinement in a penitentiary from six to fifteen years."[8] As regards imprisonment, the legislature has sometimes set only maximum[9] or only minimum terms[10] for each offense. Under statutes with open-ended provisions, the judge has to find the limit for the open-end in the penal provisions of the General Part of his code. For example, the Dutch Code provides: "Temporary imprisonment may be imposed for a term of at leat one day and not exceeding fifteen years. . . ."[11] Under some codes the minimum and maximum standards may be extended in case of mitigating or aggravating circumstances, which may be of either a general or a more limited nature.[12] Some codes/statutes set further standards for judges by establishing what might be termed "judicial arithmetics."[13] For example the Spanish Penal Code presents a veritable "price list" of criminal wrongs by giving consideration to a multitude of aggravating and mitigating circumstances, which is, in effect, a catalogue of human emotions (*see* Appendix A.).

We do not regard it as possible or desirable to emulate the Spanish example. Apart from the hopelessness of any effort to achieve completeness in the list of factors to be considered in sentencing, the attribution of weight measures to these human emotions amounts to an objectification of applied psychology, which is totally at odds with an individualized system of criminal justice, administered by relatively sophisticated judges and correctional officers, rather than automations.

IV. GUIDELINES FOR AND EVIDENCE OF JUDICIAL DISCRETION

Within the legal framework described and with variations to be noted, sentencing in civil law countries has remained a matter of some judicial discretion. The legislature, however, may provide guidelines. Many criminal codes (*e.g.*, the Brazilian, Bulgarian, Danish, Greek, Swedish, Swiss and Yugoslav Codes and the German Draft Penal Code) tell the judge what factors should be taken into account when imposing sentence. Different legislatures have shown a fair amount of

Footnotes at end of article.

agreement on this subject. Factors frequently mentioned are: the dangerousness of the offense and its harmful consequences; the motives of the offender; the intensity of his criminal intent or criminal negligence; his previous criminal record; his personal and economic conditions; and his behavior during and after the act (*see* Appendix B.).

From the nature of the different factors to be taken into account in sentencing, it is apparent that punishment is not meant to serve one goal exclusively. Rather, multiple goals—such as retribution, deterrence (both general and specific prevention), and rehabilitation—seem to have their place. Some legislatures seem to express a preference for one of these goals, while others allow the judge to determine which goal should be primarily considered in a specific case. The latter is the position of those codes which contain specific provisions on the goals of punishment (e.g., the Soviet Union and Czechoslovak Codes) (*see* Appendix C.). These lists of goals are not dissimilar to those compiled by American criminologists and are comparable to the American Model Penal Code provisions in point.[14] All such lists are subject to the criticism that they remain codified social science and philosophy and are scarcely subject to empirical validation as to their effectiveness. Nevertheless, the codification of correctional policy may be a necessary first step toward effective judicial administration of the ultimate preventive goal of all penal law.[15]

All correctional policy exhortations in penal codes are bound to remain ineffectual until there is evidence of the extent to which such exhortations have influenced judicial choice in sentencing. Consequently, in most European countries trial judges are obligated to write detailed opinions justifying their sentences in terms of the codified correctional policy.[16] A judge who fails to give evidence that he abided by the codified standards is likely to have his sentences set aside on motion of either party.[17] The Italian Supreme Court has ruled expressly that it will not accept standardized or cliché formulas adhering only formally to the codified standard.[18]

V. APPELLATE REVIEW OF SENTENCES

Most continental countries do not distinguish between appellate review of convictions and sentences. They do, however, distinguish between appellate review on matters of fact and law and on matters of law only. The former is primarily meant to serve the purpose of correction of errors of the trial court; while the latter primarily assures the unifom interpretation of the law. Generally, appeal solely on matters of law is available only if all other appellate rights have been exhausted. An appeal concerning matters of fact and law may result in a review of the sentence. This is due to the fact that European codes, unlike American statutes, prescribe sentencing rules which must be respected by the trial judge. Also, in some countries, the appellate courts interpret "law" broadly and, consequently, have an extensive power of review.

In some countries, the system of appeal differs from that just described. Norwegian law provides that a so-called "appeal proper" may be directed against a sentence for the reason, among others, that the punishment is not appropriate because it is too severe or too lenient.[19] This indicates that such appeals may be brought by either prosecution or defense;[20] however, it is not likely that a defendant will appeal a sentence he considers too lenient. The prosecutor, who is legally obligated to see that the law is properly applied, may appeal a sentence which is too severe, as well as one he considers too lenient. So as not to discourage sentence appeal by convicts, many codes provide that "the judgment may not be amended to the prejudice of the defendant, insofar as kind and amount of punishment are concerned, if the appeal was initiated by the defendant alone."[21] This doctrine, which is referred to as the prohibition of *reformatio in pejus*, has no applicability when the sentence is appealed by the prosecution for being too lenient. In that case, the appellate tribunal could either increase or decrease the punishment. This is also true where both defendant and prosecutor have appealed the sentence, as long as the sentence increase is not the result of the defendant's appeal. In the Netherlands the punishment may be increased even if only the defendant has appealed, provided that all judges of the appellate court concur.[22] Finally there is some doubt in Europe, as there is in this country,[23] as to what in fact constitutes an increase of punishment (*i.e.*, an amendment of the sentence prejudicial to the defendant). Thus, while both the German and Dutch courts hold a longer suspended sentence to be heavier than a shorter nonsuspended sentence,[24] it can be doubted that the defendants agree.

VI. PERMISSIBILITY AND SCOPE OF APPEAL ON FACT AND LAW

Most European nations permit, as of right, an appeal on fact and law. In France and the Netherlands, an appeal lies from practically all criminal judgments, except those involving very small penalties.[25] However, in France no such appeal is possible from the judgment of a jury court,[26] since there, as formerly in England,[27] the judgment of the jury is regarded as unimpeachable. Also, in France no fact-and-law appeal is possible from the judgments of a number of special courts.[28] In the Netherlands and some other countries, a defendant may not appeal a judgment of acquittal rendered "for lack of evidence," despite the fact that such a judgment leaves him under a shadow of suspicion, which he may wish to have removed by the more favorable judgment of acquittal because of "innocence."[29] In Germany, the only difference between the two types of acquittal lies in the availability of compensation for detention suffered pending trial for those acquitted because of "innocence."[30] The German Code of Criminal Procedure, which is generally regarded as providing the most limited appeal on fact and law (*Berufung*), only allows such appeal against judgments of some of the least significant criminal courts. This results in allowing a defendant tried in a minor court for a minor offense to have a fact-and-law appeal and a pure-law appeal; while a defendant tried in a major court for a major offense is limited to an appeal of law only.[31] This is regarded as one of the most serious shortcomings of the German Code of Criminal Procedure.[32]

Where partial appeals (*i.e.*, those restricted to a single issue) are permissible, the judgment unlike that of the general appeal, is subject to review only insofar as it has been attacked.[33] Ordinarily it is not advisable for a defendant to lodge a partial appeal, since this may be held to bar the appellate court from amending the judgment in the defendant's favor with respect to matters not called to its attention. Thus, the German Supreme Court has held that where a convict appeals solely on the ground that his sentence is excessive, the court has no jurisdiction to reverse and enter a judgment of acquittal for lack of criminal responsibility.[34] Where the defendant chooses to appeal the sentence only, it has been held that an appeal may not be limited to the type of punishment, and therefore, type and duration of punishment are also regarded as being reviewable.[35] Thus, when not limited by a partial application, the reviewing court will proceed to a re-examination of the entire case. It may receive new evidence,[36] or it may use only the evidence before the trial court which has become a matter of record.[37] If the court considers the appeal well-founded, it will either render a new judgment or remand the case for a new trial. Rarely will it remand the case to the trial court whose judgment was attacked.[38] The German courts have held themselves competent to review such questions as whether a commitment to an institution for cure and care was justified[39] and whether the lower court had been right in cancelling the defendant's driver's license or in imposing other supplementary penalties.[40]

VII. PERMISSIBILITY AND SCOPE OF APPEAL ON LAW ONLY

In practically all continental countries final criminal judgments are subject to appeal on matters of law. However, there are a few exceptions, such as acquittals rendered by French jury courts[41] and judgments rendered which acquit for lack of evidence or are appealable by another remedy of which the defendant has not availed himself.[42] If the appellate court finds that the law appeal is well-founded, it may reverse the judgment attacked, or it may decide the matter itself, if it can do so without a further inquiry into the facts.[43] Generally, however, it will remand the matter to a trial court other than the one which rendered the judgment attacked.[44] In Germany and the Netherlands, the court to which the case is remanded is bound to respect the higher court's decision.[45] In an appeal solely on law, the scope of inquiry is much narrower than in an appeal on fact and law.[46] The court is bound to the facts as stated in the judgment below and the review is limited to points listed in the petition for review.[47] As stated previously, appeal on law only includes sentences which under American law would not be reviewable.

In Switzerland and Austria the appellate courts hold themselves incompetent to review the determination of punishment, as long as the judge has exercised his discretion within the legal framework, but in case of clear arbitrariness, a sentence might be reversed.[48] Thus, these two alpine countries follow the same procedure as the Supreme Court of Pennsylvania.[49] According to German theory, the discretion of the trial judge is not subject to review in an appeal on matters of law.[50] But a judgment and sentence are subject to such a review if the standards of law have not been properly applied by the judge. The following are examples of successful reviews of legally "improper" sentences which nevertheless had been within the statutory framework: the trial judge had only taken into account deterrence without considering the retributive guilt of the offender; [51] the punishment imposed though within the legal framework was not proportionate to the guilt of the offender and, in that sense was excessive; [52] the trial court had not considered all aspects of the offense and the offender by taking into account all essential goals of punishment; [53] and the maximum penalty had been imposed, although it was "obvious" that the punishment should have been closer to the minimum.[54]

In Norway, the Supreme Court has full authority to reverse sentences when the punishment is too lenient or too severe, that is, excessive in either direction. Nevertheless, the Norwegian judge is given a wide discretion in sentencing.[55] Extracts from the Norwegian Supreme Court decisions show that the Court does not limit itself to reviewing sentences which are truly outrageous, but in fact does sometimes substitute its own discretion for that of the trial judge (*see* Appendix D). The Supreme Court considers the particulars of each offender and offense and decides what should be the principal objective of punishment in that particular case. If there is a reasonable possibility of rehabilitation, the Court tends to let this consideration prevail over reasons of general prevention. The Norwegian judges, as those of all other nations which have not catalogued the objectives of punishment, are ultimately driven to finding the right criteria in their own internalized notions of the proper objectives of criminal justice.

Footnotes at end of article.

VIII. CONCLUSIONS

This study of continental schemes of appellate review of legal but excessive sentences has the reassuring effect of informing us that we do not stand alone with our problems. The benefit of comparative study extends beyond theoretical reassurance; it reveals that continental law, more readily than ours, regards a proper criminal sentence within the legislative framework to be a matter of law, and therefore reviewable. The difference between review of an ordinary error of law and an error in legal sentence is one of standards for determining the error. While our legislatures have rarely seen fit to provide the judiciary with legal criteria for the imposition of legally proper sentences, many European legislatures have provided their judges with such criteria. These criteria are of two kinds: (1) the recognized aims of penal-correctional policy; and (2) the proper criteria by which the perpetrator and his deed should be evaluated.

We are not convinced that any foreign code has provided a truly acceptable list of penal-correctional aims. Nevertheless, even a hodgepodge of stated aims, as that contained in the Model Penal Code of the American Law Institute, can usefully serve as a convenient guide, the total disregard of which would be considered illegal. In any event, in accordance with continental experience, a statement of penal-correctional aims appear to us to be a necessary step toward developing a sound sentencing and sentence review system. We are totally unimpressed by the efforts of some nations in cataloguing the enormous range of human emotions and character. This approach, designed to provide a legal (and thus reviewable) framework in which the trial court may evaluate the crime and the perpetrator in imposing sentence, views man, including both the judge and the judged as a mechanical monster.

If the European experience teaches us anything, it is that an imaginative, free-thinking judge, properly guided by the codified basic penal-correctional objectives, must be trusted to find the right sentence. Since the sentence is then a matter of law, it is subject to review and revision by an appellate court which has its own criteria and approach for interpreting the legal goals of punishment and correction. These appellate court interpretations make precedent and build tradition. Several European judges have assured us in personal conversation that no one factor is as strong a sentence review criterion as the custom of the court.

Criteria and custom have been developed through appellate decisions in several European countries (Norway and Germany have been cited as leading examples). While we have cited Norway as a leading example of an enlightened practice, Norway also acquaints us with an all-to-liberal law of sentence review. We wonder whether an appellate court's view of a sentence is truly more expert than that of a trial judge. It strikes us that the proper limitation for sentence review may have been stated by the English Court of Criminal Appeal:

"In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. The trial judge has seen the prisoner and heard his history and any witness to character he may have chosen to call. It is only when a sentence appears to err in principle that the Court will alter it! If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles, then this Court will intervene." [58]

It is doubtful whether the appellate court should be empowered to increase the sentence. In Europe, an increased sentence usually prevails only on an appeal by the prosecutor, a procedure which is not available in the United States. In England, the Court of Criminal Appeal has such power, but it has recently been proposed that this power, which was rarely used, be abolished. In 1963, out of 1976 applications for leave to appeal received by the English Court, the sentence was reduced in one hundred forty-five, quashed in thirteen and increased in only six cases. In England, as elsewhere, it is felt that an increase in sentence on appeal is basically unfair. Nor is there any evidence that the existence of the power to increase a sentence on appeal serves as a substantial barrier to frivolous appeals.[57] If, per chance, there are policy reasons—which we cannot detect—favoring the existence of the power to increase sentences on appeal, we would urge that the Dutch practice, requiring unanimity of all judges of the appellate court, be followed.

FOOTNOTES

* Professor of Law, Director, Comparative Criminal Law Project, New York University School of Law. Ploen College, Germany, 1947; Keil University Faculty of Law, 1949; J. D. University of Chicago Law School, 1953; L.L.M. Columbia University, 1955. This article is based upon a study made by the authors as advisors to the Senate Committee on the Judiciary and is a follow-up of Professor Mueller's American study. *See* Mueller, *Penology on Appeal: Appellate Review of Legal but Excessive Sentences*, 15 VAND. L. REV. 671 (1962).

** Research Assistant, Comparative Criminal Law Project, New York University School of Law.

[1] *See Canals, Classicism, Positivism and Social Defense*, 50 J. CRIM. L.C. & P.S. 541 (1960).

[2] Frese v. State, 23 Fla. 267, 270, 2 So. 1, 2 (1887), upholding fine provision without maximum as constitutional.

[3] Mueller, *Penalogy on Appeal: Appellate Review of Legal but Excessive Sentences*, 15 VAND. L. REV. 671 (1962).

[4] Mueller, *Punishment, Corrections and the Law*, 45 NEB. L. REV. 58–98 (1966).

[5] Giaccio v. Pennsylvania, 382 U.S. 399 (1966).

[6] *Id.* at 405.

[7] All citations of the German Penal Code are to G. MUELLER & BUERGENTHAL (transl.), THE GERMAN PENAL CODE (Vol. 4, American Series of Foreign Penal Codes, 1961).

[8] ITALIAN CRIMINAL CODE (hereinafter IT. C. PEN.) art. 579 (1930).

[9] *E.g.*, in the Netherlands.

[10] *E.g.*, IT. C. PEN. art. 575.

[11] DUTCH PENAL CODE art. 10 (1881).

[12] *Compare, e.g.*, DUTCH PENAL CODE art. 44 *with* art. 288; *see also* note 8 *supra* and accompanying text.

[13] See SCHMIDT, DIE STRAFZUMESSUNG IN RECHTSVERGLEICHENDER DARSTELLUNG 124 (1961).

[14] MODEL PENAL CODE § 1.02 (Official Draft 1966).

[15] *See* Mueller, *Punishment, Corrections and the Law, supra* note 4, at 86.

[16] *See, e.g.*, DUTCH CODE OF CRIMINAL PROCEDURE (hereinafter WvSv) art. 359; FRENCH CODE OF CRIMINAL PROCEDURE (hereinafter FR. C. PRO. PEN.) arts. 485, 543; GERMAN CODE OF CRIMINAL PROCEDURE (hereinafter STGB) art. 267.

[17] *See, e.g.*, WvSv art. 359; ITALIAN CODE OF CRIMINAL PROCEDURE (hereinafter It. D. C. PRO. PEN.) art. 574.

[18] Court of Cassation, Jan. 30, 1935 (La giustizia penale 1935, 310).

[19] NORWEGIAN MINISTRY OF JUSTICE, ADMINISTRATION OF JUSTICE IN NORWAY 80 (1957).

[20] *Compare* FR. C. PRO. PEN. art. 497, *with* WvSv art. 404, *and* STGB ¶ 296.

[21] STGB ¶ 331; STGB art. 358; FR. C. PRO. PEN. art. 515; WvSv art. 424.

[22] WvSv art. 424.

[23] See State v. Fisher, 126 W. Va. 117, 27 S.E. 2d 581 (1943).

[24] Oberlandesgericht (hereinafter OLG) Oldenburg (Monatschrift für Deutsches Recht 55, 436); Hoge Raad (hereinafter H.R.) December 18, 1933 (Nederlandse Jurisprudentie 1934, 298).

[25] FR. C. PRO. PEN. art 546; DUTCH LAW ON COURT ORGANIZATION (hereinafter WET R. O.) 44.

[26] FR. C. PRO. PEN. art. 370. But cases brought before the Jury Court have been evaluated in the pre-trial stage by two judicial authorities, the investigating magistrate and the Chamber of Indictments.

[27] In England, before the introduction of the Criminal Appeal Act in 1907, there was no appeal as of right from the verdict of a jury in a criminal trial. Only in very few cases did the trial judge decide to reserve a point of law for consideration by the Court for Crown Cases Reserved which could quash the conviction. Under the 1907 Act (§ 3), a person convicted on indictment may appeal against conviction as of right if a question of law, alone is involved. If his appeal is based on a question of fact or mixed law and fact, he may appeal only after having obtained the leave of the Court of Appeal or of the judge who tried the case. Appeal against sentences is permissible only on leave of the Court of Appeal. Compare: INTERDEPARTMENTAL COMM. ON THE COURT OF CRIM. APP., REPORT, CMD., No. 2755, at 3, 6 (1965).

[28] Court of State Security, Military Courts, etc. *See* STÉFANI-LEVASSEUR, PROCÉDURE PÉNALE 18 (1964).

[29] WvSv art. 404; STGB § 267.*V* distinguishes between the two kinds of acquittals, but the distinction has no bearing on the permissibility of appeal. (*See* STGB § 313).

[30] *See* German Law Concerning Compensation for Innocently Suffered Preliminary Detention of July 4, 1904.

[31] StGB ¶ 312–13.

[32] *See* HIRSCHBERG, DAS AMERIKANISCHE UND DEUTSCHE STRAFVERFAHREN 33 (1963).

[33] FR. C. PRO. PEN. art. 509; STGB ¶ 327.

[34] Reichsgericht (hereinafter RG) (Deutsche Rechtszeitung 22 (1930).

[35] RG (Juristische Rundschau 1927 nr. 667).

[36] Fa. C. PRO. PEN. art. 513; WvSv art. 414; STGB ¶ 323.

[37] FR. C. PRO. PEN. art. 513; WvSv art. 422; STGB ¶ 325.

[38] FR. C. PRO. PEN. art. 514–20; WvSv art. 423; STGB ¶ 328.

[39] Compare ¶ 42b GERMAN PENAL CODE.

[40] Court Freiburg (Deutsche Rechtszietung 140 (1941)).

[41] FR. C. PRO. PEN. art. 572.

[42] WET R.O. 96; WvSv art. 430. The rule is otherwise in Germany, where a defendant may waive his initial right to appeal on fact-and-law and proceed immediately to his appeal on law only (so-called "leap revision"). *See* STGB § 335.

[43] STGB ¶ 353–54; FR. C. PRO. PEN. art. 617; WvSv art. 441. Compare MINKENHOF, NEDERLANDSE STRAFVORDERING 296 (1948).

[44] FR. C. PRO. PEN. art. 609 et seq.; WvSv art. 441; STGB ¶ 354.

[45] In France this is not the case. If, however, after reversal of a first decree or final judgment, the second decree or second final judgment, rendered in the same case between the same parties, is attacked on the same ground as the first, it will be decided by the united divisions of the Supreme Court. If a reversal results, the court to which the matter is remanded is bound to respect the decision of the united divisions, unless the decree rendered by these is different from that passed by the Criminal Division in the first place. FR. C. PRO. PEN. art. 619.

[46] FR. C. PRO. PEN. art 567; WET R.O. 99; STGB ¶ 337.

[47] STGB ¶ 353.

[48] Compare SCHMIDT *supra* note 13 at 29 & 43 (1961).

[49] Commonwealth v. Green, 396 Pa. 137, 161 A. 2d 241 (1959).

[50] KERN STRAFVERFAHRENSRECHT 203 (1959).

[51] RG 76, 325; OLG Freiburg (Hochstrichterliche Entscheidungen in Strafsachen 2, 112).

[52] OHGst 1, 174. Compare State v. O'Dell, 240 Iowa 1157, 39 N.W.2d 100 (1949). But within this range of factors the trial judge's discretion is decisive. *See* OHGst 2, 145. Compare State v. Sullivan, 241 Wis. 276, 5 N.W.2d 798 (1942).

[53] OGHst 2, 94.

[54] Bundesgerichtshof 2 StR 45, 50. Compare Dalcke, Strafrecht und Strafverfahren 1365 (1955); Lowe-Rosenberg, Strafprozessordnung 1301 et seq. (1962).

[55] Compare Norwegian Penal Code 52–65.

[56] Regina v. Ball, 35 Crim. App. 164, as quoted by Interdepartmental Committee on the Court of Criminal Appeal, Report, Cmd. No. 2755, at 43 (1965).

[57] *Id.* at 42–47.

Appendix A

Provisions on Sentencing Taken From the Spanish Penal Code

(1870, modified in 1944)

Chapter III: Mitigating Circumstances

Article 9

The following are mitigating circumstances:

1. All those mentioned in the preceding chapter, when the requirements needed for complete exemption from liability in each situation did not concur.

2. Intoxication which is neither habitful nor self-induced for purposes of committing an offense.

3. Minority below the age of eighteen years.

4. The fact that the criminal harm caused is more severe than the perpetrator intended.

5. Sufficient antecedent provocation or threats on the part of the victim.

6. When the act was committed in proximate vindication of a grievous offense against the actor, his spouse, his ascendants or descendants, his legitimate, natural or adoptive brothers, or his relatives by affinity in the same degrees.

7. The fact that the deed was motivated by moral, altruistic or patriotic reasons of considerable importance.

8. The fact that the deed was committed under such powerful excitement as to cause rage or loss of self-control.

9. The fact that the perpetrator, prior to having knowledge of the institution of judicial proceedings against him, and moved by his own voluntary repentance, proceeded to make amends in whole or in part for the harm caused, to offer satisfaction to the victim, or to confess his infraction to the authorities.

10. And lastly, any other circumstance of like significance to the above.

Chapter IV: Aggravating Circumstances

Article 10

The following are aggravating circumstances. The fact that:

1. The act was committed with perfidy. Perfidy is present whenever the perpetrator commits an offense against persons through such means, forms or kinds of execution which directly and particularly insure the success of the criminal act without those risks to his own person which would result from the defensive action the victim might otherwise take;

2. The offense is committed for a price, reward or promise;

3. The offense is committed by means of flood, fire, poison, explosion, destruction of an aircraft, grounding of a ship or other willful damage, derailment of locomotives, or by any other highly destructive means;

4. The offense is committed by means of printed matter, radio broadcasting or other means facilitating publicity;

5. The ordinary harm of the offense is willfully aggravated by causing additional harm unnecessary for the commission of the offense;

6. The act is perpetrated with known premeditation;

7. Trickery, fraud, or disguise are employed;

8. Advantage is take of superior strength or through the use of means which weaken the victim's defense;

9. The victim's confidence is misused;

10. The perpetrator makes use of his official position;

11. The crime is committed during a fire, shipwreck or other calamity or misfortune;

12. The offense is committed with the aid of armed companions or persons who provide or secure impunity;

13. The act is committed at night, in secluded locations, or by a gang; a gang is present whenever three or more armed persons jointly engage in the commission of an offense;

14. The perpetrator is a general recidivist. A general recidivist is one who at the time of the commission of the deed, has previously been sentenced for another offense which carries an equal or greater punishment, or for two or more offenses which carry a lighter punishment.

15. The perpetrator is a specific recidivist. A specific recidivist is one who, at the time of the commission of the deed, has already been (executorily) sentenced for one or more offenses within the same Title of this Code.

16. The deed was committed against public authority or with disrespect toward the dignity, age or sex of the victim, or in the victim's home, provided the victim did not provoke the act.

17. The deed was committed in a sacred place.

Chapter V: Circumstances Which May Either Mitigate or Aggravate Criminal Liability, Depending on the Facts

Article 11

The fact that the victim is the perpetrator's spouse, ascendant, descendant, legitimate, natural or adoptive brother, or a relative by affinity within the same degrees of relationship, may attentuate or aggravate his criminal liability depending on the nature, motives or effects of the offense.

*Article 61**

Whenever the punishment prescribed by law is composed of three degrees, the Courts shall impose it according to the following rules depending upon the concurrence of aggravating or mitigating circumstances:

1. If only one mitigating circumstance is present in the deed, the punishment prescribed by law shall be applied in its minimum degree.

2. If one aggravating circumstance is present, the punishment shall be applied in its maximum degree.

However, in cases where the maximum degree is the death sentence, and only one aggravating circumstance is present, the Courts, after considering the nature and circumstances of the felony and of the perpetrator, may refrain from imposing the death sentence.

A death sentence shall never be imposed due to the aggravation of a punishment prescribed for a felony unless prescribed in this Code for such felony.

3. When both aggravating and mitigating circumstances concur, the punishment shall be determined after reasonably weighing them in view of their relative importance.

4. In the absence of either aggravating or mitigating circumstances, the Courts shall apply the punishment prescribed by law in the degree they consider adequate, in view of the harm caused by the deed and the personality of the offender.

5. When two or more, or when one highly mitigating circumstance alone, concur in the absence of aggravating ones, the Courts may impose a punishment one or two grades lower than the one prescribed by law, in whatever degree they consider reasonable in view of the number and importance of such mitigating circumstances.

6. Regardless of the number and importance of aggravating circumstances, Courts shall not impose a punishment higher than the one prescribed by law in its maximum degree, unless the aggravating circumstance described in number 15, Article 10 is present, in which case a punishment one or two grades higher shall be imposed, starting with the second conviction for the same offense, to the extent they consider reasonable.

7. Within the limits of each degree, the Courts in determining punishment shall consider the number and importance of aggravating or mitigating circumstances and the greater or less harm produced by the offense.

Article 62

If the punishment prescribed by law does not consist of three degrees, the Courts shall apply the rules set forth in the preceding article, and shall divide the term of each punishment in three equal parts, each constituting a degree.

Article 63

Courts may impose fines as widely as allowed by law, determining the amount not only on the basis of the mitigating or aggravating circumstances present in the deed, but especially on the basis of the financial status or capabilities of the perpetrator.

Appendix B

Examples of General Guidelines for Sentencing

1. Provisions which express a preference for several theories of punishment: Section 81, Danish Criminal Code: [1]

"In determining the penalty, account shall be taken, not only of the gravity and dangerousness of the offense, but also of the previous record of the offender, of his age and of his general conduct before and after the deed, of the persistence of his criminal tendencies and of the motives underlying the act."

Article 79, Greek Penal Code: [2]

"Judicial calculation of the punishment

"1. In the calculation of the punishment within the defined limits of the statute, the court shall consider on the one hand, the quality of the act committed, and, on the other hand, the personality of the offender.

"2. In order to determine the gravity of the offense the court shall consider: (a) the damage resulting from the offense, or the threatened danger; (b) the nature, the kind and the purpose of the offense, as well as all factors accompanying its preparation or commission, circumstances of time, place, means and manner; (c) the intensity of the intention, or the grade of the negligence of the perpetrator.

"3. In the evaluation of the personality of the offender the court weighs particularly the degree of the criminal propensity of the perpetrator, as evidenced by the act, and for a more precise determination thereof: (a) the reasons which prompted him to commit the offense, the origin and the purpose which he sought; (b) his character, and the grade of his development; (c) the individual and social circumstances and his prior life; (d) his conduct during and after the act; especially his remorse and his willingness to compensate for the harm he has inflicted.

"4. The judgment shall state the reasons explaining the decision of the court for the imposition of the sentence."

Footnotes at end of appendix C.

48-059 O - 72 - pt. 18 - 31

Articles 132, 133 ITALIAN PENAL CODES [3]

"DISCRETIONARY POWERS OF THE JUDGE IN IMPOSING THE PUNISHMENT: LIMITS

"Within the limits established by law, the judge shall apply the punishment in his discretion; he must state the grounds which justify the use of such discretionary power.

"In increasing or reducing the punishment, the limits established for each kind of punishment may not be exceeded, except in the cases expressly established by the law."

"GRAVITY OF THE CRIME: VALUATION FOR THE PURPOSES OF PUNISHMENT

"In the exercise of the discretionary powers specified in the preceding Article, the judge must take into account the gravity of the crime as inferred from:

"(1) The nature, character, means, object, time, place and any other circumstances of the act.

"(2) The gravity of the harm or the danger caused to the person injured by the crime.

"(3) The intensity of criminal intent or the degree of culpable negligence.

"The judge must also take into account the perpetrator's propensity for delinquency, as inferred from:

"(1) The motives to commit delinquency and the character of the offender.

"(2) The criminal and judicial precedents and, in general, the conduct and life of the offender prior to the crime.

"(3) The conduct contemporary with or subsequent to the crime.

"(4) The individual, domestic and social conditions of life of the offender."

Article 54, POLISH PENAL CODE: [4]

"The court shall impose penalty according to its discretion having regard primarily for the motives and the manner of acting of the offender, and his relation to the person injured, to the degree of mental development and the character of the offender, to his past life, and to his behavior after committing the offense."

Article 37, USSR CRIMINAL CODE: [5]

"GENERAL PRINCIPLES FOR ASSIGNMENT OF PUNISHMENT

"The court shall assign punishment within the limits established by the articles of the Special Part of the present Code which provide for responsibility for a committed crime, in strict accordance with the provisions of the Fundamental Principles of Criminal Legislation of the USSR and Union Republics and of the General Part of the present Code. At the time of assigning punishment the court guided by socialist legal consciousness, shall take into consideration the character and degree of social danger of the committed crime, the personality of the guilty person, and circumstances of the case which mitigate or aggravate responsibility."

Article 38, YUGOSLAV CRIMINAL CODE: [6]

"For a particular criminal offense the Court shall fix the degree of punishment within the limits provided by law for that offense, with due consideration for all the circumstances influencing the punishment to be severer or milder (aggravating and extenuating circumstances), and especially, the degree of criminal liability, the motives from which the offense was committed, the intensity of the danger or wrong to the protected object, the circumstances under which the offence was committed, the earlier life, the personal circumstances and the behaviour of the offender after the commission of the criminal offence."

2. Provision which consider *retribution* as the primary goal of punishment: Section 60, GERMAN DRAFT PENAL CODE: [7]

"(1) The basis for fixing a punishment shall be the guilt of the perpetrator.

"(2) In fixing a punishment the court shall weigh against each other such circumstances, other than definitional elements, as speak for and against the perpetrator.

"Especially there shall be considered:

"The motives and aims of the perpetrator,

"The state of mind which the act bespeaks and the exercise of volition involved,

"The extent of breach of duty,

"The manner of perpetration and the wrongful effects of the act,

"The prior life of the perpetrator, his personal and economic circumstances, as well as his conduct after the act, especially his endeavor to make restitution."

Article 63 SWISS CRIMINAL CODE: [8]

"Sec. 1. General Rules. ART. 63. The court shall mete out penalties in accordance with the guilt of the offender, considering the motives, previous conduct and the personal situation of the convicted person."

3. Provisions which consider *correction* (*rehabilitation*) as the primary goal of punishment:

Section 7, SWEDISH PENAL CODE: [9]

"In the choice of sanctions, the court, with an eye to what is required to maintain general law obedience, shall keep particularly in mind that the sanction shall serve to foster the sentenced offender's adaptation to society."

APPENDIX C

EXAMPLES OF PROVISIONS SOLELY STATING THE VARIOUS GOALS OF PUNISHMENT

Section 17. CZECHOSLOVAKIAN CRIMINAL CODE: [10]

"1. The goal of punishment is:

"(a) to make the enemy of the working people harmless;

"(b) to prevent the offender from committing other offenses and to educate him towards respecting the rules of socialist society;

"(c) to contribute to the education of other members of society.

"2. The execution of the punishment shall not lower human dignity."

Article 20. USSR CRIMINAL CODE: [11]

"Purposes of punishment. Punishment not only constitutes a chastisement for a committed crime, but also has the purpose of correcting and re-educating convicted persons in the spirit of an honorable attitude toward labor, of strict compliance with the laws, and of respect toward socialist communal life; it also has the purpose of preventing the commission of new crimes both by convicted persons and others.

"Punishment does not have the purpose of causing physical suffering or the lowering of human dignity."

FOOTNOTES

* The provision refers to the complicated schemes and charts ruling the grades and degrees of punishment which are contained in art. 68–79 of the Penal Code.

[1] GIERSING (transl.), THE DANISH CRIMINAL CODE 49 (1958).

[2] LOLIS (transl.), THE GREEK PENAL CODE (mimeo. ed. 1962).

[3] Translated by the Comparative Criminal Law Project, per J. M. Canals.

[4] LEMKIN & MCDERMOTT (transl.), THE POLISH PENAL CODE OF 1932 (1939).

[5] BERMAN & SPINDLER (transl.), SOVIET CRIMINAL LAW & PROCEDURE (1966).

[6] 10 THE NEW YUGOSLAV LAW (3–4) 17 (1950).

[7] ROSS (transl.), THE GERMAN DRAFT PENAL CODE (1965).

[8] FRIEDLANDER & GOLDBERG (transl.), THE SWISS FEDERAL CRIMINAL CODE, in supplement to, 30, J. CRIM. L.C. & P.S. (1939).

[9] SELLIN (transl.), THE PENAL CODE OF SWEDEN (1965).

[10] Translated from SCHMIDT, *supra* note 13, at 216.

[11] BERMAN & SPINDLER, *supra* note 5A, at 151.

APPENDIX D

EXTRACTS FROM DECISIONS OF THE SUPREME COURT OF NORWAY CONCERNING SENTENCE REVIEW

(The decisions were kindly made available to the authors by Prof. Johs. Andenaes, a former Justice of the Supreme Court of Norway, and a member of the International Advisory Board of the Comparative Criminal Law Project of New York University.)

December 18, 1951 (Norsk Retstidende 1166 et seq.)

The defendant had been convicted of attempted homicide and sentenced to a term of imprisonment of one year and six months, less 154 days already spent in custody, as well as deprivation of the right to hold office. He appealed on the ground that the sentence was too severe.

From the opinion of the leading judge:

"I believe the appeal should be granted.

"The crime considered here is a very serious one, but in view of the fact that the Jury found that the act was committed under especially mitigating circumstances and during a strong reduction of the level of consciousness, c.f., the Penal Code, Section 56, No. 1b, I consider a punishment of 1 year's imprisonment suitable. I also attach importance to the fact that Johansen immediately after the act repented it, helped his victim to bed, "stanched" the bleeding, lay down beside her and was lying crying when people arrived. He attempted afterwards to commit suicide. The Court has been informed that after hospitalization for about 14 days, the woman he stabbed was discharged with a clean bill of health and has suffered no permanent injury. She has not put in any request for prosecution.

"The expert witnesses have found Johansen to be a person with inadequately developed mental faculties, but the Jury has given a negative answer to the question whether there is any danger that he may again commit an act as specified in Section 39 point 2 of the Penal Code. The Court has been informed that after being released from custoday he has again moved into the said woman s home and that it is his and the woman's intention to marry as soon as the latter has obtained her divorce.

"Under these circumstances and in view of the fact that Johansen is an able workman, who works for the said woman and her children, whose home he has taken part in rebuilding, I find compelling reasons for not sentencing him to serve a long term of imprisonment. I find special grounds in the case for presuming that the execution of the sentence is not necessary in order to keep Johansen from committing new offenses . . ."

Execution of the sentence was suspended.

September 8, 1959 (Norsk Retstidende 799 et seq.)

The defendant has been convicted of attempted rape and had been sentenced to a term of imprisonment of 3 year subject to deduction of one day for custody sustained. He had appealed from the judgment on the ground that the sentence should have been suspended.

From the opinion of the leading majority judge:

"I have found the case extremely doubtful, but have come to the conclusion that it is justifiable to apply a suspended sentence . . . Among the special reasons to which I attach importance, I mention that Appellant, who is married and has two children under age, has according to our information lived a normal married life, that he has no previous convictions whatsoever, and that in general nothing descreditable is known about him. These circumstances support the assumption, which also seems to be upheld by the medical certificate produced in the Court: that the offense was committed on the spur of the moment, that it was an act of emotional excitement caused by excessive alcohol consumption and committed during a conse-

quent reduction of his powers of judgment and ability to reason."

The execution of the sentence was suspended for a trial period of 2 years.

From the dissenting opinion:

"In my opinion, considerations of general deterrence must weigh heavily in determining the punishment for a crime of this nature. In addition, it is only permissible, in this case where the Code's minimum penalty is imprisonment for 3 years, to hand down a suspended sentence when special reasons so indicate, cf. the Penal Code Section 52, No. 2, second paragraph. Although Appellant has no previous convictions. I cannot find any such special reasons in the present case. Appellant is a married man of mature age. As pointed out by the Court of Appeal, he showed considerable brutality during the attempt at rape, and he did not abandon his attempt until his victim obtained assistance. True, the execution of the sentence will have very serious consequences for his family—wife and 2 boys, but I cannot find that these detrimental effects are greater than must normally be expected from the serving of a prison sentence of such long duration. Nor do I find it decisive that the punishment imposed is far higher than that which I would have voted for under the general principles governing the determination of sentences, if I had not been bound by the minimum penalty provided by the Code. In my opinion, this should not lead to the conclusion that the entire sentence be suspended.

"From the conference I know that a majority of the Court are for allowing the appeal, whereby the sentence will be suspended. If the appeal had been dismissed. I would have recommended—as is the case quoted in Rt. 1959, pp. 43 et seq.—that the punishment imposed be considerably reduced or in part suspended, by reprieve."

March 2, 1963 (Norsk Retstidende 231 et seq.)

Defendants had been convicted of bank robbery and sentenced to a term of imprisonment of one year and three months, subject to deduction of 71 days of sustained custody for each of them, as well as to pay compensation to the victim.

On the appeal of the Public Prosecutor, the sentence was converted to imprisonment for two years and three months less 155 days of sustained custody.

From the majority opinion:

"I come to the conclusion that the appeal ought to be allowed. It is true that the prisoners are very young. However, this is a case of a carefully premeditated crime, which has been planned and discussed by the prisoners for some time, and had been carried out cynically and in cold blood according to the plan. The amount robbed was considerable, as the offenders assumed it would be. The planning and execution of the offense were particularly likely to attract attention notably among adventurous young people; for that reason as well as the crime must be regarded as particularly dangerous to the community. In these circumstances considerations of general deterrence weigh heavily. The prisoners, both of whose intellectual qualifications and social environment should have given them every reason to behave properly, have flagrantly failed to live up to expectations."

April 6, 1963 (Norsk Retstidende 365 et seq.)

Defendant had been convicted of driving when under influence of alcohol and sentenced to imprisonment for 21 days to be suspended subject to a trial period of two years without probation, as well as a fine of Kr. 300.—or, if the fine was not paid, to imprisonment for nine days. The local Chief of Police appealed against the sentence on the ground that it should not have been suspended. The appeal was dismissed.

From the majority opinion:

"Further, I attach importance to A's young age—as mentioned in the statement of appeal he was 19 years and 4 months old at the time when the driving took place—although this age is not so low that this fact alone would have been sufficient to justify a suspension of the sentence. I also attach importance to the fact that A is at present doing his military service which he commenced on January 10, 1963. If the prison sentence is made non-suspended the effect will be either that he must leave his military services in order to serve his sentence—with the result that his military service would be extended accordingly—or that he would have to serve his sentence after the military service has been completed in July, 1964."

May 15, 1957 (Norsk Retstidende 541 et seq.)

Defendant had been convicted of grand larcenies and sentenced to a term of imprisonment of 120 days, subject to deduction of 31 days for sustained custody. Defendant appealed, on the ground that the sentence should have been suspended. The Supreme Court decided to suspend the remaining punishment with a probation period of two years.

From the majority opinion:

"In considering the appeal, I have felt serious doubts, especially in view of the fact that Appellant has on several previous occasions been guilty of similar offenses, that he has a previous conviction for robbery (Penal Code Section 267) and that the conditions are now satisfied for applying a heavier punishment for repeated crimes pursuant to the Penal Code Section 263, first paragraph. Nonetheless, I have come to the conclusion that in view of the special circumstances in the case, it is justifiable to let the execution of the prison sentence be suspended in accordance with the Penal Code Sections 52 et seq. I have attached importance to the fact that the thefts concerned very modest values, that most of the stolen objects have been returned to their owner and that the offenses are partly of a casual nature. Appellant's previous convictions are not to my mind of decisive importance in view of the comparatively long period of time—almost 6 years—that has passed since his last offense. Appellant has been unemployed for some time when the offenses were committed; he has not obtained more permanent employment and one may suppose that the execution of the sentence, by depriving him of his employment, would have a particularly serious effect on himself, his wife and unsupported children. According to the information in the case, there is reason to believe that Appellant has received a strong warning and that he will now make a serious effort to mend his ways and not again come into conflict with the criminal law. I find it reasonable that, under these circumstances, he be given a last chance and I add that the Mayor of his home town has recommended this in a letter to the Supreme Court dated March 12, 1957."

APPENDIX

In one of our district courts a sentence of 52 years without parole was imposed on a first offender for the sale and possession of narcotics. There was no indication that this was an aggravated case and, when appealed, the Court of Appeals for the 10th Circuit agreed that the sentence was excessive but held that it was powerless to reduce the sentence imposed.

In another case, a 25 year sentence was imposed on an individual for the theft from the mail, forgery and cashing of a Treasury check in the sum of $380.51. The defendant's only prior convictions had occurred 20 and 7 years respectively prior to the theft of the check. On appeal, the Court of Appeals for the 5th Circuit also held that it had no power to reduce a legally permissible sentence; however, it reversed the conviction for legal error.

A 12 year term of imprisonment was imposed on a bank clerk for embezzlement of approximately $70,000, much of which he used for the benefit of harassed debtors of the bank. This defendant was not motivated by personal gain in most of the embezzlement; instead he manipulated the books of the bank to cover up the accounts of delinquent depositors. The judge was on assignment from another district and imposed the sentence without securing even a presentence report by the probation officer.

In 1961, two bank embezzlers were committed to the same Federal institution from the same district within the same week. Yet, sentenced by different judges, one received a term of six months, to be followed by eighteen months probation, and the other received a term of 15 years.

The above are not isolated examples. In the fiscal year ended June 30, 1969, the average sentence for transportation etc. of stolen motor vehicles varied from 13.5 months in the District of Massachusetts to 48 months in the Southern District of Iowa and 50.5 months in the District of Minnesota. Terms for forgery ranged from an average of 12 months in the Southern District of Georgia to 70.3 months in the District of Kansas. In fact, the overall average of time imposed varied from 24.2 months in the Middle District of North Carolina and 23.1 months in the Western District of Wisconsin to 74.7 months in the District of Maryland and 75.3 months in the Northern District of Oklahoma.

By Mr. CRANSTON (for himself, Mr. MONTOYA, Mr. ALLOTT, Mr. Mr. BAYH, Mr. BENTSEN, Mr. CHURCH, Mr. DOMINICK, Mr. GOLDWATER, Mr. HARTKE, Mr. HUMPHREY, Mr. INOUYE, Mr. JAVITS, Mr. KENNEDY, Mr. MAGNUSON, Mr. MANSFIELD, Mr. MCGOVERN, Mr. MOSS, Mr. MUSKIE, Mr. PELL, Mr. STEVENSON, Mr. TOWER, Mr. TUNNEY, and Mr. WILLIAMS):

S. 2230. A bill to designate a certain traffic circle in the District of Columbia as the "Benito Juarez Circle." Referred to the Committee on the District of Columbia.

BENITO JUAREZ CIRCLE

Mr. CRANSTON. Mr. President, on behalf of myself, Senator MONTOYA and our fellow cosponsors, I introduce today, a bill calling for the designation of a circle in Washington, D.C., as the Benito Juarez Circle.

Recently the Government of Mexico presented to this Capital City a magnificent statue of Benito Juarez, which stands on a grassy plot in the middle of the traffic circle formed by the intersection of New Hampshire and Virginia Avenues and 25th Street NW. The circle which grew out of urban redevelopment and the new street construction has no name.

Benito Juarez, a Zapotec Indian, led a revolt against the Spanish Conquistadors who continued to oppress the peasants long after the Republic of Mexico achieved independence. Juarez was an accomplished lawyer and served as Governor of Oaxaca before he became President of the Republic.

We believe that naming the circle would be appreciated by our neighbors to the south who have often honored our national leaders. It would also be a gesture of this Nation's esteem for a Mexican leader who is a hero to all Americans, North and South, who love freedom.

Mr. TOWER. Mr. President, I am pleased to join today in cosponsoring the bill which will designate the circle in the District of Columbia upon which the statute of Benito Juarez rests as Benito Juarez Circle. The Government of Mexico presented this statue to the United States as a gesture of friendship between our two people. Benito Juarez was a strong believer in freedom and the rights of the individual and a strong admirer of Abraham Lincoln, whose contemporary he was.

Benito Juarez stands as a symbol of what a man can do with determination. Against overwhelming odds, he fought against the French invasion of Mexico and the establishment of the empire. This occurred at the same time that we were experiencing the Civil War in this Nation. Sometimes nearly alone, he stood as a symbol of the hope of the eventual return to republican government in Mexico. Through his example and hard work, the Mexican people were eventually able to reassert their independence and chart their own destiny once again.

Benito Juarez made the Indians in Mexico part of the ruling class, being a Zapotec Indian himself. I believe that it is altogether fitting and proper that we honor Juarez in this fashion, for his example has meant much in this country as it has in his native Mexico. By honoring Juarez we honor all Mexicans everywhere who have given so much to the culture of our continent.

By Mr. McGOVERN:

S. 2231. A bill to require that appropriations be made specifically to the Central Intelligence Agency. Referred to the Committee on Armed Services.

CENTRAL INTELLIGENCE AGENCY

Mr. McGOVERN. Mr. President, I am introducing today a bill which would require that proposed appropriations, estimated expenditures and appropriations for the Central Intelligence Agency should be required to appear in the Budget of the United States. Each of these items would be shown as a single sum.

This bill would also prohibit the use of funds appropriated to any other department or agency of the United States from being spent by the CIA.

There can be no doubt that our Nation requires the services of a major intelligence agency—the function served by the CIA. And by the very nature of its activities, the CIA cannot afford to have its detailed programs made public through an itemized budget. But we have been led into a practice which is completely contrary to our democratic principles and perhaps to the Constitution itself by hiding the expenditures for this agency in the budgets of other government agencies.

The American people have a right to know the purposes for which their tax dollars are used. Their elected representatives have the right to decide the priorities of the Nation as expressed in the Federal budget.

The Federal Government provides the Nation with a supermarket of services, and the taxpayer should be able to decide how much he wants to spend on each of the various items including intelligence.

But we cannot, at present, decide how much we want to allocate for intelligence activities. If the CIA budget were a single item in the budget of the United States, we would be in a position to judge if we wanted to spend more on intelligence operations and clandestine wars than on improvement of the environment or on education or even on other aspects of national defense.

Thus, one major purpose of this legislation would be to allow the Congress to exercise its constitutional powers over Federal finances by knowing where the administration proposed to allocate each tax dollar. This would not endanger national security, because the only choice available to Congress would be on national priorities—the CIA as opposed to other agencies and programs—not specific CIA activities.

Congressional oversight of the CIA would remain as at present.

I believe that CIA funding is now so substantial that such a single line item for the agency in the budget would not communicate usable information to potential adversaries. Indeed it would merely demonstrate what is already known—that the United States maintains a massive intelligence operation.

The second major purpose for the legislation is to allow Congress and the taxpayer to know the exact amount of money going into other Government programs. As it stands now, some Federal programs and agencies must have greatly inflated budgets in which CIA funds are hidden. As a result, we are led to believe that some programs are better financed than, in fact, they are. We have no way of knowing what these programs and agencies might be.

Personally, I am concerned that some of the money apparently allocated to American agriculture is CIA money. The needs of the American farmer are not adequately met as it is, although some people are critical of our farm support programs. If CIA funds are being hidden in agriculture funds, our debate over aid to agriculture is unreal.

I cite agriculture as an example. The same would be true of any agency or programs whose budget was the hiding place for CIA funds.

Because it is a matter of simple commonsense, I propose that the one hidden item in our budget be made subject to congressional and public scrutiny. We are talking about hundreds of millions of dollars. The people have not only the right but the need to know how their dollars are spent.

Mr. President, I ask that the text of the bill be printed following my remarks.

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

S. 2231

A bill to require that appropriations be made specifically to the Central Intelligence Agency

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That commencing with the fiscal year beginning July 1, 1972—

(1) the Budget of the United States, submitted pursuant to section 201 of the Budget and Accounting Act, 1921, shall show proposed appropriations, estimated expenditures, and other related data for the Central Intelligence Agency, and

(2) appropriations shall be made to the Central Intelligence Agency in an appropriate appropriation Act.

For purposes of this section, proposed appropriations, estimated expenditures, and other related data set forth in the Budget for the Central Intelligence Agency, and appropriations made to the Agency, may be shown as a single sum with respect to all functions and activities of the Agency.

Sec. 2. Commencing with the fiscal year beginning July 1, 1972, no funds appropriated to any other Department or agency of the United States shall be made available for expenditure by the Central Intelligence Agency.

By Mr. McGOVERN:

S. 2232. A bill to provide increased educational assistance for police and correctional officers, and for other purposes. Referred to the Committee on the Judiciary.

POLICE EDUCATION ASSISTANCE ACT

Mr. McGOVERN. Mr. President, I am introducing today legislation to enlist education as a fundamental resource in the fight against crime. This legislation provides for Federal assistance for police education on a new and broadened basis reflecting the modern role of the policeman in our society. It is designed to use education to counter the serious divisions between police and public. This situation hinders law enforcement in America today.

The legislation is based on a recognition that the great need for police training and education is not a result of any major failing on the part of local police forces. This need results from the enormously complex role of the contemporary policeman. While "law and order" oratory continues from the political stage, the policeman remains on the firing line. To carry the burden assigned him today, he must ideally be law enforcer, administrator, sociologist, psychologist, family counselor, scientist, medic, social worker, race relations expert, and youth adviser. In addition, he should be an authority on alcoholism and drug addiction. And it helps if he enjoys filling out forms and spending endless hours in a courtroom.

On a minimal salary, he is expected to carry out his functions with the skill and wisdom of a lawyer and judge—all of this without higher education and without the full understanding and cooperation of the American public.

We must provide the education essential for fulfillment of the policeman's complex modern role. We must provide the necessary training for the man who deals directly with the violence, fear, and inhumanity in the complex reality of the street. And we must educate the public to the fact that the quality of our society depends greatly on quality law enforcement.

The Police Education Assistance Act that I am introducing today is designed to further these objectives. The inspiration for this legislation grew out of my own experience. Like thousands of other veterans of World War II, I was able to complete my education because of the

GI bill of rights. After the Second World War this country was faced with the widespread estrangement arising from the return of millions of men who, as a result of service overseas, had missed the opportunities for training at home. The Congress responded with the GI bill of rights. That bill was of fundamental importance in the prevention of serious national problems of unemployment, unrest, and dissatisfaction among the veterans.

The GI bill of rights has been one of the greatest instruments of social change in America in this century. For a whole generation of Americans, it provided the best chance for a better, more productive life.

On the model of the GI bill, this legislation—a kind of policeman's bill of rights—provides that for every 2 years of professional performance, an individual will receive 1 year of federally financed college education. He could receive as much as 4 full years of college. This would enable a policeman to pursue a broad range of studies consistent with his complex modern role. The education may be obtained at local colleges and universities, with the police officer remaining available to his local community for emergency duty.

The program will also be open to present or potential correctional officials. It should create a new resource for the neglected prisons of America.

The bill further provides that if he so desires, and it is agreeable to the Law Enforcement Assistance Administration, a would-be policeman or correctional official could receive a college education if he undertook to perform 2 years of law enforcement or correctional work for each year covered by the Federal grant. I intend to introduce legislation which would make this provision a formal feature of our higher education loan program.

For specialized study, the bill provides that police or correctional officials who demonstrate special interest and proficiency can receive financial support for sabbatical leave for a year. Under this provision, the broadest range of educational opportunity would be opened—including graduate study. A man could specialize in any of a variety of disciplines including criminology, police science, public administration, law, medicine, chemistry, psychology, or sociology. In the case of specialized training for correctional officials, we can provide the leadership in correctional reform to break the circle of criminal recidivism that presently accounts for two-thirds of national crime.

The new relationship of police training and higher education that will exist under the policeman's bill of rights should help to heal the divisions between police and public. As police become students on college campuses, they will share a new identity with students. As students on campuses become conscious of the intellectual and moral dedication inherent in police work, they will be able to share new identity with the requirements of order in a free society. Altogether, the present sense of difference which is the breeding ground of mistrust will be countered by the positive force of education.

A similar result can be expected in the urban ghetto. As police are better trained in relating to ghetto problems, they will find the public respect that results in the public cooperation so necessary to effective law enforcement. The hard fact is that the ghetto resident is the citizen who suffers most from crime. Nowhere is quality law enforcement more needed or desired. But until we offer the training that can bridge the cultural gap, difference will continue to breed discontent, and the natural community of interest that ought to exist will not be created.

There is an essential area of police education which must remain apart from any legislative effort. As policemen have told me, there is a wisdom of the street which no school can teach. It is a combination of instinct and experience and guts. Many policemen, who could teach the professors, will decide to forgo the type of assistance I am proposing. And rightly so. I do not think the ideal police department would be 100 percent composed of Ph. D.'s.

But the policeman's bill of rights holds a limited promise of a return to the better nature of our society. In 1944, by enacting the GI bill, this Nation expressed its gratitude to the men who had saved Western civilization from the onslaught of totalitarianism. At the very least, the policeman's bill of rights is a similar statement. It is the policeman who bears a heavy burden in protecting us from the dangers inherent in our society. We can do no less for him than we have done for the American GI.

Something essential can also be accomplished for the American people. By offering the education that insures quality law enforcement, we can have security with liberty. That is our challenge as a free people and our blessing if we succeed.

Mr. President, I introduce for appropriate reference a bill to provide educational grants for police and correctional officials.

I ask unanimous consent that it be printed at the conclusion of my remarks at this point in the RECORD.

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

S. 2232

A bill to provide increased educational assistance for police and correctional officers, and for other purposes

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 "Police Education Assistance Act".

DEFINITIONS

SEC. 2. As used in this Act—

(1) "Law enforcement" means any activities pertaining to crime prevention, control or reduction or the enforcement of the criminal law, including, but not limited to police efforts to prevent, control, or reduce crime or to apprehend criminals, activities of courts having criminal jurisdiction and related agencies, activities of corrections, probation, or parole authorities, and programs relating to the prevention, control, or reduction of juvenile delinquency or narcotic addiction;

(2) "State" means each of the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and American Samoa.

APPROPRIATIONS AUTHORIZED

SEC. 3. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

TITLE I—EDUCATIONAL GRANTS FOR POLICE AND CORRECTIONAL PERSONNEL

GRANTS AUTHORIZED

SEC. 101. (a) Part D of the Omnibus Crime Control and Safe Streets Act of 1938 is amended by inserting immediately before section 401 thereof the following:

"SUBPART I—GENERAL PROGRAMS AUTHORIZED"

(1) Part D of such Act is further amended by adding at the end thereof the following new subpart:

"SUBPART 2—EDUCATIONAL GRANTS

"SEC. 421. (a) The Administration is authorized to make payments under the provisions of this subpart to eligible police officers for programs of training or courses of study conducted by institutions of higher education or by other public or nonprofit private agencies or institutions offering training programs or courses of study particularly suited to law enforcement or correctional personnel approved by it for the purposes of this subpart.

"(b) The Administration shall make such payments to each eligible police officer, who applies therefor, at a rate prescribed by the Administration for each month of attendance, full time or part time, by such police officer at any such institution or agency, while he is maintaining satisfactory progress in such program or course. The Administration shall prescribe rates of payments under this subpart which are comparable to the payments for educational benefits to veterans taking comparable training under chapter 34 of title 38, United States Code. Such payments may be awarded for a period not to exceed four years.

"SEC. 422. (a) No payment shall be made to an eligible police officer under this subpart unless the application submitted by such officer—

"(1) contains assurances that he will continue to serve the law enforcement agency or correctional institution employing him, or will serve some other agency or institution approved by the Administrator, for a period fixed by such institution or agency but not to exceed two years for each year of training or study assisted through payments under this subpart; and

"(2) is approved by such law enforcement agency or correctional institution.

"(b) No payment shall be made to an eligible police officer under this subpart for any period during which he is enrolled in and pursuing a training program or a course of study paid for by the United States under any provision of law other than this subpart, where payment of such grant would constitute a duplication of benefits paid to the eligible police officer from the Federal Treasury.

"(c) No payment shall be made to any eligible police officer initiating his training program or course of study after June 30, 1981.

"SEC. 423. (a) Any eligible police officer who desires payments under this subpart shall file an application with the Administration in such form and containing such information as the Administration determines necessary.

"(b) The Administration shall require reports containing such information in such form and to be filed at such times as he determines necessary from each eligible police officer receiving payments under this subpart.

"(c) The Administration shall make arrangements with institutions of higher education and other agencies and institutions approved by him for the purposes of this subpart providing for reports to be filed in

the manner prescribed by it on the enrollment, interruption, and termination of the program of training or the course of study of each eligible police officer enrolled therein and receiving payments under this subpart. The Administration is authorized to pay to such agencies and institutions the costs incident to the filing of such reports. No payment shall be made to such agencies or institutions for the period during which such reports were not submitted as required by this subsection.

"SEC. 424. As used in this subpart—

"(a) The term 'eligible police officer' means any person who is employed or will, at the completion of such training, be employed by a State or local law enforcement agency or public correctional institution.

"(b) The term 'institution of higher education' means any such institution as defined in section 1201 (a) of the Higher Education Act of 1965.

SEC. 425. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subpart."

TECHNICAL AMENDMENT

SEC. 102. Section 520 of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking out the word "There" and inserting in lieu thereof "Except as otherwise provided in this title, there".

TITLE II—LAW ENFORCEMENT SPECIAL SKILLS PROGRAM AUTHORIZED

SEC. 201. (a) Part D of the Omnibus Crime Control and Safe Streets Act is further amended by adding at the end of subpart 2 thereof (as added by section 101 (b) of this Act) the following new subpart:

"SUBPART 3—SPECIAL SKILLS PROGRAM"

"SEC. 431. The Administration is authorized to make payments under the provisions of this subpart to eligible police officers for special courses of study conducted by institutions of higher education or combinations of such institutions which—

"(1) will provide such officers with new or perfected specialized skills; and

"(2) are approved by the Administration for the purposes of this subpart.

"(b) The Administration shall make payments to such eligible police officers awarded a study grant under this subpart at a rate equal to $10,000 per year plus $1000 for each dependent of such an officer

"(a) Payments may be awarded under this subpart for a period not to exceed one year.

"(d) The Administration shall allocate study payments under this subpart in such manner, insofar as practicable, as will provide an equitable distribution of such grants throughout the States.

"SEC. 432. Any eligible police officer who desires payments under this subpart shall file an application with the public State or local law enforcement agency or correctional institution by whom he is employed, in such form and containing such information as the Administration by regulation requires. The officer in charge of such agency or institution shall forward to the Administration such application as he wishes to nominate as exceptionally qualified to benefit from the study assisted under this subpart.

"(b) The Administration shall require reasonable reports containing such information in such form and to be filed at such times as it determines necessary from each eligible police officer receiving payments under this subpart.

"(c) The Administration shall make arrangements with institutions of higher education and other agencies and institutions approved by him for the purposes of this subpart providing for reports to be filed in the manner prescribed by it on the enrollment, interruption, and termination of the program of study of each eligible police officer enrolled therein and receiving payments under this subpart. The Administration is authorized to pay to such agencies and institutions the cost incident to the filing of such reports. No payment shall be made to such agencies or institutions for the period during which such reports were not submitted as required by this subsection.

"SEC. 433. (a) No payment shall be made to an eligible police officer under this subpart unless the application submitted by such officer—

"(1) contains assurances that he will continue to serve the law enforcement agency or correctional institution employing him, or will serve some other such agency or institution approved by the Administration, for a period fixed by the law enforcement agency or correctional institution but not to exceed two years for each year of study assisted by payments under this subpart, and

"(2) is endorsed by the officer in charge of such law enforcement agency or correctional institution as prescribed in the previous section.

"(b) No payment shall be made to an eligible police officer under this subpart for any year during which he is enrolled in and pursuing a training program or a course of study paid for by the United States under any provisions of law other than this subpart, where payment of such grant would constitute a duplication of payments paid to the eligible police officer from the Federal Treasury.

"(c) No payment shall be made to an eligible police officer initiating his training program or course of study after June 30, 1981.

"SEC. 434. As used in this subpart—

"(a) The term 'eligible police officer' means any person who—

"(1) is employed by a public State or local law enforcement agency or public correctional institution, and

"(2) has at the time of application for payment under this title been so employed by any such agency or institution for at least three years.

"(b) The term 'institution of higher education' means any such institution as defined in section 1201(a) of the Higher Education Act of 1965.

By Mr. DOLE (for himself, Mr. ALLOTT, Mr. BAKER, Mr. BELLMON, Mr. BENNETT, Mr. BUCKLEY, Mr. BURDICK, Mr. COOPER, Mr. CRANSTON, Mr. CURTIS, Mr. DOMINICK, Mr. EASTLAND, Mr. GOLDWATER, Mr. GURNEY, Mr. HARRIS, Mr. HATFIELD, Mr. JORDAN of North Carolina, Mr. JORDAN of Idaho, Mr. MANSFIELD, Mr. MCGEE, Mr. MCINTYRE, Mr. PACKWOOD, Mr. PEARSON, Mr. PERCY, Mr. RANDOLPH, Mr. STEVENS, Mr. TOWER, and Mr. YOUNG):

S.J. Res. 125. A joint resolution requesting the President of the United States to issue a proclamation calling for a "Day of Bread" and "Harvest Festival." Referred to the Committee on the Judiciary.

"DAY OF BREAD" AND "HARVEST FESTIVAL WEEK"

Mr. DOLE. Mr. President, I am grateful to my many colleagues who join me in cosponsoring a joint resolution to call on President Nixon to proclaim October 5, 1971, as the "Day of Bread" and the week in which it falls as "Harvest Festival Week."

Centuries before time was recorded the conclusion of the harvest period was a time to conduct ceremonies acknowledging the blessings of the adequate provision of food. In different periods of time and in various parts of the world this recognition has taken many forms. Even today harvest festivals are observed in many parts of the world—celebrated for the grapes that make wine, the reaping of grain for bread, or for the stores of meat or fish for the larder.

Bread signifies the harvest of all crops, of food itself. What better way to express it than in prayer, "Give us this day," and in recognition throughout the world. The "Day of Bread," therefore, has become a tradition. Twenty years ago it was officially recognized in Germany. Since then it has spread to many nations until it is now an "International Day of Bread." Last year President Nixon's lead was followed by the Governors of nearly every State and the mayors of many cities in proclaiming the "Day of Bread" as part of the "Harvest Festival Week."

Emphasizing the importance of bread as the symbol of Harvest Week is the constant improvement that is being made in the nutritional quality of wheat grown and the flour milled and the bread baked. Farmers, millers, and bakers have all worked to improve the quality of their contribution to the process of providing bread. Today it is one of the most nutritious foods available and a key factor in combating malnutrition throughout the world.

Of significance this year is the fact that 1971 marks the 30th year of enrichment, whereby significant amounts of B-vitamins—thiamine, niacin and riboflavin—and the mineral iron are added to breadstuffs as part of the popular diet of this Nation. As the 30th year of enrichment a greater dimension is brought to the "Day of Bread"—1971.

Mr. President, the "Day of Bread" and the "Harvest Festival Week" have the wholehearted support of virtually all elements of the wheat and wheat products economy. They will arrange for appropriate observances in each of 50 States and many cities, and they will coordinate their efforts with similar groups in many foreign countries.

Mr. President, I urge the Senate to give speedy approval to this joint resolution for a "Day of Bread" and "Harvest Festival Week."

By Mr. EAGLETON (for himself, Mr. ALLOTT, Mr. BAYH, Mr. BENNETT, Mr. BIBLE, Mr. BROOKE, Mr. CASE, Mr. CRANSTON, Mr. FONG, Mr. HARTKE, Mr. HATFIELD, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. JAVITS, Mr. MAGNUSON, Mr. MANSFIELD, Mr. MATHIAS, Mr. MCGEE, Mr. MCGOVERN, Mr. MONDALE, Mr. MUSKIE, Mr. PACKWOOD, Mr. PEARSON, Mr. PELL, Mr. RANDOLPH, Mr. SCHWEIKER, Mr. SCOTT, Mr. STEVENS, Mr. TAFT, Mr. THURMOND, Mr. TOWER, and Mr. TUNNEY):

S.J. Res. 126. A joint resolution to authorize the President to proclaim the month of January of each year as "National Volunteer Blood Donor Month." Referred to the Committee on the Judiciary.

NATIONAL VOLUNTEER BLOOD DONOR MONTH

Mr. EAGLETON. Mr. President, for the third consecutive year, I am introducing for appropriate reference the National Volunteer Blood Donor Month resolution. I am pleased that this year 33 Senators have joined me as cosponsors.

We have achieved notable successes in the field of medicine in recent years. But we still have not found a substitute for human blood. People who are ill and in need of blood are as dependent today on blood donations as they were 50 or 100 years ago.

There are about 100 million persons in the United States who are physically eligible to donate blood. Unfortunately, only about 3 percent of this number actually contribute their blood. The remainder of the 6.5 million units needed annually is made up by commercial blood—blood "donated" for money.

A recent survey revealed that the risk of serum hepatitis is 12 times greater when a patient receives blood from commercial sources rather than from voluntary donations. Clearly, we must do all we can to encourage more qualified volunteers to give their blood.

The American Association of Blood Banks, an organization representing more than 1,500 hospital and community blood banks in the 50 States, informs me that the Blood Donor Month campaigns in 1970 and 1971 helped to publicize this great need and to encourage donations by new volunteers. This resolution also has the support of the American National Red Cross, the American Medical Association, the American Hospital Association, and other national organizations.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1081

At the request of Mr. BAYH, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 1081, a bill to extend benefits to killed or disabled firemen and policemen.

S. 1113

At the request of Mr. BAKER, the Senator from Montana (Mr. METCALF) was added as a cosponsor of S. 1113, a bill to establish a structure that will provide integrated knowledge and understanding of the ecological, social and technological problems associated with air pollution, degradation of the environment, and other related problems.

S. 1457

At the request of Mr. SPARKMAN, the Senator from Illinois (Mr. STEVENSON) is added as cosponsor of S. 1457, a bill to amend the Clayton Act by adding a new section to prohibit sales below cost for the purpose of destroying competition or eliminating a competitor.

S. 1541

At the request of Mr. THURMOND, the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 1541, a bill to authorize the showing in the United States of documentary films depicting the careers of generals of the Army.

S. 1592

At the request of Mr. MCGEE, the Senator from Delaware (Mr. BOGGS) was added as a cosponsor of S. 1592, a bill to establish a Commission to investigate and study the practice of clear cutting of timber resources of the United States on Federal lands.

S. 1741

At the request of Mr. EAGLETON, the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 1741, a bill to provide increased unemployment compensation benefits for Vietnam era veterans.

S. 1828

At the request of Mr. DOMINICK, the Senator from Kentucky (Mr. COOPER), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Florida (Mr. CHILES), the Senator from Ohio (Mr. SAXBE), the Senator from Georgia (Mr. THURMOND), and the Senator from Kentucky (Mr. COOK) were added as cosponsors of S. 1828, the Conquest of Cancer Act.

S. 2023

At the request of Mr. BAYH, the Senator from Illinois (Mr. STEVENSON), the Senator from Idaho (Mr. CHURCH), the Senator from Maryland (Mr. BEALL), the Senator from California (Mr. CRANSTON), the Senator from Michigan (Mr. HART), and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 2023, a bill to provide for a procedure to investigate and render decisions and recommendations with respect to grievances and appeals of employees of the Foreign Service.

S. 2083

At the request of Mr. BAYH, the Senator from California (Mr. CRANSTON) was added as a cosponsor to S. 2083, a bill to prohibit the poisoning of animals and birds on the public lands of the United States, and for other purposes.

S. 2084

At the request of Mr. BAYH, the Senator from California (Mr. CRANSTON) was added as a cosponsor to S. 2084, a bill to discourage the use of leg-hold or steel jaw traps on animals in the United States.

S. 2185

At the request of Mr. BAYH, the Senator from South Dakota (Mr. MCGOVERN) was added as a cosponsor of S. 2185, a bill to carry out the recommendations of the Presidential Task Force on Women's Rights and Responsibilities, and for other purposes.

S. 2192

At the request of Mr. HRUSKA, the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 2192, a bill to provide for the admissibility of certain evidence in prosecutions for drug abuse, and for other purposes.

S.J. RES. 32

At the request of Mr. BAKER, the Senator from Nevada (Mr. BIBLE) was added as a cosponsor of Senate Joint Resolution 32, proposing an amendment to the Constitution of the United States with respect to the offering of prayer in public buildings.

S.J. RES. 62

At the request of Mr. GRIFFIN, the Senator from Montana (Mr. METCALF) and the Senator from Georgia (Mr. TALMADGE) were added as cosponsors of Senate Joint Resolution 62, to authorize display of the flags of each of the 50 States at the base of the Washington Monument.

SENATE RESOLUTION 145—SUBMISSION OF A RESOLUTION RELATING TO VOICE OF AMERICA BROADCASTS TO THE SOVIET UNION

(Referred to the Committee on Foreign Relations).

Mr. TUNNEY. Mr. President, I submit, for appropriate reference, for myself, the Senator from New Jersey (Mr. CASE) and 19 of our colleagues, the Senator from Colorado (Mr. ALLOTT), the Senator from Indiana (Mr. BAYH); the Senator from Idaho (Mr. CHURCH), the Senator from Indiana (Mr. HARTKE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from New York (Mr. JAVITS), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PELL), the Senator from Illinois (Mr. PERCY), the Senator from Wisconsin (Mr. PROXMIRE), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Pennsylvania (Mr. SCOTT), the Senator from New Jersey (Mr. WILLIAMS, JR.), and the Senator from New York (Mr. BUCKLEY), I submit a resolution that calls on the Voice of America to broadcast into the Soviet Union, in Yiddish.

The major thrust of any type of broadcast into a Communist country is psychological. It is an expression of support—support for free expression, support for free speech, support for free life. The Jews of the Soviet Union are denied, along with millions of other Soviet citizens, the basic freedoms which we enjoy, but above and beyond that, they are denied their religious heritage, their religious life, their religious practices. Yiddish broadcasts cannot promise to rectify these problems. But what they will do is strike a blow for those who are struggling against such repression. It will tell the Soviet Jews that although they are told that they are forgotten—they are not. That although the struggle for religious freedom is long and hard, they have friends who will stand by them. This is the message that Yiddish broadcasts will convey.

The United States has a clear choice to make. Either it stands for religious freedom or it does not. Either it will support the apolitical humanitarian struggle of oppressed peoples for their basic human rights—or it will not. Either it will stand and be counted with the Soviet Jews—or it will not. I think the people of this country want to be counted with the Soviet Jews and that is the message that ought to be broadcast into the Soviet Union, in the language of the Jewish people, Yiddish.

There has been, Mr. President, much discussion over the merits of this bill. We have been in direct conflict with the Voice of America and the U.S. Information Agency in our support of this proposal. Their arguments fall into five major areas. First, the USIA claims that

more Jews could be reached by broadcasting in the Russian language than in the Yiddish language. To reinforce this claim the Agency cites figures from the incomplete 1970 Soviet census and figures from the 1959 census. The figures show that 17.7 percent claimed Yiddish as their mother tongue and of those claiming fluency in an additional language, 16.3 percent claimed Russian and 28.8 percent other languages. These figures total out to 62.8 percent. For all other minority groups in the Soviet Union, the figure was well over 100 percent. The Soviet Union offers no explanation for this discrepancy but the explanation is really not very difficult to find. It is a very obvious fact that the political climate of the Soviet Union is not conducive to a Jew admitting voluntarily that he speaks Yiddish. It is more than reasonable to assume that the "missing" 37.2 percent simply declined to answer. If we are, however, to use census figures, then we should note that more Soviet Jews list Yiddish as the language they are fluent in than Russian and if the figures for those who speak Yiddish in addition to Russian are presumed to be accurate then we can place close to 40 percent of the Soviet Jews in the Yiddish-speaking category. There is simply no reasonable basis to believe that we will be losing any listeners if we switch to Yiddish broadcasts.

Second, the USIA has claimed that due to the many time zones and the widely scattered Jewish population, it would be "impossible to reach them with a single broadcast." This statement simply ignores the demography of the Soviet Union; 150,000 to 250,000 Soviet Jews live in the Soviet Central Asian Republics. The vast majority of the rest live in Latvia, Estonia, Lithuania, Ukraine, Byelorussia, Muldavia, and the other westernmost portions of the Soviet Union. This entire area is roughly equal to the combined size of California, Nevada, Utah, and Arizona, or, approximately 500,000 square miles, of a total Soviet Union land area of 8.6 million square miles.

The third USIA claim is that Yiddish broadcasts could not be initiated within the current time allotment for Jewish programing and without the construction of new transmitters at a cost of millions of dollars and a few years' time. The fact of the matter is, however, that the few 1-minute spot broadcasts that comprise the Jewish programing could be consolidated into one time slot. In addition to this, during the prime time hours of 7 to 8 p.m.—Moscow time—a total of six available transmitters are sitting idle, and seven are idle for 45 minutes of the hour. Certainly, Mr. President, there could be better time apportionment and program planning that would allow these broadcasts to be aired.

The fourth VOA claim is simply that present Jewish interest programing is sufficient. This argument simply cannot be supported by the facts. The overwhelming majority of Jewish news items are treated in short 30-second to 2-minute slots in the general news programing. They are spread unpredictably throughout the day in such a way that it would be impossible for a listener to know when he might hear a Jewish interest broadcast. These items, plus an occasional 2-minute feature and a 2-minute show on an early Sunday morning religious program, constitute the entire VOA effort in a program week of some 147 hours.

Fifth, the USIA points to the fact that the Israeli radio, Kol Yisrael, does not broadcast in Yiddish as proof that its own stand is well grounded. No argument could be so entirely oblivious to the issues. It is not difficult to realize the immense psychological impact of any broadcast that emanates from the Jewish homeland, Israel, Israel can claim this impact simply because it is Israel. The United States cannot. If we are to transmit our support—and our sincere desire to do this might be the real question we are discussing—then we must make that support obvious. If we mean to support the religious and cultural struggle of the Soviet Jews, then we must support them in the language of the struggle. The Yiddish broadcast will have immense psychological clout. They will say to the persecuted Soviet Jews that we do not go along with this "war of attrition" against your language and your culture. We will not sit idlely by but will stand in support of your right to religious expression. We will stand up and be counted with the Soviet Jews.

I think we should remember the words of the German pastor Martin Neimboller, who said of his actions during World War II:

In Germany the Nazis first came for the Communists, and I didn't speak up because I was not a Communist.

Then they came for the Jews, and I did not speak up because I was not a Jew.

Then they came for the trade unionists, and I did not speak up because I was not a trade unionist.

Then they came for the Catholics, and I was a Protestant so I didn't speak up.

Then they came for me . . . by that time there was no one left to speak up for anyone.

Mr. President, persecution of one group is persecution of all groups. An infection in any part of the world's body will, in time, spread to other parts. We are not immune. If we think we are, if we feel that we can afford to sit back because "it could never happen here," then it has begun to happen. We would be compliant in a crime that is no less dangerous and brutal for its subtlety, than were the ones we witnessed only 25 years ago.

Mr. President, this resolution will not end the injustice in the Soviet Union. It is only one step, but perhaps it is a big step. What it will do is help to end this country's injustice of silence concerning the Soviet Jews. Mr. President, I ask that we join the efforts being made by all segments of the Nation's Jewish population and many people of all persuasions, to help the Soviet Jews. In the House of Representatives, Representative WILLIAM RYAN has introduced this same resolution with the support of some 70 of his fellow Representatives. I hope that all of us will recognize the urgency of this action. Mr. President, I ask unanimous consent that the text of the resolution be printed in the RECORD at this point, together with an article from the July 3 Washington Post describing support for this legislation in the American Jewish community.

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

S. RES. 145

Whereas the Senate deeply believes in religious and cultural freedom for all persons and is opposed to infringement of these freedoms anywhere in the world;

Whereas abundant evidence has made clear that the Government of the Soviet Union is persecuting Jewish citizens and imposing restrictions that prevent the reuniting of Jews with their families in other lands;

Whereas many of the three million Jewish citizens of the Soviet Union speak the Yiddish language;

Whereas the Voice of America does not broadcast in the Yiddish language to the peoples in the Soviet Union, although it does broadcast to several population groups in the Soviet Union whose number are less than the total Jewish population;

Whereas the broadcasting by the Voice of America in the Yiddish language would bring to the Soviet Union's Jewish citizens knowledge of the worldwide sympathy for their plight and of the worldwide support for their being allowed religious and cultural freedom, as well as freedom to emigrate; and

Whereas the broadcasting by the Voice of America in the Yiddish language would constitute for the Soviet Union's Jewish citizens an act of great psychological support: Now, therefore, be it

Resolved, That the Senate urges the Voice of America to undertake broadcasts in the Yiddish language to the citizens of the Soviet Union.

YIDDISH, HEBREW PROGRAMS FOR VOICE OF AMERICA RADIO

NEW YORK.—The Anti-Defamation League of B'nai B'rith has urged Congress to pass pending bills authorizing the Voice of America to include Hebrew and Yiddish in programs now beamed to the USSR.

The current Voice of America program "ignores the more than 3 million Jews in the Soviet Union who have been deprived of their cultural heritage, and who would welcome support from abroad in their struggles to retain their ethnic identity," ADL national chairman Seymour Graubard said here.

He called on the State Department, which has jurisdiction over the program, to institute a minimum of two weekly broadcasts, one in Yiddish and one in Hebrew "for the culture-hungry Jewish audiences in the USSR."

Mr. Graubard noted that the Voice of America has been beaming its foreign language broadcasts for decades to people under Soviet domination in Eastern Europe and the USSR.

"Yet, the Jewish ethnic group, singled out by the Soviet authorities for special harassment and denial of rights, has never been represented," he said.

Mr. BAYH. Mr. President, I am extremely pleased to rise today in support of the resolution submitted today by my good friends, the junior Senator from California and my distinguished colleague, the senior Senator from New Jersey. This resolution requesting the Voice of America to conduct broadcasts to the Soviet Union in the Yiddish language, is significant. It would authorize a most important step which this country can take to demonstrate its

commitment to the aspirations of Soviet Jews.

More than a hundred resolutions and speeches, more than dozens of impassioned appeals to the Kremlin's rulers, the broadcast of freedom's message in their own language to the Jews of the Soviet Union would signify our willingness to do all we can to help the Soviet Jews in their struggle to keep their cultural heritage alive.

The Yiddish language is a rich and expressive tongue. It has been the language of Eastern European Jews for many centuries. It is the language of one of the most noble and most humane literature of Western civilization. Yiddish represents in our time, one of the last and the most important link to the great heritage of East European Jewish culture destroyed by Nazi barbarism in the holocaust of World War II. And it represents, for the Soviet Jews, one of the chief links with their heritage as Jews—with a tradition dating back many thousands of years.

Today in the Soviet Union, Yiddish books cannot be published, and the teaching of Yiddish has been forbidden. This apparent effort to stamp out the cultural identity of the Jews in the Soviet Union continues despite the fact that the Soviet Constitution guarantees to all national groups within the Soviet Union the free expression of their national heritages. This attitude on the part of the Soviet Government is contrary to the spirit and language of international agreements guaranteeing the basic rights of men—agreements which that Government is a signatory.

We then, in the United States, must do all that we can to help the Jews of the Soviet Union keep their heritage alive. And by conducting broadcasts in Yiddish, we can show them that we in the free world are supporting them, and that we will help them resist efforts to stifle their culture and religion.

HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE AMENDMENTS OF 1971—AMENDMENT

AMENDMENT NO. 237

(Ordered to be printed and referred to the Committee on Labor and Public Welfare.)

Mr. TOWER submitted an amendment intended to be proposed by him to S. 934, a bill to amend title VII of the Public Health Service Act to expand and improve our Nation's resources for the training of physicians, dentists, optometrists, pharmacists, podiatrists, veterinarians, and professional public health personnel, and for other purposes.

ADDITIONAL COSPONSOR OF AN AMENDMENT

AMENDMENT NO. 142

CHILD ADVOCACY PROGRAM

Mr. CRANSTON. Mr. President, I ask unanimous consent that my name be added as a cosponsor of amendment No. 142, submitted by Mr. RIBICOFF, for himself and Mr. MONDALE, to S. 1512, the bill to amend the Economic Opportunity Act of 1964 to provide for a comprehensive child development program in the Department of Health, Education, and Welfare.

I intend to submit this amendment this week in executive session of the Employment, Manpower, and Poverty Subcommittee which is considering S. 1512.

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

NOTICE OF HEARING ON AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940

Mr. WILLIAMS. Mr. President, I wish to announce that the Subcommittee on Securities of the Committee on Banking, Housing, and Urban Affairs will hold a hearing on the bill, S. 2216, to amend the Investment Company Act of 1940, as amended.

The hearing will be held on Thursday, July 15, 1971, and will begin at 2 p.m. in room 5302, New Senate Office Building.

Persons desiring to testify or to submit written statements in connection with this hearing should notify Mr. Stephen J. Paradise, room 5300, New Senate Office Building, Washington, D.C. 20510; telephone 225–7391.

RESCHEDULING OF HEARINGS ON S. 674

Mr. BAYH. Mr. President, as chairman of the Subcommittee To Investigate Juvenile Delinquency, I wish to announce that hearings on S. 674, to amend the Controlled Substances Act to move amphetamines and certain other stimulant substances from schedule III of such act to schedule II, which have been previously announced, have been rescheduled for July 15 and 16, 1971, at 10 a.m., in room 6226, New Senate Office Building, Washington, D.C.

Those who wish to file statements for inclusion in the record of the hearings should communicate as soon as possible with Mr. Lawrence Speiser, staff director and chief counsel of the subcommittee at 225–2951.

ANNOUNCEMENT OF PUBLIC HEARING

Mr. JACKSON. Mr. President, I announce for the information of the Senate and the public that on Monday, July 12, at 10 a.m., the Committee on Interior and Insular Affairs will hold an open, public hearing on the nomination by President Nixon of Richard Stockwell Bodman to be Assistant Secretary of the Interior for Administration, a new position created by Public Law 92–22. He is presently serving as Assistant Secretary appointed by the Secretary of the Interior with the approval of the President, and will continue to serve until Senate confirmation.

Any Member of the Senate or of the general public who wishes to testify at this hearing should so advise the committee staff. The hearing will begin at 10 a.m. in room 3110, New Senate Office Building.

Mr. President, I ask unanimous consent that biographical data concerning this nominee be printed in the RECORD at this point in my remarks.

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

BIOGRAPHY OF RICHARD S. BODMAN

Richard S. Bodman, 33, of San Francisco was appointed Assistant Secretary for Administration by Interior Secretary Rogers C. B. Morton, with the consent of the President, April 1, 1971. Mr. Bodman has been nominated by the President for the position of an Assistant Secretary of the Interior whose duties will include, among others, those of the present Assistant Secretary for Administration.

A certified public accountant, he was formerly a partner in Touche Ross and Company, one of the largest international accounting and consulting firms. He has been directing the firm's consulting practice in San Francisco and Hawaii for the past six years. Additionally, he served as Chairman of the firm's Committee for all Services to Banks, Chairman of the Management Services Long Range Planning Committee, and was a member of the Management Services Executive Committee governing the firm's nationwide management services practices.

A native of Detroit, Michigan, but a resident of San Francisco for the last ten years, Mr. Bodman is past Chairman of the San Francisco Chapter of the Management Services Committee of the California Society of Certified Public Accountants; past President of the Planning Executives Institute's San Francisco Chapter; and was a member of the National Panel of Arbitrators, American Arbitration Association. His background includes managing a wide variety of business and government administration projects, especially with large financial institutions.

He holds a BS degree in engineering from Princeton University and an MS degree in industrial management from M.I.T.

He is married to the former Helene Dunn and they have two sons, Taylor, 9, and James, 8.

NOTICE OF HEARINGS ON FULL OPPORTUNITY AND NATIONAL GOALS AND PRIORITIES ACT

Mr. MONDALE. Mr. President, the Committee on Labor and Public Welfare's Special Subcommittee on the Evaluation and Planning of Social Programs will hold a hearing on S. 5 on Tuesday, July 13. The bill, the Full Opportunity and National Goals and Priorities Act, was introduced by me and by the Senator from New York (Mr. JAVITS), and by a broad bipartisan group of Senators, on January 25.

NOTICE OF PUBLIC HEARINGS BEFORE THE SUBCOMMITTEE ON FLOOD CONTROL—RIVERS AND HARBORS

Mr. JORDAN of North Carolina. Mr. President, I wish to announce that the Subcommittee on Flood Control—Rivers and Harbors of the Committee on Public Works, of which I am chairman, will hold public hearings as follows:

On Tuesday, July 27, 1971, the subcommittee will receive testimony from the Corps of Engineers, the Soil Conservation Service, and other interested parties regarding the environmental impact of water resource channel improvement projects.

On Wednesday, July 28, 1971, the subcommittee will hear from the Corps of

Engineers on the need for increases in monetary authorizations for prosecution of certain comprehensive river basin plans. In this connection, anyone who wishes to testify or file a statement for the record, should contact Mr. Joseph F. Van Vladricken, professional staff member, or Mrs. Birdie Kyle, staff assistant, Subcommittee on Flood Control—Rivers and Harbors, Committee on Public Works, room 4206, New Senate Office Building, Washington, D.C., telephone area code 202/225–6176. The subcommittee will meet at 10 a.m. in room 4200 of the New Senate Office Building.

The subcommittee consists of the Senator from Indiana (Mr. BAYH), the Senator from Missouri (Mr. EAGLETON), the Senator from California (Mr. TUNNEY), the Senator from Texas (Mr. BENTSEN), the Senator from Kansas (Mr. DOLE), the Senator from Kentucky (Mr. COOPER), the Senator from Maryland (Mr. BEALL), the Senator from Connecticut (Mr. WEICKER), and myself.

ADDITIONAL STATEMENTS

IN DEFENSE OF THE MILITARY

Mrs. SMITH. Mr. President, in the coming search to determine first who got us into the Vietnam war and then later who lost the Vietnam war—and perhaps whether the same person or persons both got us in and lost the war by their decisions on policy, strategy, and tactics, which perhaps many of them now condemn as immoral—there will be an intensively political search for scapegoats.

The scenario that is about to unfold is not unlike that scenario that started 21 years ago in the U.S. Senate on the "Who and Why We Lost China" with all of its ploys of leaks of secrets, purloined documents, alleged deceptions, smears, intimidations, sensationalism, abuse of senatorial immunity.

Obviously it will be a long time before all of the evidence is paraded before the American public and before the witches can be exposed and the scapegoats conveniently found in this exercise of polemic indictment of our Nation. It will be well for Americans—those who do not become bored with the voluminous reporting—to withhold their indictment and conviction of the witches and scapegoats until all of the evidence is in, perhaps including that on the accusers themselves seeking the witches and scapegoats.

Let us not forget that the witch hunt that started 21 years ago ultimately ended with the greatest condemnation by the American public being made of the witch hunter himself after the full evidence was in, after a pitifully few Americans had the courage to challenge the witch hunter, and after we recovered from the national sickness of mental muteness he imposed on our Nation and people.

I urge, at the outset of the forthcoming quest for witches and scapegoats, a very serious sense of perception as contrasted to selfrighteous and fault finding emotions. I urge a sense of restraint and fairness.

An example of personal restraint and fairness is the refusal of former Undersecretary of State George W. Ball to posture an "I told you so" stance, even though he was a voice in the wilderness in urging our withdrawal from Vietnam during the controversial period. Perhaps subsequent developments proved the wisdom of his rejected advice, but he is refraining from rushing in to blame those who ignored his advice. At this moment he is standing rather tall amidst the actors of the current scenario.

He has evidenced this in more than one way. A recent example is his article in the July 5, 1971, issue of Newsweek. I commend it to Senators and to the American people for thoughtful reading and ask unanimous consent that it be printed in the RECORD.

I also invite the attention of Senators and the American people to a highly perceptive statement in the June 26, 1971, issue of the Economist. It incisively puts the forthcoming search in excellent perspective. I ask Senators not only to read it but to reread it and to study it carefully before they proceed to their own inquiry in this matter as jurors to hear the evidence and return the verdict.

Because it is an excellent charge to the jury, whether the jurors be Members of this body or the American public, 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:

IN DEFENSE OF THE MILITARY

(By George W. Ball)

It is time to speak up for the soldiers. For the past several years we have made them the scapegoats for our misfortunes. Yet, to continue to seek exculpation by loading the blame on the military is not only unjust, it risks harm to our security; so we had better take a lesson from the experience of France—something we lamentably failed to do when we committed our forces to Indochina.

In the bitter aftermath of the second world war the French Army and Air Force were given a dreary series of dirty and foredoomed assignments to sustain the remnants of colonial power, first in Syria, then Indochina, then Morocco, and finally Algeria. For almost a decade and a half, graduates of St. Cyr fought under the most frustrating conditions, taking frightful casualties, yet losing each conflict not from failure of valor on the battlefield but from a decay of political will in Paris, a decision by the politicians—reflecting public weariness—that the game was no longer worth the candle.

PERNICIOUS EROSION

By 1958 these agonizing experiences in far-off lands had loosed poisons throughout the whole military establishment. France had done what no modern democratic state should ever do; by pushing its armed forces into conflicts only fragilely supported on the home front, it had detached them from the national life of their country. For, as the politicians abandoned first one war and then another, the military suffered a pernicious erosion of their traditional role as the respected protectors of *la patrie*. Thus, inevitably they developed a festering resentment of the politicians who bartered away the gains hard won by their blood and toil, until the imminent abandonment of Algeria might have triggered a revolution had it not been for General de Gaulle on his white horse.

Today these pressures are beginning to be felt on the American scene. For ten years we have embroiled our armed forces in the wretched paddies of Indochina. Our valiant airmen have been killed in futile sorties against the north; our army has lost far more than the normal percentage of its professional officer corps. Yet, though there have been ample courage and devotion, Vietnam is now associated in the public mind not with heroes but heroin. We scorn our soldiers for being careless of civilian lives, overlooking the brutalizing character of colonial wars—while we condemn our Air Force because bombs strike whoever happens to be under them, refusing to recognize that the alternative to sophisticated weapons is more American boys dying in the jungle. Meanwhile we are assaulted by the scribblings of junior Clausewitzes designed to prove that the conflict could have been won long ago if only their patented recipes had been followed.

FATAL ERROR

No wonder our soldiers are demoralized as we speed our withdrawal from Vietnam. How could they be otherwise, since the fatal error was the choice of mission, not its execution; and what the McNamara documents plainly show is that the military did not push us into Vietnam half so much as the civilian theoreticians with theses to prove—doctrines of counter-insurgency and guerrilla tactics all reeking of the lamp?

Thus, we had better stop carping at the soldiers if we are to learn the true lessons of this ghastly experience. We had better be sure that, as a necessary and honorable element in our society, they are not pushed toward alienation or bitterness. Otherwise, though we are unlikely to repeat the shattering constitutional crisis of France, we may well drive our most gifted and competent officers out of our armed forces—men we shall desperately need when the going again gets rough.

As an urgent first step, let the universities tone down their derision; since, at the end of the day, the real "treason of the intellectuals" may well be judged not to be what Julien Benda had in mind—their abandonment of meditation for activism—but rather their role in undermining society's protective institutions. Part of the blame will no doubt fall on the young faculty cheerleader who encouraged the campus yahoos to identify all policemen as "pigs," but the most grievous offense will be the acadamicians' effort to off-load the sins of this melancholy time on the military, who, skilled more with the sword than the pen, cannot adequately defend themselves against eggheaded *francs-tireurs* blowing beanshooters from the sanctuary of their ivory towers.

[From the Economist, June 26, 1971]

THE WAY WE GO TO WAR: LBJ MAY HAVE DISSIMULATED MORE THAN MOST, BUT THERE ARE POWERFUL REASONS WHY DEMOCRATIC GOVERNMENTS ARE SELDOM PARTICULARLY OPEN WITH THEIR PEOPLE ON THE BRINK OF WAR

It was in the February of an election year that the President of the United States sent his personal envoy to talk, in what he intended to be great secrecy, to the prime minister of that battered country whose army was being bled white by an apparently unbeatable enemy. The envoy left the prime minister in little doubt about the American commitment: unless the military situation took a clear turn for the better, he said in his report two days later to the President, "it was finally understood that . . . you would intervene." But the President wanted to get himself re-elected, and kept on hoping, as men will hope in these circumstances, that something would happen to make an American intervention unnecessary; he was not being totally dishonest when he beat the Republicans that November by attacking them as the war party and claiming that his own policy was to keep America out of it. It was only in the following April that he eventually gave the order for the American army to go into action.

That election year was 1916; the President was Woodrow Wilson, the special envoy was Colonel House, and the prime minister Colonel House gave his undertaking to was M. Briand of France. The fact that there is a curious similarity between the course that Woodrow Wilson followed in 1916 and 1917, and what Lyndon Johnson did in 1964 and 1965, does not mean that the two situations were identical, or that the two men concealed their minds from the American electorate to the same degree; there is nothing quite like the Gulf of Tonkin resolution in Wilson's handling of his problem. But the similarity is close enough to make the point.

The point is that the way in which great powers, and especially great democracies, go to war rarely has much to do with the ideal of frank analysis, frankly debated, against which Mr. Johnson's performance in 1964 is now being retrospectively measured. The leaders of such countries are seldom open with public opinion, either about the likelihood of war or about the reasons why they think they may have to fight; they rely on victory to silence the questions people might ask afterwards. When President Roosevelt told the Americans in the 1940 election that "I shall say it again and again and again: your boys are not going to be sent into any foreign wars," he had already committed the United States to a huge programme of military aid to Britain, and had drawn up the Rainbow contingency plans for a simultaneous war with Germany and Japan, and was soon to slap on Japan the embargoes which some people still believe pushed the Japanese into their attack on Pearl Harbor. No doubt Roosevelt was hoping that war might even then be avoided; but that was not quite how he put it to the voters. And it is not only the Americans who get into wars this way. It is doubtful whether there has been any democratic leader in this century, except perhaps Chamberlain in 1939, who can claim to have taken this country into a major conflict with its eyes reasonably open.

But of course it is not enough to say that Mr. Johnson in 1964 was behaving in more or less the customary way, with maybe 15 per cent more deviousness than the par for the course. The question that matters is why men who lead democracies—even, and indeed especially, men who count themselves as standing on the left of centre—behave like this. That is the issue raised by the *New York Times's* publication of the secret documents about the origins of the Vietnam war, and the *New York Times* will not fully justify its action until it faces this larger issue. No doubt it is asking a great deal of men honourably but desperately obsessed with their own immediate agony to recognize that it is only one example of the general condition. But it is; we had better recognize that the problem which has burst out of its cage is the relationship between democracy and war.

If the issue can be recognized for what it is, the embarrassment that has been caused to the American government is not earth-shattering. No doubt there are plenty of people in Washington, and elsewhere, who are not going to like the new habits they will have to acquire if the Supreme Court does eventually tell the Administration that it cannot stop the *New York Times* and the rest from printing these documents. That could mean, on the worst interpretation for the civil servants, that the only sort of documents marked "secret" that the government will be able to call upon the law actually to keep secret will be those dealing with current military operations. That is not much of a restriction in a society as open as the United States, where most people are irreverent about the dignity of government and it is pretty easy for men in government service to walk out, with photostats in their pockets, to jobs in business or the universities. For the rest, the public servants whose job it is to think about the future will either have to circulate their ideas to fewer people, or put machine-guns around their filing cabinets, or just not commit their thoughts to paper; and foreign governments will have to get used to the idea that the private remarks they think they are confiding to the Secretary of State may be shared, surprisingly soon afterwards, by a dozen subeditors on their way to the composing room. This will not make the life of government any easier, but then the main business of newspapers in a free society is not to make life easy for governments. It is to publish as much as the law decides they can get away with.

There is no point in crying over the spilt milk of secrecy. The *New York Times* has done the news-making side of its job by testing the legal limits of the government's desire to conduct its affairs in private. It will have performed a much larger service if—but only if—its disclosures make people think about the whole subject of how democracies cope with the business of going to war.

It is not a sufficient explanation of why governments tell their people only a fraction of what the governments know, or suspect, to say that it is because people in general are reluctant even to think of war. Of course they are; except for the minority who like to measure themselves against fear, people hate the idea that they might be killed, or that their sons and husbands might, or even that they will have to spend a portion of their lives doing physically demanding and sometimes dangerous things a long way from home. But the real problem is not with public opinion in general. Most people are willing to acknowledge, even if they would not put it into so many words, that the question of war or peace is different from the other business they entrust to their government. They do not expect the government to deal with it by the procedures they hope it applies to its other business; they accept that it may not want to confide its calculations to its adversaries, or even to them; they know they are often told less than the whole truth, and sometimes a great deal less. It is not the full flower of the democratic idea, but it is what most people are prepared to live with until they can see what the alternative is. The odds are that there has been much less outrage, or even surprise, about the *New York Times'* revelations on the small streets of America and Europe than there has been among the politicians, or the people who write newspapers and produce television programmes.

And this is probably where the explanation lies. The way in which the democracies appear to sidle up to the question of war—crabwise, eyes averted, hand over mouth—is largely a result of the problem their governments have with one fairly small, but important, section of their population. The name this section of the population gives to itself is the liberal intelligentsia; it consists of that part of the middle class which, with a reasonably good education behind it, keeps up its interest in public affairs afterwards on the basis of what it calls left-of-centre politics. It is arguably the most influential body of opinion in the western world today. It is civilised, rational and concerned for others. As President Johnson and now President Nixon have discovered, no policy can be sustained for long without its consent. But it has one over-riding characteristic when it applies itself to the problems of international politics. Its emotions understand the misery of war, but it does not possess a matching intellectual grasp of the way cause and effect continuously operate among the powers of the world. Its feelings are international, but its reasoning remains parochial. Because it is so nice itself, it is unwilling to look too closely into the minds of the adversaries its country has to deal with. The result is that it is usually in favour of putting off unpleasant decisions: it prefers not to bring itself to face the possibility of war until it sees the knife at its own throat, or at least its immediate neighbour's.

This is the decent, kindly cross that democratic governments carry around their necks in the contest with the dictatorships. It was people like this who on August 3, 1914, heard Sir Edward Grey spell out the argument for war—the evidence of German ambitions, the commitment to Belgium, the defencelessness of France's northern coast—and could still believe, even then, that Germany was prepared to respect the integrity of Belgium and that the real trouble was Britain's "mad desire" to maintain the balance of power. It was the same body of opinion which delayed rearmament in the 1930s until it was within a few weeks of being too late, and which then made Chamberlain jump through the Munich hoop before it would recognise that Hitler was a problem for Britain too. These are the people who would have protested furiously if Chamberlain had described his war aims in 1939 as 70 per cent the preservation of British influence in the world, 20 per cent the need to keep Hitler inside Germany and 10 per cent the interests of the people of Poland; though that is about how the British government of the time saw it. They are the sort of people every country needs, but it is not hard to understand why they make governments shuffle and prevaricate—and sometimes lie—on the brink of war.

So Mr. Johnson prevaricated, and said one thing while making plans for another, and no one outside his group of intimates knew how likely it was that those plans would have to be put into action. It became fairly obvious quite soon afterwards, to quite a lot of people, that he had been playing a devious game; but that does not lessen the deviousness, or make it any less a cause for concern that leaders of democracies should so often find it difficult to be honest with public opinion at such moments. In the end, of course, like the others, Mr. Johnson will have to stand his judgment on whether the dissimulation he practised can be excused by the reasons which eventually persuaded him to go to war. And that brings the argument back to the question that has been virtually obliterated in the newspapers in the past week. The central issue of the events of 1964 is not Mr. Johnson's writhings; it is whether the United States was right or wrong about what was happening in Vietnam.

The evidence is not all in yet, and will not be for quite a time. But it is worth repeating what seemed to most people to be the case at the time, and still seems to be. This is that the war had been set in motion by a decision taken in North Vietnam, and that North Vietnam was supplying the apparently decisive margin of men and guns; that superb military efficiency of the communists had brought the South Vietnamese army to the point of collapse; that superb military efficiency tells you nothing about the political acceptability of the ideas it is seeking to enforce, as Hitler's army showed clearly enough; that the defeat of South Vietnam would have been followed by a similar process in Laos and Cambodia, and possibly elsewhere; and that for ten years already the world, not least the enemies of the United States, had been watching to see if the Americans would allow that to happen. That account of how things looked in 1964 may not be the final story; but it is an important enough part of it not to be left out of the row about those documents. After all, it is why Mr. Johnson acted as he did.

CRUSADE AGAINST DRUG ABUSE

Mr. SCOTT. Mr. President, on June 30, President Nixon announced another major step forward in his crusade against drug abuse. As a result of negotiations between the Republic of Turkey and our own Government, Prime Minister Nihat

Erim has decreed that within 1 year opium poppy will no longer be planted in Turkey.

Since assuming office, President Nixon has taken and initiated many significant executive and legislative steps in line with his commitment to halt the disastrous and heartbreaking toll of drug abuse in our Nation.

In the legislative area, these actions include his proposal of the Comprehensive Drug Abuse Prevention and Control Act of 1970, which the President signed into law in October of that year. I was gratified to take an active part in the passage of this vital consolidation and revision of our dangerous drug laws.

Three weeks ago, President Nixon sent an omnibus drug control legislative message to Congress proposing the creation of a Special Action Office for Drug Abuse Prevention within the Executive Office of the President. This Office would develop and coordinate the overall Federal attack on drug abuse. I am a sponsor of this omnibus package and am working for its early enactment.

Executive action by the President has resulted in the Bureau of Customs tightening our Nation's borders against the importation of narcotics, a nationwide program of drug abuse research and education by the Department of Health, Education, and Welfare, and increased efforts by the Department of Justice to halt the sale and distribution of dangerous drugs within our borders.

Throughout his administration, President Nixon has worked on the international level, both with individual nations and within the United Nations to halt the international trade in dangerous drugs. I believe that this agreement with the Republic of Turkey is one of the most significant and far reaching results of these negotiations.

I ask unanimous consent that the text of the President's June 30 statement announcing the agreement be printed in the RECORD.

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

STATEMENT BY THE PRESIDENT

In today's world, declarations of statesmanlike intent are not difficult. But instances of courageous statesmanlike action are few. Prime Minister Nihat Erim of Turkey has just combined the two. Today he declared that the Republic of Turkey, our friend and stanch ally within the North Atlantic Treaty Organization, would abandon a traditional agricultural practice in order to make a significant contribution to the well-being of the world. In the decree of his government, he announced that within one year, in accordance with the law of his nation, the opium poppy will no longer be planted. This farsighted step will provide an example which we trust will soon be followed by other nations.

For hundreds of years, tens of thousands of Turkish families have raised the opium poppy as a legitimate cash crop and for its edible oil and seed. Under a United Nations' convention, Turkey is one of those few nations permitted legally to grow poppy for export, yet Turkey is one of the few opium-cultivating countries in which the use of opium or heroin as an addictive drug is virtually unknown. Since the opium farmer has little if any knowledge of his part in the spread of a frightening international epidemic, a ban on opium production is a particularly difficult decision. These circumstances accentuate the vision and wisdom of this very important step. We know well the importance of the agricultural sector of Turkey's economy and we are prepared to put at the disposal of the Turkish government our best technical brains to assist Turkey's program to bring about a better life for the Turkish farmer. We are proud to assist in a program from which we all will benefit.

Secretary of State Rogers told me about his discussions in April with Prime Minister Erim and senior Turkish officials. Secretary Rogers understood fully the range of problems confronting the Turkish government and its people, and he was impressed by the efforts being made to solve them. We in the United States are obligated to a friend and ally whose firm military and political commitment to the welfare and defense of the Atlantic community is well known. My Administration is committed to aid nations and peoples prepared to help eliminate the narcotics menace. I pledge continued cooperation with Turkey in its efforts to increase the well-being of its people and to maintain its independence and security.

TRIBUTE TO A FORMER COLLEAGUE, TOM DODD, OF CONNECTICUT

Mr. BYRD of West Virginia. Mr. President, I rise to pay tribute to a former colleague, and friend, Tom Dodd, of Connecticut, who passed away May 23, 1971. Senator Dodd was a hard-working and effective public servant who served in this body with distinction for 12 years, starting in January 1958. Senator Dodd and I both began our Senate service on that date.

During his tenure in the Senate, and prior to it, Senator Dodd, who was a "fighter" for the causes in which he believed, carved out for himself a long and distinguished career. Starting as a senior law student at Yale, Tom Dodd organized a group of articulate students who made crusading New Deal speeches for Franklin D. Roosevelt. These activities brought this bright young student to the attention of Homer Cummings, who was designated to be appointed Attorney General. After his appointment, the new Attorney General persuaded Tom Dodd that the Federal Bureau of Investigation had a place for a young crusader such as himself. Tom Dodd joined the Federal Bureau of Investigation and stayed with that organization until 1934, when he left it to become Connecticut director of the National Youth Administration. In this capacity he helped to establish educational and job opportunities for depression-deprived young people.

I think it should be noted that Tom Dodd retained his interest in assisting the youth of this country during his service in the Senate by his effective and active chairmanship of the Senate Subcommittee on Juvenile Delinquency.

After getting the Connecticut NYA program organized and running smoothly, Tom Dodd joined the Department of Justice and served as a trial attorney until he was selected as chief trial counsel for the Nazi war crimes prosecution at Nuremberg, Germany. At the conclusion of these lengthy trials, Senator Dodd returned to Connecticut and practiced law in Hartford until 1952, when he was elected to the U.S. House of Representatives, where he served two terms prior to his election to the Senate.

Mr. President, Senator Dodd and I came to the Senate together in the class of 1958. He served his State and his country well and made many lasting contributions during his Senate service, especially in the field of foreign relations and internal security. He was an effective and courageous fighter, who took many stands which were unpopular at the time, but which, in many instances, subsequently proved to be correct. I recall one instance when Senator Dodd repeatedly called attention to Castro's Communist connections, even though certain segments of the press and the administration were still supporting the Castro regime. Within 2 years, both the administration and the press had come around to Senator Dodd's position, and both had dropped their support of Castro.

I could cite numerous examples of Tom Dodd's political and personal courage: however, I think that is unnecessary, since all who knew him were certainly aware of that attribute.

If there was any hallmark of Senator Dodd's Senate service, it was his courage to take the stand dictated by his conscience, regardless of the political implications.

Mr. President, I take this opportunity to express my deepest condolences to his devoted wife, Grace, and to the Dodd children. They have lost a devoted husband and father, and this country has lost one of its stanchest, and most effective fighters for freedom.

THE INDOCHINA EXPERIENCE

Mr. SYMINGTON. Mr. President, a thoughtful and constructive editorial, "The Indochina Experience," was published recently in one of the Nation's great newspapers, the Los Angeles Times. This editorial concludes:

What the country needs above all is reconciliation at home and an orderly rearrangement of its priorities and policies abroad. To both ends, the swift resolution of the war is essential. Congress can help move the country toward reconciliation of its citizens by the way it approaches the inquiry into the past.

And the President must help by deciding, for once and for all, to cut the United States loose from Indochina, and cut loose fast.

This administration has now joined the previous administration, however, in refusing to recognize the difference between a defeat and a mistake.

I ask unanimous consent that the editorial, published on June 27, 1971, be printed in the RECORD.

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

THE INDOCHINA EXPERIENCE

The President has said that if the United States does not get out of Vietnam in an honorable and orderly way, there would be a period of "furious recrimination" in this country.

Well, the furious recrimination is already upon us, and we aren't even out of Vietnam. The instant cause is the publication of the Pentagon papers. The reasons the government offered for suppressing them we think irrelevant. But much of the debate about them threatens to become irrelevant, too; and, worse than that, damaging.

"Who is to blame?" is becoming the com-

mon cry, and blame and self-excuses are flying between many of the actors in the long Vietnam tragedy, which is now dragging painfully toward its close. It is already distasteful; it will become damaging if inquiry into the past becomes a hunt for scapegoats.

Remember the scarring debate on the question "Who lost China?" It fouled the waters of American politics for several unpleasant years, and its stain persisted. (It is an irony of history, a rather bitter one, that President John F. Kennedy's memories of how the Democrats were blamed for getting out of China helped persuade him, and other Democrats, they had to stick in Vietnam. And the same fear of being blamed seems to haunt Mr. Nixon, seems to be keeping him stuck in Vietnam too.)

Who is to blame? is a dangerous slogan because the fact is that most Americans in the government, and most influential American institutions with a public voice, this newspaper among them, thought and argued at one time or another that the American national interest would be served by making the South Vietnamese government secure against communist insurgency and infiltration.

A few doubted all along. For the rest, doubts came at different points. Most doubt now; but only a few years ago—the war seems to stretch back endlessly into the past but it was really only a few years ago—public opinion held that as a matter of course the Communists had to be held back in Vietnam. It was the logical extension of the containment policy arrived at after World War II, though arrived at after bitter public debate, for many thought the United States ought to have a roll-back policy toward communism, and some thought we should have no policy at all. But a consensus was reached. And the consensus approved the attempt in Vietnam.

Unless the public debate over Vietnam is conducted in full recognition of that fact, we are going to have a bad time, a period of scapegoating. For the cause of this country's troubles in Vietnam was not the wickedness of this country's leaders, for they were not wicked; nor the impurity of their motives, for their motives were as pure as a statesman's can be.

What went wrong in Vietnam was simply that it didn't work as predicted. It was thought it would be easy, and it turned out it could not even be done at all, without running risks and incurring costs everyone agreed were unacceptable. It was thought that it would be cheap, and even the attempt to do it turned out to be expensive in terrible ways.

These are the basic facts about this country's involvement in Vietnam. What the Pentagon papers have highlighted is the way the government dealt with itself, and with the people, as time and events began to reveal the flaws in the Vietnam policy. The government deceived itself about its prospects, and, in so doing, it fell into deceiving the people. It was all human enough, and all tragic.

A congressional inquiry is being put together, to start with the Pentagon papers and to proceed, apparently, to the whole subject of the war. It probably has to be done: the documents published so far are only part of the story. We doubt very much that the main threads of the story will be changed, but the country will be restless until it's all told. It becomes important then to keep the telling of it under control, to keep it steady and sober and without recrimination. And such an inquiry has dangers beyond the inflammation of the public mind. It may divert the attention of Congress and the country even longer from the other problems of the United States' foreign policy. It is, after all, a backward looking exercise where the pressing task is to look forward.

What the country needs above all is reconciliation at home and an orderly rearrangement of its priorities and policies abroad. To both ends, the swift resolution of the war is essential. Congress can help move the country toward reconciliation of its citizens by the way it approaches the inquiry into the past.

And the President must help by deciding for once and for all, to cut the United States loose from Indochina, and cut loose fast.

VIETNAM POLICIES AND EXPERIENCES

Mr. SCOTT. Mr. President, Howard K. Smith, the noted television network commentator, on Friday night posed some interesting points. He said it was most important for the public to wait for the results to come in because, to quote him, "things may look different."

Mr. President, Mr. Smith makes a great deal of sense, particularly his reference to the Vietnam experiences and our policies. I ask unanimous consent that the editorial be printed in the RECORD.

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

ABC EVENING NEWS, HOWARD K. SMITH, JULY 2, 1971

As said in this space the other day, our Vietnam experience is ending, will-we or nil-we. Now, before it is over, is the time to weigh the effects of quitting.

For example, as said here before, don't expect the end there to solve home problems here. Only direct application to these problems will solve them, not the end in Vietnam.

Today, another warning: be wary of making scapegoats. As the London Economist said this week, the results are not all in; when they are, things may look different.

It is clear Kennedy and Johnson launched huge tactical mistakes. But that is common in all wars. Liddell Hart's History of World War II, just published, reveals enough monumental mistakes by our side to have strung Roosevelt and Churchill up—if they hadn't won.

The larger question about Vietnam—should we have tried to stop the Communists in the first place—is in my opinion still unanswered.

Suppose, stimulated by this triumph, the Communists proceed the same way with neighbor after neighbor . . . as, indeed Ho's writings suggest he wanted to do. The mood of this country could switch again. The flip-flop of Mr. Ellsberg from intolerant hawk to intolerant dove is a warning.

I have the uneasy feeling he could slip back the other way if the mood changed.

The part of wisdom is, keep emotions under discipline. Learn from our abysmal mistakes in Vietnam; don't compound them.

SUMMER IN THE CITY: A WARNING FROM THE NATIONAL URBAN COALITION

Mr. HUMPHREY. Mr. President, the problems of the cities are continuous. They overpower our sense of living and they remind us of how much remains to be done.

Of all the problems though, the most disturbing are those that lead to violence, to killings, to burnings, and to looting. We had such violence in 1967 and 1968. And we have had an additional scattering of instances of violence.

The National Urban Coalition, since 1967, has been involved in a concerted study and action program to bring the reality of our cities to policymakers.

In an article written recently for the Washington Post, Sol M. Linowitz, the national chairman of the Urban Coalition, said that the cities still possess all the elements that led to the violence of the 1960's. He noted the high unemployment, the flight to the suburbs, the crime, and the racial tensions that are, as he puts it, "inner city basic elements as explosive as ever."

I ask unanimous consent that the article be printed in the RECORD.

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

AS SUMMER APPROACHES, WILL THE CITIES ERUPT IN VIOLENCE?

(By Sol M. Linowitz)

As we get deep into summer there is a new tone in our American view of summer holidays. Along with our national celebration there is a note of fear. Today we can hardly pause to look back to Philadelphia and the Revolution of 200 years ago. We are worried about what will happen in Philadelphia now, this year, this Fourth of July. In our time we have learned to fear the combination of hot weather and crowds of people.

Since cities burst into flame in 1967 and 1968, we have seen a period of relative calm. People talk less of "the long hot summer" and we have a new cliche, "the cooling of America." But thoughtful observers have noticed that in the past year we have had serious trouble in Los Angeles, and the early spring began with days of civil disorder in the Brownsville section of Brooklyn, in Chattannooga, Tennessee, and elsewhere.

I do not know of any thermometer which can take the temperature of a city.

Nonetheless, I believe there are some figures which any American can read, and which we must all understand.

Here are some of the new factors and the critical temperature readings, if you will, which are now worse than they were when Watts and Detroit first exploded a few years ago.

High Unemployment: The national rate of unemployment is 5.6 per cent, but that figure is far higher in the inner city. Any rate of unemployment has to be doubled for blacks, Puerto Ricans, and Chicanos. In recent years we have not been able to accommodate into the working force the great numbers of young people coming to maturity who are the products of the "baby boom" after World War II. So we can double the rate again for young persons. There is also an "inner city factor" which operates where people have less education, less transportation, and often less motivation to try once again in the job market which has disappointed them so often. The grim fact is that the real rate of unemployment in the inner city is more like 36 per cent, and for young persons may be higher. In Baltimore the mayor estimates that in many neighborhoods unemployment is 40 per cent. In Newark in the inner city one in three persons is on welfare. In San Francisco there are large pockets of 35 per cent unemployment in black, Chinese, and Spanish neighborhoods. Seattle, of course, is bitterly hard hit. So it goes across the nation, somewhat better in newer cities, but always a problem in the older cities, Boston, Cleveland, Los Angeles.

The Kerner Commission which investigated the riots in our cities established that most of the crowds were composed of young people, from 18 to 25. They have nothing to lose and nothing to hope for if we do not offer them opportunity to work and to learn.

The Flight to the Suburbs: Since 1967 the movement of millions to the suburbs has produced massive social changes which we are just beginning to comprehend. By and

large the more established persons have fled to the suburbs, perhaps not so much in fear of crime or race trouble as in search of better schools and jobs. In recent years 80 per cent of the new jobs have been in the suburbs of the metropolitan areas. Our social system has left behind in the cities—or pushed into the cities, as some see it—the members of minority groups, the aged, the young, the jobless.

Ten years ago Washington was our only major city with a majority of black persons. Now it is joined by Newark and Gary in the North and Atlanta in the South, and many more cities are 40 per cent non-white.

The big city mayors are pleading for help and they must have it. We cannot expect to build up the outer metropolitan area, and leave behind millions without jobs, without proper schooling. These people will each year become more poor, more ignorant—and more angry.

Last year for the first time in 10 years the number of the poor in America increased by 1.2 million, according to an historic and shocking census report. This was a report on conditions in 1970, before the unemployment situation had worsened to its present level. For a decade the number of persons in poverty had decreased about 5 per cent a year.

In another historic report the census showed that in 1970 inflation had wiped out any pay raise benefits for the typical American family. This is the first time in nine years that the average American had less real purchasing power than he had the year before.

One thing this means is that it will be difficult to sell the blue-collar worker on higher taxes for more social programs—when he somehow finds that he has less actual cash than he had last year or the year before.

It is front-page news that "Job Outlook Is Bleak for Vietnam Veterans."

Two million or so men have returned from SE Asia, and about 10 per cent are unable to find work, and the number is rising. In the first quarter of this year 375,000 Vietnam veterans were unemployed, compared with 200,000 the year before. The rate for unemployed black veterans is at least 15 per cent.

The voters have been demanding and getting cutbacks in government programs and the war in Vietnam goes on, still costing billions as we withdraw troops. Since 1967 we have raised peoples' expectations, we have started many excellent programs, and now we are cutting back. The immediate cause of the Brownsville rioting and burning was reduction in help to poor people. There had been cuts in welfare, Medicaid anti-narcotic programs and in the foundation stone of our democracy—the schools.

All our recent past disorders had started because of some trigger event related to something the people of Harlem or Miami or Watts saw as offensive and evil. Brownsville did not explode because of the extension of something oppressive—such as a new police action. Brownsville blew up because of the withdrawal of something perceived as good.

Our nation is groaning under the burden of welfare programs, swollen to incredible size. But we need to make basic changes in our economy, in education, in training, and in bringing people to jobs and jobs to people, before we do anything too drastic in the way of cutting aid-for-dependent children. Who can measure dollars in one part of the balance and the emotion of angry welfare mothers in the other part of the balance?

There are some hopeful developments since 1967. Perhaps the most important is that more people are aware of the realities. But in all seriousness it does not appear that our response is yet anywhere close to the challenge.

The National Urban Coalition was formed in Washington in 1967 while fires still smouldered in some of our cities. Under the leadership of men like John Gardner and the late Whitney Young, businessmen and labor leaders, black and white and brown, worked with a sense of urgency and dedication to keep communications lines open among all the elements of the community. Now we have active local coalitions in many cities, and this is one of the hopeful new developments which is different from our situation in 1967. From the ghetto streets have come some great young leaders in the finest tradition of American democracy—men who can speak eloquently and bluntly of things they know to be true—and men who can still hope that the American system does not intend to leave our inner cities as wastelands of poverty, crime, drug addiction, and despair. These community leaders rightly warn us that the basic elements in the inner city are as explosive as ever.

There are many answers to what needs to be done. Some programs are underway, moving toward public-service employment, toward special programs for youth, toward revenue-sharing, and many other approaches to fulfill again the promise of America as a land of opportunity for all.

We simply have to find better answers. We have to face up to the answers we already know.

These are thoughts of hope and fear which I believe many Americans share as we approach the birthday of our nation. We are old enough to know what we have to do. We must recover the urgency and the will to make the American reality as great as the American dream.

WAR POWERS DEBATE

Mr. JAVITS. Mr. President, on July 4 the Washington Post published an article on the war powers debate, written by Irving Brant, the distinguished famous biographer of James Madison and a recognized authority on constitutional questions. Mr. Brant's article essentially is in the form of comment on and rebuttal of the testimony of Secretary of State Rogers before the Foreign Relations Committee on May 14.

The war powers question is perhaps the most profound issue now before the Senate. Mr. Brant has made a most important contribution to the national debate and I feel that Senators will benefit from familiarity with the article. Accordingly, 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:

NIXON VERSUS CONSTITUTION IN WAR POWERS DEBATE

(By Irving Brant)

The Nixon Administration's extraordinary attempt to halt publication of the Pentagon papers on Vietnam is entirely consistent with its recent opposition to congressional efforts to limit the power of Presidents to wage undeclared wars. In both confrontations, the administration has put deceptive secrecy at the heart of national war policy.

In his testimony before the Senate Foreign Relations Committee in May, opposing the bill presented by Sen. Jacob K. Javits (R-N.Y.) to make "rules respecting military operations in the absence of a declaration of war," Secretary of State William P. Rogers asserted that "the heightened pace, complexity and hazards of contemporary events often require rapid and clear decisions. The nation must be able to act flexibly and, in certain cases, without prior publicity.

"Unlike the presidency," Rogers continued, "the institutional characteristics of Congress have not lent themselves as well to the requirements of speed and secrecy in times of recurrent crises and rapid change."

The Javits bill does not challenge, but instead recognizes and regulates, the power of the President to initiate hostilities under certain circumstances inferentially sanctioned by the Constitution. Specifically, it affirms his power to repel sudden attack against American territory or armed forces, to protect the lives and property of American nationals abroad, and to comply with national commitments made by laws or treaties where immediate military action is required.

The bill requires that such unauthorized hostilities be reported promptly to Congress, and forbids their continuance beyond 30 days from their initiation, except as may be provided by Congress. Prompt committee action is compulsory and a final vote of both houses is required within the 30 days.

A PEACEFUL DEATH

Besides flatly opposing this bill as an attempt to "freeze" the allocation of war power between President and Congress (which it does, and rightly so), Rogers sought to dispose of it by recommending postponement to some quiet period "after the passions of Vietnam have faded into the past." That is, put it off until interest in it would have lapsed.

On the score of allocation of power, the Secretary's testimony was a partial re-run, in different tone, of the pugnacious remarks of former Under Secretary of State Nicholas Katzenbach in 1967, opposing the "National Commitments Resolution" to restrict the President's power to initiate war.

After listening to Rogers' argument, Chairman Fulbright and others accused him of taking the same stand as Katzenbach. This he vigorously denied; he differed completely with the former under secretary. And so he did—in tone and method—but they came to identical conclusions regarding the constitutional war powers of the Chief Executive and of Congress.

The Constitution vests "all legislative power" in Congress and grants the following specific powers in the military field: "To lay and collect taxes . . . to . . . provide for the common defense. . . . To declare war . . . To raise and support armies . . . To provide and maintain a Navy. . . . To make rules for the government and regulation of the land and naval forces."

Bearing also on the war power are these clauses concerning the President: "The executive power shall be vested in a President of the United States of America. . . . The President shall be Commander in Chief of the Army and Navy of the United States. . . . He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur" (and shall appoint ambassadors).

GRADUAL USURPATION

The excessive swelling of presidential power is an outgrowth of his blended functions as Commander in Chief and general manager of foreign affairs. Historically, in England, the king had sole power to declare and make war, subject only to Parliament's holding of the purse strings. The framers of our Constitution saw great danger in this. Kings had plunged the American colonies into ruinous wars with France. So they transferred the warmaking power to Congress, except, by implication, in situations of extreme emergency, leaving the President, as Commander in Chief, to conduct military operations.

However, the sweeping grant of executive power, and more specifically the power to negotiate treaties and to appoint and receive ambassadors, have made the President the primary formulator of foreign policy. Aided by technological developments, the result has been that the President has gradually combined his role as Commander in Chief (supervisor of operations) with his role as the

formulator of foreign policy, to the derogation of Congress. Undeclared wars, initiated by the President without congressional authorization, have shifted from emergency measures into instruments of foreign policy.

All this is in clear violation of the constitutional separation of powers and in defiance of specific provisions of the fundamental charter. The relative ease and speed of one-man action, compared with the deliberate process of legislation, have helped to produce this usurpation.

There is universal agreement that Congress can halt any American military operation either instantly or by ultimate effect, by refusing to appropriate money for its continuance. That remedy, however, is too drastic in its consequences for practical use unless in the gravest emergency. It is also universally agreed, based on debate in the framing of the Constitution, that the President has legitimate power to repel invasion or resist any sudden attack on the United States without a prior declaration of war by Congress.

Beyond this, all is contention, with a historical record of gradual and progressive extension of presidential prerogative. So far has this been carried that Katzenbach was able to say in 1967, with a measure of historical support but wholly without constitutional warrant, that declarations of war are "outmoded in the international arena." Hence comes the implied corollary that the President can initiate hostilities at his own discretion, under virtually any circumstances, without a declaration of war by Congress.

The position taken by Katzenbach in 1967, and by Secretary Rogers in 1971, is supported by a chain of events culminating in the Korean and Vietnam wars and the invasions of Cambodia and Laos. Taken together they add up to this fallacious maxim: "The habitual exercise of unconstitutional power makes it constitutional."

WHAT'S AN EMERGENCY?

In this contest for power the President has a decided advantage. As Commander in Chief, constitutionally charged with the conduct of military operation, he can bull things through by mere possession of the power to do so. That, in effect, is what Katzenbach told the Foreign Relations Committee in 1967, offering virtually no constitutional argument except precedent.

Secretary Rogers takes a different tack. Instead of bluntly declaring that declarations of war are obsolete, he undertakes to find constitutional warrant for this extension of presidential power. The result is a mountain of claims unsupported by so much as an anthill of evidence.

All that Rogers demonstrated, from the historical record, was that the framers of the Constitution reshaped the clause on making war to give the President emergency power to defend the country against sudden attack. Who denies such an emergency power? To prove his point, the Secretary actually cited the one explicit action in the Federal Convention of 1787 that completely disproves his contention. Said the Secretary of State to the Foreign Relations Committee (italics added):

"The Committee of Detail submitted to the general convention a draft article which gave the Congress the power 'to make war.' Pursuant to a motion by Madison and Gerry, this was amended to the power 'to declare war.' This change in wording was not intended to detract from Congress' role in decisions to engage the country in war. Rather it was a recognition of the need to preserve in the President *an emergency power*—as Madison explained it—*'to repel sudden attacks'* and also to avoid the confusion of 'making' war with 'conducting' war, which is the prerogative of the President."

That is exactly what is claimed by those who seek to limit presidential war power to accord with the Constitution. Elaborating, Secretary Rogers said that "the necessity to repel sudden attacks" was the only situation cited by the framers in which, in 1787, "it was evident that emergency action was required." He believed, however, that the power extended beyond the cited reason for it:

"But I submit that the rationale behind the concept is broader—that is, that in emergency situations the President has power and a responsibility to use the armed forces to protect the nation's security."

This conclusion, he said, was borne out by subsequent practice and judicial precedents, extending from 1801, when President Jefferson sent a naval squadron to protect American shipping from the Barbary pirates of North Africa, down to the Vietnam War.

The key word in all this—the word that wrecks the Rogers analysis—is "emergency." Grant that the President has power both to repel sudden attack and to protect the nation's security, in an emergency, by initiating hostilities against a foreign nation. How does that furnish constitutional warrant for American entry into the Vietnam War? That entry was discussed for years between the White House and the Pentagon. The war was decided upon and expanded with slow deliberation, contention, and doubt. In no sense was the initiation of hostilities an emergency action.

The only reason for not referring the Vietam decision to Congress was fear that the answer would be negative. The pseudo-approval obtained later, in the Gulf of Tonkin Resolution, was based on false representation and artful wording, designed to deceive Congress and build up an unconstitutional executive ploy.

Thus was initiated the longest war in American history, fought on the other side of the world, "justified" by the now-discredited "domino theory" of little nations automatically collapsing into communism without internal reason for it—a war built up soldier by soldier through the years until American casualties rose to the tens of thousands.

DEFAULT BY CONGRESS

What brought this about? Chairman Fulbright asked that question and gave the answer after that 1967 session with the rambunctious Under Secretary Katzenbach: The fact that Congress has acquiesced in, or at the very least has failed to challenge, the transfer of the war power from itself to the executive, is probably the most important single fact accounting for the speed and virtual completeness of the transfer."

Nothing like this was dreamed of in 1787, and for decades after the Constitution was adopted, declarations by American statesmen took the restrictive line on executive initiative. In 1796 Madison denied that the treaty power was unlimited, for that would mean that the President and Senate, acting together, could put the United States into war. President Jefferson in 1805 sent these words to Congress about a diplomatic crisis with Spain:

"Considering that Congress alone is constitutionally invested with the power of changing our condition from war to peace, I have thought it my duty to await their authority for using force in any degree which could be avoided."

Wrote President Monroe in 1824: "The President has no right to compromise the nation in any question of war."

Said Secretary of State Daniel Webster in 1851, rejecting a Hawaiian appeal for protection against threatened French aggression: "I have to say that the war-making power rests entirely with Congress; and that the President can authorize belligerent operations only in the cases expressly provided for by the Constitution and the laws."

Does not every word of that statement apply with full force in support of the Javits bill? That bill specifies the cases, sanctioned by the Constitution, in which the President can authorize belligerent operations to cope with an emergency. It retains the basic authority of Congress in relation to war and peace. It regulates the authorized deviations from the general constitutional rule. It does not interfere in the least with the handling of any emergency, from minor property damage to nuclear holocaust.

Rogers declared that although the Javits bill requires congressional action within 30 days, this would not ensure such action. Said he: "This raises another constitutional issue, that is whether the President's authority under the Constitution—for example, to protect the nation against sudden attack—could be limited or terminated by congressional action or inaction."

For sheer inanity, that is hard to surpass. Imagine Congress, with the nation under sudden attack by a foreign enemy, violating its own law in order to paralyze military resistance to that attack! To say that such a possibility points to the Javits bill's unconstitutionality goes beyond the bounds of reason. It is almost equivalent to arguing that the President has constitutional power, in an emergency, to lay and collect taxes for the common defense because there is no conclusive assurance that Congress will levy them.

The Javits bill gathers up the loose ends of divided governmental authority and puts them in order, in harmony with the intent of the framers and with the security and welfare of the nation. That is precisely what President Nixon does not want. Speaking through his Secretary of State, he seeks to subordinate Congress to the Executive in the exact spot where congressional authority should be paramount.

Secretary Rogers, of course, is in an almost impossible situation. He has to defend a Nixon concept of presidential power that surpasses the indefinite sweep exercised by Lyndon Johnson. The latter's Under Secretary of State, Nicholas Katzenbach, told the Foreign Relations Committee in 1967 that the Gulf of Tonkin Resolution was "as broad an authorization for the use of armed forces for a purpose as any declaration of war so-called could be in terms of our internal constitutional process." President Nixon consented to have the Tonkin Resolution repealed because, he said, he has ample authority for all his current and prospective actions without it. These include the Cambodian and Laotian "withdrawals by escalation" and threats of renewed bombing of North Vietnam on a huge scale.

With that limitless Nixonian concept in the background, Rogers evaded a question put to him by Sen. Frank Church (D-Idaho). The senator restated it:

"My question was what limits do you see to the President's unilateral authority as Commander-in-Chief to make war in foreign lands without congressional consent?"

Rogers: "Well, I am not really prepared to discuss hypothetically constitutional questions because it is too risky and unwise. In order to pass judgment on those matters you have to know all the facts."

Church persisted:

"What are the limits? There are no limits in this 40-page statement, Mr. Secretary, and you say you are not prepared to suggest any limits."

To which Rogers replied:

"The limits, it seems to me, are that in any situation that is not an emergency situation, or one such as Cambodia and Laos involving a war that has been going on for a long time, the President should come to Congress, consult with the Congress, and get its authorization for the initiation of war."

Except for the reference to Cambodia and Laos, that statement could have come from Chairman Fulbright. It was equivalent to saying that the Vietnam War, which did not begin in an emergency situation, properly required a congressional declaration of war. The Cambodian and Laotian invasions were regarded as legtimate only in the context of pre-existing war.

Sen. Claiborne Pell (D-R.I.) pushed the question farther. If the Javits bill had been in effect in 1965, he remarked, we would not be in this hassle because "we would have set forth policy before and you would be following it out. Would that not be a correct statement?"

Rogers replied: "I do not think I can answer that, senator." Why not? Because, one must conclude, the only possible answer would be "yes."

A WAR IS A WAR IS A WAR

Running all through the Johnson-Nixon line of thought, but not explicitly affirmed by Secretary Rogers, is the idea that a non-emergency *limited war*, of limited scope for limited purposes, does not require a declaration, even though that action would be required for a fullscale conflict. Katzenbach in 1967 differentiated the Tonkin Resolution from a full declaration of war. Said he: "We did not declare war. Our objectives are limited. We are there for a limited purpose."

The committee, in its comments on the hearing, refused to "accept the view that 'limited' wars can be undertaken by the executive without the consent of Congress." Justice Samuel Chase, in 1800, placed the whole subject under the legislative branch when he wrote in Bas v. Tingey, a case growing out of the limited naval war with France:

"Congress is empowered to declare a general war, or Congress may wage a limited war; limited in place, in object, in time." The distinction Chase saw was that a general war was restricted only by the international laws of war, while "if a partial war is waged, its extent and operation depend on our municipal laws."

Municipal (domestic) laws do not give rise to presidential power. The fallacy of the Johnson-Nixon position is easily demonstrated. Bomb Hanoi, bomb Haiphong, bomb the rice-field dikes of North Vietnam (as many have advocated) and the limited war in Vietnam would become a general war. Such an expansion, under the concept of presidential power to initiate only limited war, would require a declaration of hostilities by Congress. Has any such thought ever been expressed by either Mr. Johnson or Mr. Nixon, or any of their spokesmen? Not a hint of it.

Broadly speaking, Secretary Rogers takes the stand that, "except in emergency situations," decisions to involve the country in armed conflict should be arrived at "jointly" by the President and Congress. Does that mean by a congressional declaration of war? Perhaps so, yet he persistently gives Congress a minor role. Thus he says:

"There are few significant matters which can be accomplished by presidential order alone. The essence of presidential power is the ability to enlist public support for national policy, and in this the President needs the cooperation of Congress."

This means that in the matter of going to war, Congress is to serve as a sounding board for presidential policy.

EQUALITY AND WOMEN'S POLITICAL RIGHTS

Mr. PROXMIRE. Mr. President, on the main doors to the New Senate Office Building there stands a large medallion with the likeness of two American citizens, a man and a woman, and above them the motto: "Equality."

Mr. President, we are all aware, particularly after the speeches and celebrations this past Independence Day weekend, that the signers of the Declaration of Independence were motivated in large part by a passionate desire to see all men free and equal. King George's English Government habitually treated the inhabitants of the American colonies as second-class citizens, denying them equal treatment in representation before Parliament and limiting their opportunities to hold public office. That attitude resulted in the Declaration of Independence.

The Nation today also faces a movement toward independence in human relations. Women who, in the past, were tied to the home are now asserting their undeniable right to participate in all sectors of national life, including the political sector.

Just this past week, the Washington Post reported that President Nixon had appointed two women to top administration posts. I ask unanimous consent that the Post article be printed at this point in the RECORD.

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

TWO MORE WOMEN GIVEN HIGH POSTS IN ADMINISTRATION

(By Carroll Kilpatrick)

President Nixon yesterday named two more women to high administration posts—Rep. Charlotte T. Reid (R-Ill.) to the Federal Communications Commission and Brereton Sturtevant to be an examiner-in-chief of the Patent Office.

The President also nominated Peter G. Nash, solicitor of the Labor Department, to be general counsel of the National Labor Relations Board.

In picking Mrs. Reid for the FCC, the President accepted the resignation of Commissioner Thomas J. Houser, also of Illinois, who was appointed late last year to fill a term expiring June 30.

Houser's associates have said he wanted to be renominated for a full term but that the White House had made the commitment to Mrs. Reid.

Houser could not be reached for comment, and his letter to the President was not released. The White House cited "personal reasons" for his resignation.

The President requested Houser to serve until Oct. 1 to permit Mrs. Reid to continue in Congress until that time. She was elected in 1962.

In a letter to Houser, Mr. Nixon said: "I would hope we could call upon you again in the not too distant future." One source said he may serve as Mr. Nixon's Illinois campaign manager next year.

Mrs. Reid has served on the House Interior and Insular Affairs, Public Works and Appropriations Committees.

Miss Sturtevant is a partner in the Wilmington, Del., law firm of Connolly, Bove & Lodge, specializing in patent and trademark law. She is a native of Washington, D.C., and is a graduate of Wellesley College and Temple University Law School.

Nash, 34, is a native of Newark, N.Y., and is a graduate of Colgate University and New York University Law School.

Mr. PROXMIRE. Mr. President, we as Americans have gone a long way toward making women feel a part of the political process. We have a constitutional amendment providing for equal voting rights for men and women. Women hold high public office and exercise substantial electoral weight. Senate approval of the Convention on the Political Rights of Women, as a part of the Human Rights Conventions, would be one more step in the right direction. It would show the world that we stand four-square behind the political equality of women. I urge that this treaty be ratified.

FAULTY JUDGMENT OF DANIEL ELLSBERG

Mr. SAXBE. Mr. President, the best one can say about Daniel Ellsberg is that his judgment is faulty.

The columnists Evans and Novak disclose in today's Washington Post that this, however, is not a new affliction. They indicate that Mr. Ellsberg surrendered mentally to the Vietcong and the North Vietnamese in 1968. He apparently has been trying to justify this attitude ever since.

I ask unanimous consent to have printed in the RECORD a column entitled "A Tet Memo From Ellsberg," written by Rowland Evans and Robert Novak.

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

A TET MEMO FROM ELLSBERG

(By Rowland Evans and Robert Novak)

The flawed vision of Daniel Ellsberg in viewing the Vietnam war, a failing that was to have profound implications for his country, was laid bare in a private memorandum he wrote for the Pentagon on Feb. 28, 1968, spectacularly misinterpreting the just completed Communist Tet offensive.

Ellsberg, then a Vietnam expert for the Rand Corp. think tank, had been asked to interpret the bloody Tet offensive for the Defense Department's Office of International Security Affairs (ISA). His memorandum was apocalyptic: "I think that the war is over"—Communists taking over the countryside, the South Vietnamese government and army deteriorating, a rapid renewal of the Communist offensive. "Two months from now . . . things are going to get much worse," he said, precluding any possibility for improvement.

No prophecy could have been more false. In truth, the Tet offensive was the Communist high-water mark, triggering a three-year decline in their Vietnamese strength (which may now be ending). But Ellsberg exasperated with Saigon's corrupt government and shoddy army, could see in Tet only the vindication of his own warnings. It was a view widely shared in ISA, whose staffers wrote the Pentagon Papers.

Thus, the spectacular mistakes of Ellsberg's 1968 memo transcend the personal. His flawed vision is the flawed history of the Pentagon Papers. It is the all-is-lost syndrome that deeply influenced U.S. policy in the months after the Tet offensive and finally led to Ellsberg's disclosure of the Pentagon Papers.

For these reasons, Ellsberg's errors about Tet are worthy of examination. Herewith are some prophecies he sent the Pentagon along with the actual outcome of events:

Ellsberg prophecy No. 1: The Communist Tet offensive of Jan. 29-Feb. 29 was a prelude to "the takeover of the countryside" by the Vietcong, "inexorably sucking" South Vietnamese and U.S. forces "toward the environs of the towns and cities, away from the hamlets and outlying regions."

The actual outcome: by their desperate Tet attacks, the Communists depleted their forces in the countryside and have not adequately rebuilt them since.

Ellsberg prophecy No. 2: The Vietcong will be drafting ever more recruits, whereas South Vietnamese armed forces "will probably be considerably smaller." By April 1, Saigon's force "will be, at the most, 75–80 per cent of its actual strength in December, 1967, and quite possibly closer to 60 per cent" because of heavy desertions.

The actual outcome: Saigon forces *increased* by 122,000 the next six months, finally surpassing one million. In contrast, Vietcong recruiting in the countryside was never the same, and the Communist war effort was increasingly carried by regulars from the North.

Ellsberg prophecy No. 3: "It is the death of pacification"—Communist control of South Vietnam will steadily increase, never receding. By April 1, "U.S. sub-sector teams will be withdrawn from a number of districts, and a number of province towns will be under siege. Some will have fallen." Some 400,000 U.S. troops would be needed to prevent this.

The actual outcome: Far from U.S. teams being withdrawn or province towns falling, Communist control of the countryside steadily receded, without any increase in U.S. troops.

Ellsberg prophecy No. 4: "The best guess is that the VC (Vietcong) cadres are busy learning lessons from the initial attacks on how to do better next month." By early April, there will be another round of heavy attacks, including renewed pressure of the U.S. Marine base at Khe Sanh.

The actual outcome: The Vietcong were hopelessly decimated by the Tet offensive. Not since then have they even contemplated an offensive comparable to Tet. By April 1, the relief of Khe Sanh had begun.

Moreover, Ellsberg completely missed this point: By their brutal assault on villages, the Communists irrevocably diminished their own political base in South Vietnam. While Ellsberg's memo predicted post-Tet tensions would result in U.S. air and artillery attacks on South Vietnamese villages, U.S. sensitivity about such politically self-defeating tactics has greatly increased since then.

Flawed though Ellsberg's judgment was, however, this mentality—in high places in and out of government—helped erode U.S. support of the war and undermine a political consensus at home. Now, in the confusion wrought by publication of the Pentagon Papers, the mistaken Dr. Ellsberg is apotheosized while those who correctly interpreted Tet as a calamitous Communist setback are in disgrace.

THE WAR IN EAST PAKISTAN

Mr. TUNNEY. Mr. President, we are at war in East Pakistan. We have not declared war, and we have no troops in Pakistan, but we are, nonetheless, in the eyes of the East Pakistanis and Indians, at war. It is our own grainships that are carrying Pakistani troops to the East. It is our planes that are searching out the ragged, desperate, ill-armed Bengladesh, and then, finally, it is our guns, rifles, and ammunition that cut them down—wholesale and indiscriminately. Without our help, the Pakistanis would be severely hampered in their warmaking powers and because that is so, because we are effectively allying ourselves with one belligerent in a civil war, we ourselves are belligerents and our actions become all the more despicable.

There is only one position for the United States in this situation and that is as an advocate of peace. A relentless advocate for sick and hungry people. In order to place this country in a position to pursue this policy, I have cosponsored the Saxbe-Church amendment to the Foreign Assistance Act. This amendment would terminate all military and economic assistance to Pakistan, until such time as effective internationally supervised relief measures are instituted in East Pakistan. This, Mr. President, is intervention for peace and not war. It is intervention for life and not death, and it is intervention with food and medicines, not guns and planes. I do not see how it is possible to act for peace in the area while we are still actively engaged in providing the wherewithal for war. I believe that cutting off aid to force relief measures would be the most justified, indeed the required, use of our ability to pressure the Pakistan government.

But there is yet another dimension to the problem.

On Monday, July 5, an editorial appeared in the Washington Post concerning our trade record with Pakistan. The editorial was entitled "U.S. Arms for Pakistan: A Shameful Record." The editorial retraces how what we all were told over a period of days by the State Department. The editorial also describes the consequent shifts in the State Department line. It is by now, to many of us, an old story.

The other day the President's special assistant, Dr. Henry Kissinger, met a not so cordial welcome at the New Delhi Airport. The reasons are as good as they are obvious. India and Pakistan are treading the thinnest of wires between war and peace and at the same time we are continuing to supply arms to the Pakistanis. Our relationship with India is rapidly deteriorating, while at the same time we are providing the wherewithal for the slaughter of millions of East Pakistanis. Who is gaining by this? Certainly not war-ravaged West Pakistan. Was no lesson learned from the Biafran tragedy? Will we sit by, not idly, but as undeclared belligerents, aiding in the misery and death of millions of East Pakistanis?

In Pakistan after consistently being told that no arms were being shipped, we find more and more appearing. What right have we to equip the West Pakistanis to fight the Bengladesh? What right have we to intervene in a civil war for any reason other than humanitarian relief and rescue? If the State Department can answer these questions, I am sure we would all be very interested. But even if the State Department could provide answers, why should we expect that the American people would listen? Why should we think we are hearing the truth? The raw facts are, Mr. President, that either the State Department has no control over the foreign activities of this Nation, or else they choose to exercise that control with one hand while dishing out public information with the other.

We have, due to the inexcusable bungling of the State Department, backed ourselves into a corner in our relationship with India. At the same time that Mrs. Gandhi is resisting the urging of some of her countrymen to go to war, we are supplying the weapons to Pakistan that exacerbate the situation. I simply do not understand, Mr. President, whose interests we are serving by our actions in that area. We enable Pakistan to continue waging war, which in turn causes India to move closer and closer to a state of war, and all the while millions of East Pakistans are dying or being made refugees. It is not a role that we should be proud of.

Mr. President, I ask unanimous consent that the Post editorial be printed in the RECORD.

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

U.S. ARMS FOR PAKISTAN: A SHAMEFUL RECORD

The Pakistani army under order to crush the autonomy movement in East Pakistan on March 25. Soon after, as word of the army's appalling and indiscriminate slaughter began to seep out, the question was asked in Washington whether arms sold or given by the United States were being used and, further, whether the supply of these arms was continuing. Here is the record of the answers given in Washington.

April 2: The State Department said it could neither confirm nor deny reports from the scene that American equipment was being used.

On April 20, the fact no longer deniable, the Department informed Senator Kennedy that it had "expressed our concern over the use of American arms in East Pakistan"; it added that "arms acquired from a number of countries, including China, the U.S.S.R. and the U.K., also have been used."

Three days later: The Department specifically acknowledged to Senator Fulbright that "some M-24 tanks and F-86 aircraft have been observed in use in East Pakistan in recent weeks." It did not acknowledge that these tanks and planes had been employed against ragged desperate men armed with little more than rifles, if that.

April 6: Mr. Fulbright had asked Secretary of State Rogers for information on the "status of any current shipments" of military equipment to Pakistan. The following week a department spokesman, speaking to reporters, denied that the United States has "a large on-going military assistance program with Pakistan" and declared, "There is no—repeat—no equipment in the pipeline and none has been delivered" under a one-shot October, 1970, arms deal. Referring to a "modest" sales program dating from 1967 for "non-lethal military equipment, spare parts for equipment already in Pakistani hands and some ammunition," he said: "Insofar as shipments under these agreements are concerned, we have this matter under review."

April 14: An unattributed report appeared in The Washington Post saying that arms shipments were continuing but with minimum publicity. The next day, however, a department spokesman concluded a review of the subject this way: "In short, no arms have been provided to the Government of Pakistan since the beginning of this crisis, and the question of deliveries will be kept under review in light of developments."

April 20: The department told Senator Kennedy: ". . . none of these items [on the 1967 'non-lethal' list, including ammunition] has been provided to the Pakistan Government or its agents since the outbreak of fighting in East Pakistan March 25–26, and nothing is presently scheduled for such delivery."

May 6: Senator Fulbright was told: "In short, no arms have been provided since the beginning of the crisis and the question of deliveries is under review."

May 8: The Sonderbans, a Pakistani ship carrying arms to Pakistan, sailed from New York, without public announcement or public knowledge.

June 17: The State Department told reporters, as reported in this newspaper the next day, that "no deliveries of military equipment has been made to Pakistan since March 25, when the fighting began."

June 22: The department, responding to a story in the New York Times, acknowledged that two shiploads of arms were going to Pakistan and explained that they had been licensed before March 25. The same day the second ship, the Padma, sailed.

Six days later: The administration said it would allow further shipments of military material if licensed before March 25. The first reason cited was to apply "leverage" to induce the Pakistan Government (1) to bring about a political accommodation in East Pakistan (it has yet to do so) and (2) to take back the six million refugees who had fled to India (the flight continues, according to report, at a 40,000-a-day rate). The second reason cited by the administration—which

had earlier downgraded use of American arms in the carnage by saying Soviet, Chinese and British arms also were used—was to discourage Pakistan from shifting to other arms suppliers.

June 29: It was revealed that four or five more arms ships were scheduled. The Kaptai sailed July 2.

This is, we submit, an astonishing and shameful record, with two meanings. The first is that, for the shabbiest of political reasons, the United States is supplying military equipment to a brutal regime that has killed an estimated 200,000 of its citizens and driven some six million others out of their country. The second meaning must be read in the context of the current controversy over the Pentagon Papers, which turns on the public right to know and the government's right to conceal. Here we have a classic example of how the System really works; hidden from public scrutiny, administration officials have been supplying arms to Pakistan while plainly and persistently telling the public that such supplies were cut off. We assume that this deception is due to a combination of organizational confusion and bureaucratic dissimulation and not to deliberate deceit. The fact is: arms ships still sail. It is up to the President to stop them—assuming the government is serious about its proclaimed policy.

INTERNATIONAL TRADE SHOWDOWN

Mr. FANNIN. Mr. President, the Wall Street Journal recently published a lengthy article entitled "Trade Showdown, U.S. Readies for War on International Rules for Exports, Imports."

I have great respect for the Wall Street Journal; it is one of the world's great newspapers. As might be expected in the work of competent journalists, the Journal attempted to give a sampling of sentiment on both sides of the issue.

It is my desire to have the article placed in the RECORD, but first I would like to make some comments.

First, I note that the article cites figures supplied by the U.S. Government which portray a U.S. trade surplus for last year. It says:

> Officials still expect an export surplus for the full year, but they fear it will be slimmer than last year's $2.7 billion and so will do less to offset the big dollar outflow for military, investment and other purposes.

Mr. President, the $2.7 billion figure is the one compiled by the Department of Commerce, but it is a misleading figure because it includes foreign purchases made with American aid and it computes imports on an f.o.b. basis rather than the realistic c.i.f. basis. In reality, we had a $3.2 billion trade deficit last year.

The Senator from Louisiana (Mr. LONG), myself, and other Senators have been trying to get our Government to compile statistics in a meaningful way, but so far we have not been successful. Until we get reliable statistics we can not really comprehend the depth of the problem, and we cannot intelligently formulate answers.

The article also contains a very intriguing quotation from a British trade official who says we in the United States should not worry about our declining fortunes in world trade. This British official advises us to "have faith that one's scientists and engineers will come up with something else."

Mr. President, no one has much more faith than I in the ability and ingenuity of American scientists and engineers. But to base our foreign trade policy and to gamble our future on the premise that "one's scientists and engineers will come up with something" would be ridiculous.

Too many Americans already have their head in the sand hoping that we will "come up with something" to save us from economic disaster in the international trade field.

As Mr. Peter Peterson says, technology provides a fleeting advantage in today's world of rapid communications and transportation. This point is put across even more painfully in a joke—more truth than fiction—that has made the rounds in international trade circles. According to this joke, the Americans announce discovery of a wonderful new product one month, the Soviets follow this up in the next month with a claim that they discovered it first, and before another month is out the Japanese are mass-producing the item for sale in the American market.

Mr. President, in the Journal article we are given the view that the General Agreement on Tariffs and Trade—GATT—operates through "moral suasion" and the negotiations work through a "foot-shuffling and throat-clearing process."

I submit that we need something better than foot-shuffling and throat-clearing to solve our foreign trade problems. These are complex issues that call for efficient devices for resolution. If GATT does not provide the machinery necessary for the jet age, then let us set up a system that will do the job.

The article, in its discussion of the basic GATT principle, the most favored nation—MFN—principle, goes into some very interesting testimony from N. R. Danelian, president of the International Economic Policy Association:

> The U.S. generally honors this principle (MFN), it's widely agreed, but GATT permits so many exceptions for others that Mr. Danelian contends the U.S. has fallen into a "least-favored-nation position."

Mr. President, the United States is indeed in a "least-favored-nation" position in world trade.

A classic example of the failure of our trading partners to live up to the MFN principle, and the failure of GATT to remedy the situation, involves the European Economic Community discrimination against American citrus. The EEC violated the MFN principle by granting tariff reductions on citrus of 40 to 80 percent to four Mediterranean nations while still requiring full tariff on American oranges and grapefruit. Last year we fought unsuccessfully to have this discriminatory practice stopped. Earlier this year this body passed a resolution calling for an end to the EEC tariff discrimination on citrus.

So far the matter still has not been satisfactorily resolved. The Arizona-California citrus industry has lost millions of dollars worth of sales, because of the EEC discrimination.

Finally, Mr. President, I would like to point out that the article also includes the meaningless argument put forth by the EEC that its "average" tariff rates on industrial goods is lower than the U.S. average:

> The Common Market stresses that by January its rates on industrial goods will average 6.9% of their values, compared with the U.S. average of 10.9%.

Average tariff rates are useless gages of the amount of protectionism being exercised by any nation. The so-called averages are based on a series of assumptions and weighted values. It is easy to twist this kind of statistic into whatever shape you may want.

The Director General of GATT is quoted as saying that tariffs are no longer of much importance in trade, and I would have to agree with him.

Whatever the average tariff is in the EEC, or Japan, it still is virtually impossible to ship many important American-made items into those nations.

Japan has kept American television sets out of the Japanese market by nontariff barriers, redtape, and foot dragging. Likewise, American cars have been effectively excluded from Japan for so long that Japanese companies now have their home market sewed up tight.

The EEC may have some trumped up statistic to show it has a lower-average tariff, but this does not help American companies which are trying to market power transformers either in Europe or at home.

Most foreign manufacturers of power transformers have their home markets guaranteed. In most cases the foreign manufacturers are selling to their own government or government-controlled entity which purchases exclusively from domestic manufacturers. American firms are not allowed to enter the picture. Thus, the foreign manufacturer of large power transformers can get a good price from his own government and does not have to worry about outside competition.

These foreign manufacturers do not stop at their own borders, however. Since they enjoy a high home market price level, they can cut the price of large transformers which they ship to America. This is known as dumping, and it is supposed to be illegal. But foreign manufacturers have found that they can do it and get away with it except in rare cases. That is why I have sponsored legislation to improve enforcement of antidumping actions by the U.S. Government.

Mr. President, the Wall Street Journal article helps to focus attention on the growing seriousness of the international trade situation. My observations on the article are not criticisms, but expansions of the points under discussion.

I ask unanimous consent that the article be printed in the RECORD.

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

TRADE SHOWDOWN: UNITED STATES READIES FOR WAR ON INTERNATIONAL RULES FOR EXPORTS, IMPORTS

(By Richard F. Janssen)

The U.S. government is getting ready for a new cold war—against the rest of the free world.

The field is the presumably peaceful one of international trade. The object: updating the rules to give the U.S. an even break in the $300 billion-plus game of world trade.

Spurring Washington to act is a vision that Europeans deride as "the American night-

mare": a dark picture of a world in which other nations combine the newest technology with lower wages to rout U.S. goods from both home and foreign markets. Some in Washington see this situation being hastened by the fact that present trade pacts are enforced slowly, unfairly or not at all. Says one U.S. strategist: "How do they expect us to survive—as a nation of coupon-clippers and welfare recipients?"

U.S. officials and lawmakers complain that the present system doesn't stop Europe from offsetting the greater efficiency of American farmers through steep tariffs against U.S. foodstuffs and generous subsidies for its own farm exports. They charge, too, that existing rules let other countries encourage exports with special tax rebates, permit growing regional groups to do business duty-free among themselves and allow Japan to keep quota limits against numerous U.S. items while flooding the U.S. with autos, radios and synthetic textiles.

THE RESPONSE

In response, the U.S. is taking an increasingly tough stand in international economic organizations, is launching probes of foreign trade practices and is acting more vigorous against allegedly unfair imports ranging from French molasses to Japanese glass. Some officials hint, moreover, that the U.S. ought to cut its military commitments abroad unless there's less discrimination against U.S. wares.

The risks of the undertaking are high. The new American posture threatens to shatter the tenuous constraints against anything-goes competitive practices and protectionism abroad, and American planners concede that their trade aims could strain diplomatic and military relationships.

But they feel there's urgent need to plow ahead anyway. President Nixon was said to have been "bowled over" by the dismal trade projections of Peter G. Peterson, the head of his new Council on International Economic Policy. Mr. Nixon is devoting much time to the situation, aides report, in part because of the world political ramifications. The potential trade conflicts are greatest with Japan and West Germany, the industrial powers that he is said to deem "the key to peace in the world" now.

The first phase of the effort to revise the rules appears to be going smoothly. After Secretary of State William P. Rogers cautioned in Paris this month that "many in the U.S. aren't convinced" that the international trade rules are being applied fairly, the 23-nation Organization for Economic Cooperation and Development agreed to start sorting out the issues.

BRITISHER'S ADVICE: HAVE FAITH

But this may be the easiest phase. Serious negotiations may follow in two years or so, and this country's trading partners are determined to defend the status quo. "We understand the U.S. concern, but I'm not so sure we find it justified," says a British trade official in London. While admitting that imports are making sharp inroads in such key U.S. industries as autos, steel and consumer electronics products, he advises the administration "to have faith that one's scientists and engineers will come up with something else."

But administration men fear that any product innovations will swiftly be picked up for cheaper manufacture abroad, mainly through the foreign subsidiaries of U.S. businesses. "Technology gets transferred in a great hurry now," frets Mr. Peterson.

The apprehension is underscored by statistics showing that the U.S. imported $215 million more goods in April than it exported. Officials still expect an export surplus for the full year, but they fear it will be slimmer than last year's $2.7 billion and so will do less to offset the big dollar outflow for military, investment and other purposes.

Nor will technological progress do much good in the longer run, U.S. officials fear, if other countries continue to frustrate American export attempts by what these officials call unfair manipulation of the fair-competition rules of the General Agreement on Tariffs and Trade, the 90-nation authority based in Geneva. "The rules will have to be changed" or at least enforced more even-handedly, Treasury Secretary John B. Connally declares. Another official adds bluntly, "We've lost confidence in GATT. The Europeans have GATT going their way, and why the hell should they give it up?"

A MUTUAL MISTRUST

The mistrust is mutual. At GATT headquarters, a pale-green hilltop villa with a breathtaking view of Lake Geneva, an aide describes the Nixon administration attitude as "fantastically dangerous" for the future of a liberal trade order. He denies that the rules or their applications are at fault, and he says the Nixon administration simply doesn't understand GATT.

"I know the U.S. feels cheated" because GATT hasn't swiftly arrested, say, the surge of Japanese textile exports to the U.S., he says. "But GATT isn't a court with police to enforce laws," he says. Rather, it's "a forum for negotiations on the basis of agreed rules and procedures" set up in 1948.

GATT works mainly through "moral suasion," officials say. The most it can do if this fails, they add, is to sanction retaliation by an aggrieved member against an offending one, such as restoration of higher tariffs on some products. To insist directly that a nation stop a disputed trade practice, an official warns, "can unravel everything" by setting off a chain reaction of rule violations or drop-outs from GATT membership.

To use GATT successfully, a staffer chides, "a country must have a foreign-trade policy—and the U.S. has none." If the Nixon administration had had a clear concept of how to dovetail the U.S.-Japanese textile dispute with such other policy problems as steel imports and the return of Okinawa to Japan, the official suggests, "we could have helped" by providing a secluded setting and technical support for serious negotiations. But as in other trade issues, GATT analysts complain, the administration couldn't get agreement among such agencies as the Commerce, State and Defense departments and the Tariff Commission to do this.

The administration recognizes this internal disarray. President Nixon's formation early this year of the council headed by Mr. Peterson was intended to unify policy-making. And at least some trade experts in Washington agencies agree that GATT can't be expected to make crisp, legally enforced rulings. "It's more of a foot-shuffling and throat-clearing process," one says.

Nor is GATT totally "loaded against us," some officials concede. It provided the forum for the widely acclaimed lowering of tariffs that President Kennedy initiated, and it routinely extends a rule waiver permitting the U.S. to impose import quotas on cheese, cattle and other agricultural products. Rather than change GATT's basic rules, "we should seek to improve its operations," testifies Nathaniel Samuels, deputy Under Secretary of State for Economic Affairs.

Still, the U.S. dissatisfaction runs deep, not only in the administration but also on Capitol Hill and in the business community. The GATT rules "should be redrawn" because they date from the early post-World War II time when "the U.S. held a virtual monopoly over production and trade," asserts a report by the staff of the Senate Finance Committee. The GATT principles of fair play "are being violated right and left," charges N. R. Danielian, president of the International Economic Policy Association, which represents big U.S. companies.

As U.S. officials start exploring possible reforms, here are some complaints they'll likely make—along with objections they're apt to encounter from other governments:

Tariffs: The most basic GATT principle is that each member should apply to the products of all other members a duty no higher than it applies against the same goods from the "most favored nation." The same rule requires that any other "favor" granted the goods of one nation must also "immediately and unconditionally" be granted to like products from all others."

The U.S. generally honors this principle, it's widely agreed, but GATT permits so many exceptions for others that Mr. Danielian contends the U.S. has fallen into a "least-favored-nation position." The six European Common Market nations are allowed to levy duties against U.S. goods while collecting none from each other, for instance, and they have a growing network of more favorable rates for Mediterranean and African countries.

Europe yawns at the American alarm. The poorer, developing countries that make up two-thirds of GATT membership "need special measures to help them expand their exports," asserts Olivier Long, GATT's director-general, and others argue that GATT negotiations have brought tariff rates down so much since World War II that they no longer mean much anyway. The Common Market stresses that by January its rates on industrial goods will average 6.9% of their values, compared with the U.S. average of 10.9%.

Taxes: GATT permits "indirect" or sales-type taxes to be rebated to exporters and to be levied against imports, but it doesn't allow this to be done with such "direct" taxes as the corporate income tax. In the U.S. view, this gives a wide pricing edge to countries that rely on sales taxes, such as the European "value added tax" levied at various stages of handling goods.

The distinction is based on an "extreme and arbitrary" economic theory, the Senate staff report charges, and it notes that European countries have sharply raised their sales-type "border taxes" over the decades. But European authorities argue that their income tax rates have gotten roughly as high as American rates, and they suggest that if the U.S. really believes that having a stiff national sales tax is such a good thing it ought to enact one. (The administration is studying the possibility of a "value added tax" for the U.S., but apparently not with any great urgency.)

Nontariff barriers: This is the broadest and thorniest area of trade disputes. GATT has compiled—by asking each member to tell the nasty tricks others are pulling—a catalog of 800 such obstacles to free trade. They are often "complex and deep-rooted," says Robert McLellan, Assistant Commerce Secretary for Domestic and International Business, and are of "considerable concern" to the administration because they're often directed especially against U.S. products.

These restrictions are often subtle. Foreign governments may offer lower rates for their export goods than for other freight on state-owned railways, or they may encourage their exports industries to get together without fear of antitrust actions. There is a "general reluctance" among other nations to give up such practices, Commerce Secretary Maurice Stans says.

The U.S. has formally complained to GATT that Western European nations are developing uniform standards for electronic and electrical products. Washington suspects the aim is to exclude a wide variety of U.S. goods. A European trade official blandly denies that this is "necessarily" the motive. Instead, he argues that on such a highly technical matter "it is simply easier to get agreement among a few countries than among many."

TRIBUTE TO LOUIS ARMSTRONG

Mr. KENNEDY. Mr. President, I rise to pay tribute to Louis Armstrong. While his life served as a source of enjoyment for musiclovers everywhere, the true meaning of his work was borne in the joy and the inspiration he gave to all who strived to become expert jazz musicians. Louis Armstrong produced a spark for thousands of young musicians that has enriched the world's volume of musical treasures.

His contribution to the world's culture is as great as any made by a single individual throughout our history. Louis Armstrong will be long remembered for his creative innovations, and his outstanding ability to compose jazz renditions that firmly establish this art form—jazz—as the only native American music style.

With his music, Americans were brought closer to peoples of other lands as Louis Armstrong traveled around the world—an ambassador of music. Because his music will live on, Louis Armstrong will never be forgotten. I believe that is the most fitting tribute to this outstanding American.

LITTLE LEAGUE BASEBALL

Mr. BENNETT. Mr. President, the Little League baseball program is one of the finest things that has ever happened to the young boys of this country. At a time when so many of our young people are wasting their youthful energies through idleness and others are turning to violence, drugs, and crime, the Little League program provides an opportunity for over 500,000 boys to participate in a wholesome constructive activity.

Congress has realized that the Nation must have such programs for our youth, and in July of 1964, Little League Baseball, Inc., was chartered by an act of Congress. The objectives of the Little League program were spelled out in that congressional charter and read as follows:

> To promote, develop, supervise, and voluntarily assist in all lawful ways the interest of boys who will participate in Little League Baseball.
>
> To help and voluntarily assist boys in developing qualities of citizenship, sportsmanship, and manhood.
>
> Using the disciplines of the native American game of baseball to teach spirit and competitive will to win, physical fitness through individual sacrifice, the values of team play and wholesome well-being through healthful and social association with youngsters under proper leadership . . .

The objectives spelled out in the congressional charter express the spirit and vision of the Little League program. They give the people who work with the "Little Leaguers" a tremendous challenge and responsibility. It is because of these men who unselfishly give of their time and talents that the Little League program so successfully reaches its objectives each year. I feel that America owes a great debt to those people who do so much for her youth.

Morris A. Shirts, dean of the School of Education at Southern Utah State College, is such a person. For years he has given unselfishly of himself to further Little League Baseball. He has the spirit and vision of the program. Because of his interest in the program and his desire to see it continue to grow and improve, he has written a book especially for "Little Leaguers" entitled "Warm Up For Little League Baseball." This book, recently published by the Sterling Publishing Co., is written in basic English that boys from 8 years on up can read and understand. It explains in step by step fashion all of the fundamentals of baseball. Incorporated in this explanation are statements concerning the importance of safety, consistent practice, discipline, competitiveness, physical fitness, teamwork, and sportsmanship. By reading "Warm Up For Little League Baseball" a boy will not only gain a working knowledge of the fundamentals of baseball but should also catch the spirit of the Little League program. I commend Dean Shirts for the excellent job he has done on this book and express my full support and recommendation of it.

VETERANS BENEFITS: IMPROVEMENTS ARE REQUIRED, NOT CUTBACKS

Mr. TUNNEY. Mr. President, those who have served in the Armed Forces of our country and, particularly those who have undertaken such service in time of war, have earned the right to a full measure of gratitude from their fellow citizens. One expression of that gratitude is the national holiday we set aside in the fall of each year to pay homage to all veterans. But that gratitude is even more strongly and far more effectively shown through the oustanding system of benefits which we have provided for our veterans.

Altogether, the bill for veterans benefits now comes to some $10 billion per year. This amount covers the cost of compensation payments for those who have suffered disabilities in the course of their military service; it covers the cost of medical treatment for those same disabilities and also for other disabilities of veterans not arising from service-connected causes. It covers pensions for aged and disabled veterans. It covers vocational rehabilitation and education assistance for veterans recently returned from service. It covers benefits for the surviving widows and children of deceased veterans. And it covers a variety of other programs designed to meet the particular needs of our veterans and their dependents.

It is, in my view, absolutely essential that we continue and intensify our efforts to improve these veterans benefit programs. America did not always do a very good job of providing for those who had served it. In the early years of our history, veterans benefits were too often provided on an erratic and haphazard basis. In this century, however, and in particular in the past few decades, we have developed a comprehensive system of veterans benefit programs of which we can justly be proud. These programs have helped meet the needs of millions of veterans and have enabled our Nation to discharge the debt of gratitude it owes to those who have faithfully served it. As a matter both of national honor and of national self-interest, we must see that these benefit programs which have been carefully developed over many years are maintained and improved.

First of all, I am concerned that the Veterans' Administration medical care system not be allowed to deteriorate. That system is now one of the largest and finest health care organizations in the world. It consists of 166 hospitals, over 200 outpatient clinics, and a number of other facilities. On an average day, more than 80,000 veterans are being treated as inpatients in VA hospitals. In March of this year, more than three-quarters of a million outpatient visits were made to VA medical facilities. Thus, it is quite clear that the Veterans' Administration is a major and irreplaceable source of medical care for America's veteran population. In addition, the VA medical system serves as a training ground for a very substantial proportion of this country's doctors, nurses, and other health care personnel.

The need for an expanded and improved VA medical care system is clear. The rapid growth of our veteran population speaks for itself as does the critical need for the training of additional medical care personnel to meet the health needs of our country. There are also other, less obvious factors which must be considered. For example, a law enacted last year permits all veterans aged 65 or over to make use of VA hospital facilities for non-service-connected disabilities. This is highly significant since there are over a million World War II veterans who are now within 5 years of reaching age 65 and about 3 million who are within 10 years of that age.

I am, therefore, appalled at the mounting evidence that the Veterans' Administration medical care system is not only failing to expand to meet the growing needs it will face in the near future but is actually suffering from a shortage of sufficient funds to maintain current levels of operation.

Looking through a recent survey of VA hospital administrators, I find that time after time they complain of inadequate funding to meet the demands placed upon them. For example, the administrator of the Wadsworth VA hospital in Los Angeles says:

> We have not been allotted sufficient funds to meet the increasing costs of supplies, drugs, equipment and medications and increased usage of these items. Each day, this problem becomes more and more acute. We do not have sufficient funds to employ janitorial personnel needed to keep the hospital clean . . .

In the same vein, the San Francisco Veterans' Administration hospital reports:

> Our single most pressing need is adequate recurring funding to meet the demands placed on this hospital. It is difficult to see how a hospital as active as this one can sustain such a large deficit without a severe impact upon all aspects of our hospital operations.

These complaints of inadequate fiscal support of our VA hospitals are confirmed by the 1972 Federal budget which indicates that the funding provided for

1971 and the funding which has been requested for 1972 will require that, over this 2-year period, the average number of patients being treated as inpatients on any given day be cut by a total of 6,500. In view of the health care crisis the Nation faces, in view of the growing veteran population, and in view of the increased demands for medical services for veterans, this failure to fund adequately the VA medical care system can only be looked upon as the most shortsighted type of false economy.

It is, therefore, my intention to fully support legislation which will restore adequate funding for the VA hospital system and which will permit the improvement and expansion of that system. More, not fewer, VA hospitals are needed, and this is particularly true in my State which has a veteran population of approximately 3 million. The first step must be the immediate construction of a new VA hospital adjacent to Loma Linda Medical School in California.

Second, I support increased compensation payments for veterans with service-connected disabilities. Of all the various types of veterans benefits, disability compensation is the one which most clearly is based on a moral obligation of the Nation. These payments are designed to offset the loss of their earnings power suffered by those who have been disabled in the course of their service in this country's Armed Forces. It is true, of course, that these benefits were last increased less than a year ago, but the continuing effects of inflation in our economy have already taken their toll. I, therefore, feel that these disability compensation rates should be looked at again and should be appropriately increased.

Third, I support efforts to improve the pension system for our aged veterans and for the widows and children of veterans who have died from causes not related to their service. In a certain sense, these benefits typify the best aspects of America's feelings for its veterans. Unlike service-connected disability payments which have an aura of obligatory compensation for an injury suffered, pension benefits are more in the nature of a freely offered expression of national gratitude to those who generously came to the aid to their country in its hour of need. Unfortunately, however, pension payments are too often grossly inadequate. Under current law, for example, an unmarried veteran over age 65 and with no other income gets a pension of only $121 per month. This is well below the official poverty line for an aged individual and is clearly inadequate. In addition, our present pension law requires that pensions be reduced whenever the veteran's other incomes goes up. For those who get an increase in social security benefits, this can mean that part of what the Federal Government gives with one hand it takes away with the other. I believe that our veterans pension programs must be restructured to assure aged veterans and widows of veterans an adequate income and to eliminate once and for all the possibility of social security increases causing reductions in veterans pensions.

In general, I think it is clear that this is a time in our history when veterans benefit programs should be strengthened and improved. The number of veterans is increasing rapidly. The needs of veterans have never been greater as is evidenced by the shockingly high veteran unemployment rates and the indications that substantial numbers of veterans are returning from Vietnam with serious drug problems. I, therefore, find it hard to understand how a reduction of effort on behalf of our veterans can be contemplated. And yet, such appears to be the case as is shown by the evidence I mentioned earlier in connection with the medical program and by other indications such as the publicly announced decision to eliminate the highly successful direct loan program. I intend to do everything I can to prevent such cuts in our veterans programs from being carried out, and I will strongly support legislation which will not just maintain but will improve and expand those programs.

When the 1972 budget was prepared, the administration proposed a $2.5 million cutback in the community service programs authorized by the Older American's Act. The protests that followed caused them to reconsider and, as a result the budget request was increased $7.5 million over the amount appropriated for fiscal 1971. The budgets for some programs really were increased to their 1971 levels only, when, in fact, they have been expanded.

For example, the foster grandparent program administered by the Administration of Aging successfully employs more than 4,200 volunteers to work 2 hours each day, 5 days a week in caring for children in institutions. California has three programs where over 160 people serve. Participants talk, listen, read and play with the children. Older people participating in the program experience a new vitality by being able to look forward to meaningful work each day. As one of the people said, "I feel alive once again because I am loved by someone who needs me." The budget, however, proposed to cutback this program for fiscal 1971 by reducing the appropriation from $10.5 million to a mere $7.5 million. The proposed reduction received harsh criticism and the budget request was revised to the $10.5 million level appropriated for fiscal 1971. This, of course, would simply maintain status quo and should be viewed in light of the $25 million Congress has authorized for this program. Concern for our aged and our children is part of our National heritage. Programs such as this should not be contracted; they should not stand still; they should be expanded.

Sixth. The knowledge we have of the aged and the aging process along with ongoing studies need to be centered in one place where they can be coordinated and where they will have a spokesman in the executive branch to plead their cause to the Congress. Thus, I have cosponsored a bill, S. 877, which Senator EAGLETON introduced. This bill would establish a National Institute of Gerontology within the U.S. Public Health Service. This Institute would be the Nation's focal point for biomedical, social and behavioral research on aging and on special health problems of aging. Thus far we know little about the phenomenon of aging but an understanding of the basic causes of biological aging could conceivably be a step toward retarding or arresting the aging process.

Mr. President, I have outlined an ambitious program for aiding older Americans. Yet, ambitious as I believe it is, it is only a start. Adoption of all I have proposed would point us in the right direction only; it would not cure all of the problems older people face. When all of this is done, there will still be more to be done. Therefore, I ask that this Congress meet its responsibilities to older Americans. Let the 1970's be remembered for enacting the landmark legislation that the experience of the 1960's showed necessary.

THE PRESIDENT'S VIETNAM POLICY

Mr. FANNIN. Mr. President, it is evident that President Nixon has made great strides in working toward an end to the Vietnam war his administration inherited.

Efforts to force the President to capitulate to North Vietnamese demands have been ill conceived. It would be a sad mistake for any new efforts to be made at this time when we have new evidence of progress by the administration.

We are progressing now on all fronts. Our troops are withdrawing from Vietnam at a rapid rate, and combat details are about half what they were last year. Vietnamese troops are progressing in learning to take over their own defense. And in Paris, the North Vietnamese at long last have at least made a start in the right direction to bring about some acceptable settlement.

It is my belief that the great majority of Americans approve of the President's policy.

I ask unanimous consent to have printed in the RECORD a lucid editorial published in the Flagstaff, Ariz., Daily Sun of June 25, 1971. It contains some sensible arguments in support of the President, and I believe that it embodies the sentiment of the silent majority.

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

EXERCISE IN FOLLY

The United States Senate seems determined to try and tie the hands of President Nixon in his efforts to end American involvement in the Vietnam War.

The Senate, in approving a two-year extension of the Selective Service Act, added a "national policy" declaration calling for total U.S. withdrawal from Indochina within nine months, subject to release of all American prisoners.

For the past several weeks, the Senate has been seeking to approve establishment of a firm withdrawal date.

Senator George S. McGovern, South Dakota Democrat and an announced candidate for the Democratic presidential nomination, sought to have the cutoff date set for Dec. 31 of this year.

Three other measures involving definite dates for withdrawal have been proposed and defeated in the Senate.

On the other side of Congress, the House

of Representatives has on five occasions in recent weeks rejected the fixing of a specific date for withdrawal.

McGovern has insisted he will keep offering amendments seeking a firm withdrawal date. This is indeed an exercise in folly.

Opponents of the cutoff date object to giving Hanoi a definite date for withdrawal while they retain American war prisoners and refuse to bargain for peace in good faith.

President Nixon has steadily reduced the number of Americans involved in Vietnam. He is keeping his promise to end American involvement in Southeast Asia.

He has offered the North Vietnamese an honorable peace plan, including an immediate ceasefire. But the North Vietnamese have rejected such a plan.

It could well be that those advocating the definite withdrawal date, most of whom are Democratic presidential hopefuls, are seeking to make some political hay from such a move.

If they let President Nixon end American involvement in his own way, they realize it will be politically advantageous for the incumbent in the 1972 elections.

Mr. Nixon isn't playing politics with the war, however. He has obviously been working on a well-planned program for ending American involvement. A main factor was to leave South Vietnam so that country could defend itself.

Carrying out this project couldn't be done overnight. But with each passing day, the war is becoming more a South Vietnamese war than an American war.

The President is meeting his timetable. There is no reason for him to expose his entire plan to the enemy. To do so would be foolhardy.

THE VIETNAM ELECTIONS

Mr. STEVENSON. Mr. President, the President's National Security Adviser, Mr. Henry Kissinger, recently completed a 2-day visit to South Vietnam.

I am heartened to learn that a sizable portion of that visit was devoted to meetings between Mr. Kissinger and a number of important South Vietnamese who do not support President Thieu's bid for reelection. It is especially significant that Mr. Kissinger met separately with the two men regarded as President Thieu's strongest opponents—Gen. Duong Van Minh and Vice President Nguyen Cao Ky.

These and other meetings with opposition leaders will help to convey to the South Vietnamese electorate that the United States does not oppose the candidacy of Ky or Minh, and is serious about implementing the stated policy of strict neutrality in the forthcoming elections.

But much more needs to be done if we are to dispel the notion that a Thieu victory is inevitable because the United States is providing him with massive campaign assistance. This morning's Washington Post reports that two other opposition leaders with whom Mr. Kissinger met, Senator Vu Van Mau and Prof. Nguyen Van Bong, "said that simple declarations that the United States would not become involved and that the election must be fair are insufficient."

Thus far, the administration has done little else. I hope that Mr. Kissinger's visit results in vigorous and concrete action to back up our stated policy of noninterference.

Mr. President, I ask unanimous consent that the article written by Peter Jay and Peter Osnos and published in the Washington Post of July 7, 1971, be printed in the RECORD.

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

FAIR VIETNAM ELECTIONS NEEDED, KISSINGER TOLD

(By Peter A. Jay and Peter Osnos)

SAIGON, July 6.—Presidential adviser Henry Kissinger was told by a prominent government official here yesterday that while security in South Vietnam has markedly improved, the Thieu administration "still does not control the people."

The observation was made by Prof. Nguyen Van Bong, director of the National Institute of Administration during a half-hour meeting with Kissinger, which Bong recounted in an interview today.

Bong said he told Kissinger that the "fairness" of the presidential election was "more important to the future of Vietnam" than whether President Thieu or his main opponent, Gen. Duong Van (Big) Minh is the winner.

KISSINGER PLEDGE

"What Vietnam needs most is a leader," Bong said, "genuinely chosen by the people," in order to instill greater faith in the central government in the political struggle with the Communists.

Whatever the outcome of the election, Bong said Kissinger told him, the United States will not "desert" South Vietnam, either militarily or economically, especially after investing 50,000 lives in its defense.

Bong was one of five leading South Vietnamese that Kissinger saw yesterday, before leaving on the next leg of his around-the-world, fact-finding trip. Others were Vice President Nguyen Cao Ky, Gen. Minh, senate president Nguyen Van Huyen and Sen. Vu Van Mau.

Mau, leader of the Buddhist slate that came in first in last August's senate election, refused to discuss details of his conversation with Kissinger, but freely aired his views on the election—presumably that main topic covered during the session.

MAIN PROBLEM

He said he was very worried about the fairness of the contest in light of President Thieu's handling of campaign preparations thus far. There is a "general feeling" among the people, he said, that regardless of how they vote, Thieu will be the winner.

Expressing a view much like Bong's, he said that with improved security countrywide, the main problem now is to assure "true representation" of the people. Because they remain "indifferent to government activities."

Bong, 42, is one of the most respected political intellectuals in Vietnam. He is considered a mild critic of the administration he works for. Mau, 57, is a strong opponent of the government and a staunch Minh backer.

Kissinger's meeting with the two were clearly intended to show American interest in the views of moderate opponents of the government, particularly concerning the election. Bong said Kissinger emphasized the American commitment to a fair election.

Doubtless Kissinger made the same point in a 2-hour meeting Sunday with Thieu.

VIETCONG THREAT

Neither Bong nor Mau believes that North Vietnamese military action is as great a threat in the coming months of U.S. withdrawal as Vietcong proselytizing, political infiltration and guerrilla activity.

Calling up a basic, but often forgotten maxim of the Vietnam war, Bong said security is only the first step in pacification. "The next step," he said, "is political," bringing the people into a governmental system in which they can genuinely participate.

Discussing the role of the Americans in the elections, both Bong and Mau said that simple declarations that the U.S. would not become involved and the election must be fair are insufficient.

"The Americans must do more," said Mau, but he declined to say what. Asked if Kissinger's trip was a step in the right direction, Mau replied, "I hope so . . . it was not a pleasure trip."

"The people," said Bong, "are more interested in local politics than whether Thieu or Minh is elected. On national politics the only issues are peace and war."

He said that one way the government might increase its influence with the people would be for the armed forces to "give up its dominant role in local administration. District and province chiefs are military officers. They are frequently unpopular with the people they govern and there are countless reports of corruption.

ELECTION IN PROVINCES

Vietnam's constitution provides for elected province chiefs beginning next year, but Thieu is expected to invoke other provisions to delay the change.

Both Minh and Ky have accused Thieu of preparing to rig the election by leaning heavily on his appointed province chiefs to line up support for the president. American officials are known to be concerned that the two candidates might drop out (Ky may not get on the ballot at all) and leave Thieu in an embarrassing one-man race.

Mau, who was interviewed at his Saigon home, said Thieu was preparing for that eventuality by pressuring legislators and provincial councillors to sign blank endorsements which the president could use himself or turn over to a hand-picked opponent if the others drop out.

Although Kissinger's discussions probably focused on the presidential race, Bong and Mau said that for many Vietnamese the lower house elections in August had considerably more meaning.

DEATH OF ADMIRAL AND FORMER SENATOR THOMAS C. HART

Mr. BUCKLEY. Mr. President, I wish to honor the memory of a remarkable man, a man almost 50 years my senior whom it was my privilege to know as a friend.

I speak of Adm. Thomas C. Hart, who died last Sunday at the age of 94. He served and loved this country as few have served and loved her during a career which included 52 years in the U.S. Navy and two in the U.S. Senate.

As a midshipman, he saw his first duty at sea on the sailing frigate *Constellation*, and his final command was of the Asiatic Fleet, a fleet which his wisdom and foresight saved from disaster in the aftermath of Pearl Harbor. Following his retirement from the Navy in 1945, he was appointed to fill out the vacancy caused by the death of Senator Francis T. Maloney, of Connecticut.

The chronicle of his long and brilliant career is contained in the obituaries which I ask unanimous consent to have printed at the conclusion of these remarks. But however great his accomplishments, he will live on in the memory of those of us who have come to know the Admiral during the quarter of a century since his retirement, not so much for his service to the Nation as for his special qualities as a human being. He will live on in our memories because of his rectitude and principle and wit, and because

of the intense interest in community and country which together had made him so superb an example of the best that America has produced.

It was typical of the man that he expressed the hope, during his final illness, that he might live until the anniversary of America's independence. It is typical of his command of events that he held on to life until a few minutes after midnight on July 4, 1971. May his soul rest in peace.

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

[From the New York Times, July 5, 1971]

ADAM. THOMAS C. HART IS DEAD AT 94

SHARON, CONN., July 4.—Adm. Thomas C. Hart, U.S.N. retired, Commander in Chief of the Asiatic Fleet at the time of Pearl Harbor and a former United States Senator, died today in his home at the age of 94.

(By Farnsworth Fowle)

Admiral Hart, who entered the United States Naval Academy in 1893 and retired in 1945 to serve for two years as an appointed Senator from Connecticut, filling a vacancy, was one of the senior commanders in World War II.

He was sent to Shanghai in 1939 to take command of the Asiatic Fleet and in December, 1941, braced his small force for the Japanese onslaught on the Philippines, Dutch East Indies and Malaya. Called to Washington in February, 1942, he resumed a seat he had held on the Navy's General Board and was entrusted with compiling the Navy's report on the Pearl Harbor disaster that had beset less vigilant commanders at the Hawaiian base.

About two weeks before the aerial attack on Dec. 7, 1941, Admiral Hart, without consulting Washington, had ordered his PBY–2 (Catalina) long-range flying boats to maintain a discreet surveillance on Camranh Bay on the southeast coast of Vietnam.

They found a massing of Japanese vessels in that anchorage as a portent of Japanese readiness to strike south. Admiral Hart relayed this to Washington and felt no great surprise when Washington sent a "war warning" message calling for "defensive deployment" to him and to the Pacific Fleet commander at Pearl Harbor a day or two later.

ISSUED ATTACK ORDER

Before the week-long battle of the Macassar Straits, Admiral Hart issued an order to attack that said "no vessel will leave the scene of action until it is sunk or its ammunition is exhausted."

On his return, President Franklin D. Roosevelt added a second gold star to his Distinguished Service Medal. The citation praised the admiral's "sound judgment and marked resourcefulness in dealing with the difficult military and diplomatic situation" on the eve of conflict, and for handling his fleet as well as could be done in combat.

Born in Davidson, Mich., on June 12, 1877, he was finishing his second year at Flint High School when he learned that a competitive examination for a Naval Academy appointment was being arranged by his Representative. He took the exam, came out first, and then, though just 16, passed the entrance examinations by cramstudying.

As a midshipman he was coxswain of crew, at a time when he was getting his first taste of deep-sea sailing on the frigate Constellation, a sister-ship of the Constitution.

GRADUATED IN 1897

He graduated with the class of 1897, which included such future admirals as Henry E. Yarnell, Arthur J. Hepburn and William D. Leahy.

The young officer had his first taste of combat in the Spanish-American War, on the battleship Massachusetts and the ex-yacht Vixen. He ran messages from Navy to Army headquarters and occasionally accompanied Col. Theodore Roosevelt of the Rough Rider regiment when the future President came to the Vixen in search of good dinner in the officers' mess.

In World War I, Admiral Hart commanded submarine units in British and Azores waters, emerging a captain with his first Distinguished Service Medal. His work with submarine forces was credited with "making them tick" in World War II.

He commanded the battleship Mississippi for two years, but later, to the surprise of many, turned down an invitation to command the Navy's battleships, a prize post before Pearl Harbor, in favor of the challenge of the more lightly armed but speedier heavy cruisers.

Shore duties between wars included Naval War College and the course at the Army War College, where he spent a second year by Army request as an instructor in amphibious war. From 1931 to 1934 he returned to Annapolis as Superintendent. Cadets of those years remember him as strict but fair, and that he made an attempt to broaden the curriculum.

His first tour on the Navy's General Board was from 1936 to 1939, when he was sent to Shanghai with the four stars of a full admiral to command the Asiatic Fleet, of which he said: "All my ships were old enough to vote."

Reading the signs of coming conflict, he moved his headquarters to Manila. He was credited with dispositions that saved all his surface ships and more than 200,000 tons of merchant vessels in the initial Japanese attack.

In February, 1942, he was ordered home, turning over command of his fleet to the Netherlands commander of the Allied fleet. Though a year overdue for retirement, he was immediately recalled to active duty and a seat on the General Board, while Congress voted him permanent four-star rank.

One of his wartime duties was to collect depositions for the Navy's inquiry into the Pearl Harbor disaster, before memories faded. For this, he traveled extensively through the combat theaters and also spoke and wrote at home to publicize the Navy's war effort.

Admiral Hart had made the King house a historic mansion in Sharon, Conn., his family home since 1924. In February, 1945, he accepted appointment by Gov. Raymond E. Baldwin, a Republican, as Senator to fill the vacancy caused by the death of Francis T. Maloney. It was at that time that he stepped down from the General Board.

As a Republican Senator he maintained that he was not a Navy spokesman and subsequently declined service on the Naval Affairs Committee, although he later agreed to serve on the Military Affairs Committee after being assured that the Army would welcome his presence.

He was an opponent of the merger of the armed services into a single Department of Defense. He contended that a separate Air Force would combine with the Army to diminish the Navy's role—and he also thought that the combination of air and surface forces in a single branch, as in the Navy, was more effective militarily than their separation.

In October, 1947, he warned that Korea probably would become the 17th Soviet Republic. "A Sovietized Eastern Asia," he said, "is fully as menacing to us as would be a Sovietized Western Europe, and the probability that it may happen is decidedly greater."

He regretted in the light of later events that the United States had sought Russian entrance into the war against Japan, saying that "Japan's China army gave up, the Russian troops were not needed at all and the estimate was all wrong."

Admiral Hart is survived by his widow, the former Caroline Brownson, daughter of an admiral; a son, Roswell R. of Sharon; 3 daughters, Mrs. LaVerne Baldwin of Taconic, Conn., Mrs. Dana Bergh of Rochester, and Mrs. Francis B. Sayre Jr. of Washnigton; 13 grandchildren and a great grandchild.

[From the Washington Post, July 5, 1971]

THOMAS HART, ADMIRAL, SENATOR, DIES

(By Paul Hodge)

Adm. Thomas C. Hart, short, peppery commander of the U.S. Asiatic Fleet when the Japanese attacked Pearl Harbor, who later served two years as a senator from Connecticut, died yesterday at his farm in Sharon, Conn. He was 94.

An 1897 graduate of the Naval Academy, the four-star admiral sailed on square-rigged ships, fought in the Spanish-American War on the battleship Massachusetts and commanded submarines in European waters in World War I.

An instructor at the Naval Academy in the 1920s, he became its superintendent in 1931. He established the academy's economics department and placed increased emphasis on physical fitness—including horseback riding. An enthusiastic horseman, he brought in his own saddle horses to replace the academy's aging plugs.

Despite the country's losses at Pearl Harbor, Adm. Hart was praised by President Franklin D. Roosevelt for handling the situation "in a manner which left nothing to be desired." Stationed in Manila at the time, Adm. Hart had transferred many of the fleet's larger ships to Australia prior to Dec. 7, 1941, and evacuated the remaining warships and even merchant ships from the Philippines without loss once the war had begun.

The son of a Michigan lumberman, he took the Annapolis entrance exams at the age of 15 and became the youngest and one of the smallest members of his class. Though only 5 foot-6 and weighing only 140 pounds, he was right end in the academy's football team. He graduated 13th in his class.

Considered somewhat of a submariner throughout his career, his favorite award came from men in the World War II submarine service for "pioneering the development and preparation which made them (the submarines) tick during World War II."

Though a strong proponent of a unified Navy, Army and Air Force command as a necessity for victory against the Japanese in the Pacific, Adm. Hart in his time had been tough on aviators. When commanding the battleship Mississippi in 1926 he chewed out one reporting airman: "We've got too many goddamned aviators aboard this ship already. Why I can take you up on my quarter deck and show you oil marks where the aviators have spilled oil . . . you aviators are just not seamen!"

An example of his uncompromising orders came during the battle of Macassar Strait in the struggle for the Philippines: "Submarines and surface ships will attack the enemy and no vessel will leave the scene of action until it is sunk or all its ammunition exhausted." The week-long battle cost the Japanese almost 40 ships.

One of the investigators of the Pearl Harbor tragedy, and the country's entrance into World War II, Adm. Hart later said "all in all . . . America has gone to war well." He made few bones about the Navy's condition at the start of the war, however. "I used to say, when asked about it, that all my ships were old enough to vote."

Adm. Hart married Caroline Brownson, daughter of former Naval Academy Superintendent Rear Adm. Willard Brownson, and his Sharon, Conn., farm has been the Brown-

sons' ancestral home since it was bought from a member of George Washington's staff in 1790.

In 1945, while retired and serving on the general board, the Navy's senior advisory group, he was appointed to fill the unexpired term of the late Sen. Francis T. Maloney, a Democrat, by Connecticut's Republican Gov. Raymond Baldwin. He called himself an independent but upon entering the Senate, said, "There seems to be more room on the Republican side . . . . and I will sit on that side." He declined to run for election.

Besides his wife, he is survived by a son Roswell, of Sharon, three daughters, Mrs. Francis B. Sayre, wife of the dean of Washington Cathedral, Mrs. Dana Bergh of Rochester, N.Y., and Isabella Baldwin, of Taconic, Conn.

ADEQUACY OF AIR PASSENGER SERVICE IN ALABAMA

Mr. ALLEN. Mr. President, the Alabama Legislature recently passed a resolution which petitions the Civil Aeronautics Board, consistent with its responsibility for the encouragement and development of civil aviation, to explore the adequacy of current scheduled air passenger service into and out of the major cities of Alabama.

The resolution solicits the assistance of members of the Alabama congressional delegation in effecting such an investigation. It is a pleasure for me, the junior Senator from Alabama, to join in this most deserving endeavor.

Mr. President, I am confident that when the Civil Aeronautics Board examines this problem, it will conclude that additional scheduled flights are needed to service a rapidly expanding Alabama economy and growing populations in our major cities.

Mr. President, the State of Alabama is on the move. It is rich in untapped natural resources; it has a vast and growing system of highway and river transportation; prosperous economic institutions; an enviable labor supply of hardworking, conscientious citizens; it is blessed with imaginative, aggressive, future oriented leaders in economic, civic, and political affairs.

Mr. President, the future of Alabama is rich in promise. Air transportation must keep pace with the tempo of economic growth. I commend the Alabama Legislature for its initiative in calling upon the Civil Aeronautics Board to examine the question of adequacy of airline services currently available to the citizens of our great State.

Mr. President, I ask unanimous consent that Alabama State Senate Joint Resolution 28, authored by my esteemed friend Senator Doug Cook, of Jefferson County, and adopted by the Legislature of Alabama on June 15, 1971, be printed in the RECORD.

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

SENATE OF ALABAMA RESOLUTION 28

RESOLUTION TO PETITION FOR AN INVESTIGATION OF AIR TRAVEL IN ALABAMA

Whereas there exists in the judgment of the Alabama Legislature on behalf of the air traveling citizens of this State, an inadequate air transportation service in and out of the major cities of Alabama, and;

Whereas, most existing schedules to major cities without the State require the traveling public to endure inconvenient and time consuming routing through Atlanta, Georgia, and;

Whereas, the nature of air service is so regulated to provide service where the need exists and not determined altogether by the economic justification of each flight, and;

Whereas, the people of Alabama are entitled to adequate service in and out of the State under the supervision and control of the Civil Aeronautics Board, and;

Whereas, the scheduled air service should be thoroughly examined by Federal officials to determine the adequacy of service in and out of the major cities of Alabama as presently served by the regularly scheduled airlines.

Now, therefore, be it resolved, that the Legislature of Alabama, both Houses thereof concurring, does hereby petition the Civil Aeronautics Board to conduct a full investigation of the adequacy of scheduled air service in and out of the cities of Alabama to include:

(1) frequency of direct and indirect flights by existing air lines,

(2) the possible need for additional service via non-existent routes of present carriers,

(3) the possible need for additional carriers to establish connections in Birmingham, Huntsville, Montgomery and Mobile.

(4) the possible need for additional service through any method deemed appropriate by the Civil Aeronautics Board; and

Be it further resolved, that the Alabama Attorney General join in this petition to the Civil Aeronautics Board for an investigation into the apparent discrimination of Alabama citizens by the regulated air carriers presently serving the State; and

Be it further resolved, that the Alabama Congressional and Senatorial Delegations are also hereby asked to join in this petition on behalf of Alabama citizens, and;

Be it further resolved, that the Governor of Alabama be asked to join in this petition by virtue of his signature to this Resolution and any other means he so chooses, and;

Be it further resolved, that if the Civil Aeronautics Board, in its best judgment, does initiate an investigation into the number of schedules, frequency of schedules, the number of carriers, and the present origin and destination of all flights, that such investigation should include oral hearings for the benefit of those in the State desiring to be heard before making any final determination, and;

Be it further resolved, that the Secretary of the Senate mail a certified copy of this Resolution to the Civil Aeronautics Board, the Alabama Congressional and Senatorial Delegation, the Governor of the State of Alabama and the Attorney General of the State.

I hereby certify that the above is a true, correct and accurate copy of Senate Joint Resolution No. 28 by Mr. Cook, adopted by the Legislature of Alabama on June 16, 1971.

MCDOWELL LEE,
Secretary of Senate.

S. 1886—THE JUDICIAL DISQUALIFICATION ACT OF 1971

Mr. BAYH. Mr. President, on May 17 of this year I introduced S. 1886, the Judicial Disqualification Act of 1971. That bill would revise section 455 of title 28 of the United States Code to define with greater precision those instances in which a Federal judge ought to disqualify himself from participation in a case.

The basic principle of my bill is that a judge should not only avoid impropriety but also the appearance of impropriety, as is now required by Canon 4 of the American Bar Association's Canons of Judicial Ethics. My proposed revision of section 455 eliminates the "substantial interest" language and clarifies the type of interest requiring disqualification. The rule is clear and simple. The bill precludes participation by a judge in a case if he holds any stock—even a single share—in a corporate party, or any corporation substantially related to a corporate party. It also precludes sitting if the judge is a director or holds any other office in such a corporation.

The second section of S. 1886 deals with section 144 of title 28, which involves disqualification for bias or prejudice. When a motion to disqualify for prejudice of bias is made, a party is often dismayed to learn that under section 144 the judge himself determines whether the allegations are sufficient. Surely litigants who believe that they cannot get a fair trial before a particular judge should not have to convince the very same judge of his bias.

The Judicial Disqualification Act of 1971 would create a right in a litigant to one peremptory challenge of a trial judge assigned to hear his case, adopting a disqualification provision now employed in California and a number of other States. Under such a provision a judge is disqualified upon the filing of an affidavit alleging bias or prejudice and signed by the party or by his lawyer. The disqualified judge is left with no option except to determine whether the application has been timely made. The affidavit must be filed before any discretionary matter has been presented to the judge. Each side is restricted to one challenge, in order to avoid abuse in cases where one of the parties simply wants to create delays or to avoid trial altogether.

Mr. President, I believe that this is a sound bill and a necessary one. In order that Senators might have more information both about the need for change in our judicial disqualification laws and also about this bill—and the alternatives to this bill—I ask unanimous consent that an article entitled "Disqualification of Judges: In Support of the Bayh Bill," written by John P. Frank, be printed in the RECORD at the conclusion of my remarks.

Mr. Frank has long been acknowledged as one of this country's experts in the law of judicial disqualification. He wrote the pioneering work in the field, entitled "Disqualification of Judges," 56 Yale L.J. 605 (1947), and was asked to testify on the subject as an expert witness by the Judiciary Committee. I believe that Mr. Frank's article deserves the attention of every Member of this body.

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

DISQUALIFICATION OF JUDGES: IN SUPPORT OF THE BAYH BILL

(By John P. Frank*†)

The defeat of Judge Clement Haynsworth, Jr., for the Supreme Court demonstrates that the federal law of disqualification of judges needs to be rewritten. As Justice Blackmun said of a shift in his own personal disqualification practice, "The times have changed."[1] John Marshall heard *Marbury v. Madison*

Footnotes at end of article.

although the substance of the case involved problems arising from his own failure to deliver papers when he was Secretary of State in the Madison administration. Justices Byron White and Thurgood Marshall, former Deputy Attorney General and Solicitor General, never hear cases involving matters with which they dealt in the Department of Justice.

The difference is not in the character of the Justices, but in the governing law and the changed attitudes of recent tmes. In Marshall's day, the law of disqualification was governed by two maxims from the sages. Coke, in the most famous rubric of the law of disqualification, had said, "aliquis non debet esse judex in propria causa," or no man shall be a judge in his own case.[2] Blackstone had reduced this to a straight matter of pocketbook interest by excluding the possibility of disqualification for bias or prejudice or relationship, "for the law will not suppose the possibility of bias or favor in a judge." [3]

The nineteenth century changed the rules of the game. At the beginning of the century, pecuniary interest was the only ground of disqualification. By the end of the century, bias and relationship had been added; for a strong suggestion of bias arises from relationship. The judge may be so related to a party or an attorney that he is either actually partial or appears to be. Quite aside from relationship, the judge's former career may preclude a fair approach to the case. The case may have been in his firm and he may have worked on it before he went to the bench. Whether it was or not, the party may be a former client with whom he has had a very close association. It may involve some matter with which he was directly and personally involved when he was in the executive branch of the government. In any of these instances, he may lack a free mind. All of these, with refinements which we may put aside for the moment, have become grounds for disqualification since Marshall's time.

Inevitably, judicial virtue is a mix of ethics and convenience. It draws upon the grand magniloquence of Lord Coke and the Due Process clause. On the other hand, however, school must keep; someone had to decide the cases. The reluctance to sit must be balanced by the principle of necessity, so that, for example, Chancellor Kent sat in his brother-in-law's case because there was no alternative way of deciding the matter anywhere.[4]

This balance has a practical application in the federal system. In the past thirty years, the number of federal judges has radically expanded. Only a few states now have but one federal judge, and the larger cities have such judges by the squadron. Only one court of appeals is limited to three judges. In the larger circuits, the chambers line the halls. The result both can and should be that the standard of disqualification goes up; it is so easy to put someone else on the case.

But in the Supreme Court, this is not true; the number is fixed and there are no substitutes. If even one disqualifies, it may be impossible as a practical matter to reach a decision. If four disqualify, decision is legally impossible.[5] Instances of complete inability to decide for lack of a quorum have occurred. To avoid one such lack of a quorum, after first disqualifying himself in the leading Public Utility Holding Company Act case, Chief Justice Stone withdrew his disqualification so that the case could be decided.[6] Undoubtedly because of the limit on the number of Justices, the Supreme Court Justices have not disqualified casually. On the other hand, where disqualification is clear, out they go.

THE GENERAL LAW OF DISQUALIFICATION

Disqualification is a term generally applied to the process or result by which a judge disengages from participation in a particular case which he would otherwise hear. There is a technical distinction between disqualification or exclusion by force of law, and recusation, or withdrawal at the judge's discretion, but the latter term is now largely obsolete, and I put it aside.[7] There are two sources of the law of disqualification, the common law and the statutes. But these are to some extent overlaid by the constitutional conception of due process. That is to say, some kinds of disqualification were so absolutely basic that justice would be altogether denied if a judge were allowed to participate in a case. This amounts to what might be regarded as the inner core of disqualification. Surrounding that inner core are the group of further restrictions which are not constitutional, but are simply refinements.

Interest in the proceeding. Illustrative of the constitutional inner core of the law of disqualification is the famous case of Dr. Bonham,[8] in which Lord Coke said that not even an Act of Parliament can allow a judge to retain a fine which he levies. The case illustrates the axiom that "No man shall be a judge in his own case." [9] The *Bonham* principle was followed in 1927, when the Supreme Court held that a judge could not hear a case in which he received a portion of the fine which he imposed.[10] The guiding due process principle was more recently restated by the Supreme Court:

"A fair trial in a fair tribunal is a basic requirement of due process. . . . To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." [11]

The Justices apply the same standard to themselves. What appears to be the first case of disqualification for interest is *Livingston & Gilchrist v. Maryland Insurance Company,* which involved the financial interest of someone referred to as B. Livingston of New York. Justice Brockholst Livingston is recorded as absent from the decision.[12] In *Fairfax's Devisee v. Hunter's Lessee,* decided the same year, Marshall, who had an interest in the land, was also "absent." [13] Chief Justice White, as a recipient of a sugar bounty, disqualified in a case involving that interest.[14]

No one doubts the principle of disqualification for direct interest, although there may be a problem as to how the principle is applied. The possibility of an accidental deviation, as in the case of Judge Haynsworth discussed elsewhere in this essay, is perfectly real. Some Justices are wealthy men, with wide holdings. The list of parties may be long. The designation *"et al.,"* though short, is a cloak large enough to cover twenty or more parties in a mortgage foreclosure. Equally troublesome is the problem on the horizon which results from holding companies or corporate affiliations through conglomerates. There is nothing published on the practices of the Justices where a Justice may own a small amount of stock in a company which in turn own stock in a party, or where any of the other possible corporate permutations exist. I believe that there is disqualification in those cases although, inevitably, there must be error where the Justice simply does not know. Prior to 1948, there was no federal statute which laid down any disqualification requirements for Justices of the Supreme Court.

The statutes then in existence were restricted to district judges, though the practice at the Supreme Court was for the Justices largely to apply to themselves the same standards as existed in the statutes.[15] The current statute, as adopted in 1948, does apply to the Supreme Court as well as to the lower courts, requiring the Justices to disqualify in the case of "a substantial interest." [16] Nothing is written as to how the Justices have applied the concept of "substantial" to themselves, but I believe that they have disqualified where they have felt that they had any interest at all.

Relationship to a party or counsel. Relationship makes so well-accepted a conflict of interest that it is a standard ground of disqualification. If the relationship is lineal, as for example a son and a father, there may be the possibility of an inheritance. In any case, there is the possibility of bias, and certainly there is the appearance of bias. Yet, the matter has its fuzzy edges: Is the relationship with the party or with the attorney? If with the attorney, is a relationship to Partner *A* in a large office sufficient ground to disqualify when Partner *B* handles a case? Does it matter whether the attorney's fee is contingent? The federal statute abandons any effort at precision, simply requiring disqualification if the Justice "is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit." [17] The matter gets its final and largest complication from the problem of how close the relationship must be. As was said in a 1572 decision, "All the inhabitants of the earth are descended from Adam and Eve, and so are cousins of one another," but "the further removed blood is, the more cool it is." [18] While in that case the line was drawn at relationship in the ninth degree, American practice has cut it off at various points between the third and the sixth degrees.[19]

The Supreme Court practice has shifted from the nineteenth to the twentieth centuries. In the nineteenth century, Justice Curtis and Field on various occasions heard cases presented by their brothers, and Justice Miller heard his brother-in-law. In the twentieth century, the line has hardened. Solicitor General Hughes resigned when his father became Chief Justice, and Chief Justice Stone would hear argument in a case his son had tried only upon the consent of the parties, and that in one highly exceptional case.[20] However, in that instance, while the son had been counsel in the Military Commission proceedings which the Supreme Court was to review, he was not involved in any way in the Supreme Court proceedings.

The Solicitor General is so actively involved in presenting cases to the Supreme Court that something like the Hughes solution was required as to that office. Other relationships between the Court and the Department of Justice, however, might well be different. The Department's problem is special because it is the largest law office in the world and has cases by the hundreds of thousands and lawyers by the thousands. For the most part, the relationship of the Attorney General to most of those matters is purely formal. As between the Assistant Attorneys General for the various Departmental divisions, there is almost no connection.

This was a problem of the Clarks, *pere et fils,* because each rose through the chairs of the Department of Justice, and son Ramsey was moving through his chairs while father Tom was on the Supreme Court. When the son was Assistant Attorney General for the Lands Division, and even when he was Deputy Attorney General and thus the number two man in the Department, the father did not disqualify himself. However, when the son moved from the office of Acting Attorney General to the full and formal post of Attorney General, the father resigned from the Supreme Court.

Justice Clark could have made his decision either way. While there is no previous case of a Justice father-Attorney General son relationship, there is one relationship even closer than this, and that is the relationship of the Justice to himself. In repeated instances, Attorneys General rise to the Supreme Court, and they must then decide whether they can sit on cases which were in the Department when they themselves were there. This is decided on a case-by-case basis. Repeatedly, Attorneys General have sat in such cases where they felt that their connection with the matter in the Department was purely nominal. An illustration

Footnotes at end of article.

of the subjectivity of the practice is *Schneiderman v. United States*,[21] a denaturalization matter during World War II so important that the then most recent Republican Presidential candidate, Mr. Wendell Willkie, presented the case for Schneiderman. The opinion of the Court in this closely divided case was written by Mr. Justice Murphy. Justice Jackson disqualified with a brief statement which matched its hostility to Justice Murphy only with its subtlety. Jackson said, "This case was instituted in June of 1939 and tried in December of that year. In January, 1940, I became Attorney General of the United States and succeeded to official responsibility for it. This I have considered a cause for disqualification, and I desire the reason to be a matter of record." [22]

This gratuitous reproof to Murphy, who had been the Attorney General in 1939, did not mean that Jackson always disqualified himself when he felt that his participation was only a formality. In one instance, in reversing an opinion which he had personally signed when he was Attorney General, Jackson hints that he had been merely the nominal author of the disputed Attorney General's opinion.[23] Chief Justice Stone suggested that the proper standard of disqualification was whether a former Attorney General had "something more to do with the case than the merely pro forma relations which an attorney General often has with cases in the Department of Justice." [24]

Nonetheless, Justice Clark, a man immensely sensitive to the value of high ethical appearance as well as its substance, resigned. There was in fact no functional difference between the son's relationship to the Supreme Court as Deputy Attorney General or, certainly, as Acting Attorney General, a post he held for a long time, and his final position as Attorney General.[25]

Personal bias. The final ground for disqualification is bias. As used in a standard dictionary, the phrase denotes a "propensity or prepossession or bent." So far as the legal issue in the particular case is concerned, that is not what the term means in the federal law of disqualification.[26] Supreme Court Justices are strong-minded men, and on the general subject matters which come before them, they do have propensities; the course of decision cannot be accounted for in any other way.[27] Nor can bias be based upon rulings in the particular case; [28] the general federal view is that the bias must be "of extra-judicial origin." [29] Bias in this sense means that bias which arises from the judge's association with either an attorney, a party, or the government.

Apart from interest and relationship, it has not been the practice for Supreme Court Justices to disqualify because of attorney contacts except for those contacts arising from some sort of joint involvement in a particular matter. Each Justice will inevitably have friends at the bar, and some of them are very close. This, by itself, is never a ground of disqualification in the Supreme Court.[30] Ex-members of the Court may also appear—Justices Curtis, Campbell, and Hughes often did.

A problem does arise if the attorney is a former partner and if he is presenting a matter which was in the Justice's office before he went to the Court. In that circumstance, the Justice invariably disqualifies, as do all judges. On the other hand, if the attorney is a former partner but the matter was not in the office at the time the Justice withdrew, then there is no disqualification. While Justice Jackson once very sharply criticized Justice Black for having heard a case presented by a man who had been his partner more than twenty years before, the episode is regarded as an aberration on the part of Justice Jackson, who was at the time under great strain in connection with his extra-judicial duties as War Crimes Prosecutor at Nuremburg. The fact is that no Justice has ever disqualified himself because a matter was being presented by an ex-partner. Illustrations of Justices who did not disqualify in such circumstances are Holmes, Brandeis, Cardozo, and Stone.[31]

The matter of the case in the office bridges over into party contacts, because the real reason that the Justice does not sit in such circumstances is because either he or his office has represented the party in the litigation in the particular matter. As noted, disqualification is universal when the case was in the office; the federal statute expressly provides that the Justice shall disqualify in any matter in which he "has been of counsel," and if his firm was of counsel, so was he. But what shall be done as to the former client? May a Justice sit when the case was not in the office, but the party was, so that the Justice has in fact represented that particular concern in other matters previously? Here the practice is very sharply divided. Justice Stone felt that it would be "undesirable" for "a member of the Supreme Court to sit a case of a client of his former firm, even though his relations with the client had not been at all personal," and even though the particular matter was not in the office at the time.[32] But the weight of the practice has been the other way, and Justices who have previously represented particular corporations have later felt quite free to hear cases involving those same concerns on independent matters.[33]

In contemporary times, Justices more frequently come from the government than from private practice. On the present Court this was true of Chief Justice Burger, and Justices Black, Douglas, White, and Marshall. When I wrote in 1947, eight of the nine members of the Court had distinguished government backgrounds.

Justices disqualify in government cases when they have been directly involved in some fashion in the particular matter, and not otherwise. Illustrations from the Department of Justice were given earlier. The disqualification is limited to the particular department with which the person has been connected—that is to say, Justice Goldberg did not disqualify in a non-labor case coming from the Department of Justice when he was Secretary of Labor. Any other rule would make it useless to appoint government lawyers at all. More important, Justices who have come from the government do not disqualify merely because the particular matter involves a policy which, when in the government, they may have helped to form. The Justices who come from the House or the Senate do not disqualify from the interpretation of statutes which they may most actively have helped to write. Chief Justice Vinson wrote on tax matters and Justice Black on Fair Labor Standards Act cases, though each was particularly involved with those laws. Other examples could be endless. Chief Justice Taney achieved the most eccentric compromise on record. As Attorney General he had given the Secretary of the Treasury an opinion on a particular matter of federal relations of the Bank of the United States. When a case came along involving the same subject, he did not sit, but he filed an unofficial dissent in the appendix of the reports.[34]

In short, Supreme Court Justices disqualify when they have a dollar interest; when they are related to a party and, more recently, when they are related to counsel; and when the particular matter was in one of their former law offices during their association; or, when in the government, they dealt with the precise matter and particularly with the precise case; otherwise, generally no.

Federal statutes and practice. In the country as a whole, there are two conflicting currents on disqualification. In some states, disqualification is easy; for example, in Arizona, the author's state, one may have one change of judge almost for the asking. A simple affidavit will do it. In others, disqualification is hard—one must squarely show interest, relationship, or bias or keep the judge he has.

The federal practice tends to the latter view. Originating in a period of few judges, perhaps one in a state, where disqualification might well mean long delay, casual disqualification was not much welcomed. This is reflected in the two federal statutes:

"1. 28 U.S.C. § 455:

"Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein.

"2. 28 U.S.C. § 144:

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. . . ."

Particularly in the federal practice, the judge has an *equal* duty to disqualify when he should and to sit when he should. "It is a judge's duty to refuse to sit when he is disqualified but it is equally his duty to sit when there is no valid reason" not to.[35]

II. MAJOR DISQUALIFICATION MATTERS RAISED AS TO JUDGE HAYNSWORTH

Judge Clement Haynsworth, the Presiding Judge of the Fourth Circuit and President Nixon's choice to succeed Justice Fortas, was opposed by civil rights and labor organizations. While these groups could muster a substantial number of Senate votes, they could not, on those grounds alone, defeat the nomination. They therefore turned their attention to conflict of interest charges, and the marginal number of votes sufficient to defeat the nomination came from this source. The conflict of interest issues were essentially disqualification problems; the question was whether the Judge should have disqualified himself in certain matters which came before him on the Court of Appeals.

A. The Darlington case

The first charge against Judge Haynsworth arose from his participation in *NLRB v. Darlington Manufacturing Company*.[36] Deering Milliken Company in the early 1960s was a largely Milliken-family-held textile selling house. It was also what can be loosely called a holding company, owning or dominating seventeen textile manufacturers which had twenty-seven plants. One of those plants was Darlington Manufacturing Company, in which the Deering Milliken group held a majority, but by no means all, of the stock. Darlington fell into a conflict with the Textile Workers Union in 1956 and went out of business. The broad legal question was whether Darlington had committed unfair labor practices, and if so, whether Deering Milliken should be held financially responsible.

Judge Haynsworth, when the matter reached his Court, was a substantial stockholder in Carolina Vend-A-Matic Company, a vending machine company which sold coffee and other refreshments. This company had "locations" in many places, including three of the twenty-seven Deering Milliken affiliates. The locations were obtained by competitive bidding. Deering Milliken did not pay Vend-A-Matic to come to the premises—Vend-A-Matic paid a premium to Deering Milliken, if anything was paid. It had nothing to do with Darlington. Revenues from those plants amounted to about three per cent of the vending company's income.

When the case came before the Fourth Cir-

Footnotes at end of article.

cuit Court of Appeals, the judges concluded that its importance warranted hearing by all of the five circuit judges, of whom Judge Haynsworth was one. The Court decided three to two that there was no unfair labor practice, with Judge Haynsworth in the majority. Hence, it never reached the question of whether Deering Milliken was chargeable with the cost. The Supreme Court held that there might have been an unfair labor practice, depending upon facts which were not in the record, and that the Labor Board's opinion was not comprehensive enough to cover the case. It therefore vacated the decision of the Court of Appeals with instructions to send the case back to the Labor Board for further proceedings. On this remand, the Board found unfair labor practices, and the Court of Appeals, Judge Haynsworth concurring specially, enforced the order.[37]

In late 1963, the Textile Workers Union of America, on the basis of an anonymous telephone call received by it, forwarded an allegation to Judge Sobeloff, the Chief Judge of the Fourth Circuit, charging improper inducements by Deering Milliken to Judge Haynsworth. Judge Haynsworth asked for a full-scale investigation and consideration, both by the circuit judges and the Department of Justice. On February 6, 1964, the Union, after the investigation, withdrew its complaint with warm apologies. The Court of Appeals judges, after independent investigation, concluded that there was "no warrant whatever" for the charge. Similarly, Attorney General Kennedy expressed his "complete confidence" in Judge Haynsworth.

Clearly, if there were any basis whatsoever for the anonymous suggestion of improper inducement, Judge Haynsworth should not be considered for any post. But there is not, and the call may be put aside as one of those unhappy prices which judges must sometimes pay for the vexation of disappointed litigants. There remains, however, the question as to whether Judge Haynsworth should have disqualified himself in the case.

If Judge Haynsworth were to have disqualified in this case, it would necessarily have been for interest. That is to say, there is no conceivable question of relationship or bias, apart from interest, as those terms are used in the law.[38] Under what circumstances, if any, must a judge who is a shareholder of a company which has business dealings with a party, disqualify himself from hearing a case involving that party?

1. It is immaterial that Judge Haynsworth was a shareholder in the vending company rather than owner of the company in a personal proprietary capacity. The law of disqualification, in the heavy majority and clearly better view, treats a shareholder as though he individually were the concern in which he holds shares. In other words, if a judge holds shares in a corporation which is in fact a party before him, he should disqualify as much as if he himself were a party.[39] Every state and federal court reporting agrees that if the judge has a pecuniary interest in the party, he may not sit.

2. Where the judge has an interest in a non-party, however, the rules are entirely different. This is a necessary concession both to common sense and to the practicalities of modern life. Lines must be drawn somewhere. Thus, at common law, a judge might have disqualified in a case involving taxes in an area in which he paid. But this is not the modern view.[40] In these non-party cases, the rule of disqualification which has developed is a test of immediacy or remoteness of the interest. The interest must be direct, proximate, inherent in the instant event, and affected by the direct outcome of the particular case.[41] It must be direct, real, and certain; and not incidental, remote, contingent, or possible.[42] The interest contemplated is a "pecuniary or beneficial interest" in the case,[43] with equal attention both to the benefit and to its connection with the particular case.[44] Some cases push this to the point of saying that in order to be disqualified for interest in these third party situations, the judge must be capable of being made an actual party to the case, but this is not the better view, which is that it is sufficient if he has a proprietary interest in the actual result of the actual case.[45]

3. Coming then squarely to the problem of judges who in some manner have financial relations with a party, the question may arise when the judge is connected with a supplier, as was Judge Haynsworth, or with a creditor or debtor of the party. These problems have been solved in the manner foreshadowed by the foregoing principles. If the interest of the judge as creditor, debtor, or supplier will in any way be affected by the case, then he must disqualify. Otherwise, he should not. For example, when there was a dispute over a corporate election in Corporation *A*, which in turn has a large claim against Corporation *B*, in which the judge is a shareholder, the judge was held disqualified to pass on the election because he would in effect be choosing who was to be in control of a lawsuit against him.[46] Similarly, where a judge was a stockholder in a bank which was a substantial creditor of plaintiff and plaintiff's repayment to the bank was dependent upon a judgment in the particular case, the judge was disqualified.[47] On the other hand, where there is no direct effect in any meaningful way, the judge is not disqualified. Thus, a judge who was a stockholder but who would not be affected by the final outcome was not disqualified.[48]

The Supreme Court of Michigan has emphatically rejected a view that a judge who is a shareholder of a creditor of a party, even on a substantial obligation, is disqualified in the absence of a showing of some direct and precise benefit to the creditor from the case. A suggestion to the contrary is said to have "no foundation in reason."[49]

A leading case very close to the supply situation is *Webb v. Town of Eutaw*,[50] in which the judge was a stockholder in a bank to which a party was indebted. The Alabama court, in holding no disqualification, laid down the guiding rule that the mere existence of "a business relation with one of the parties to [the case] is to be regarded as too remote or contingent to constitute a ground of disqualification." The judge must disqualify only where the corporate creditor in which he is a stockholder has "a direct and immediate interest in the result of the suit."[51]

4. The principles just outlined are codified in the controlling federal statute, 28 U.S.C. § 455. The judge is disqualified "in any case in which he has a substantial interest" in the particular case.[52]

A judge with an interest in a third party which in turn has business relations with a party to a case is not disqualified for interest unless the case directly affects the third party. Any contrary result would lead to impossible consequences. If, hypothetically, a judge owned stock in a major automobile company, he would be disqualified from hearing auto accident cases if a party happened to be a regular purchaser of cars manufactured by "his" concern. In the *Darlington* case the issue was a determination of an unfair labor practice involving a subsidiary of a large concern which had no connection except common ancestry with other plants which Vend-A-Matic serviced. The concessionaire did business, not with Deering Milliken except as it paid for the privilege of installing machines, but with its employees. The proportion of its revenue from this source was slight. There was no issue in the case which related even in the most fanciful degree to coffee and food distribution by Vend-A-Matic. A review of all of the reported cases on disqualification in the United States shows no instance in which a judge has ever disqualified in circumstances in any way similar to the Haynsworth situation.

In the instant case, it was necessary to have all of the judges of the Circuit participate; it was an *en banc* determination. Had Judge Haynsworth not participated, the Court would not have been able to decide the case at all. But regardless of that circumstance, since he was not disqualified, it was, under the strict federal rule of duty, his plain responsibility to participate, and he would have shirked his duty under existing law if he had not done so.[53] In these circumstances, a majority of the Senate Judiciary Committee concluded that the conduct of the Judge in participating in this (and other cases involving vending customers) was quite proper. On the other hand, Senator Bayh felt that his participation violated "the strong precedents of disqualification law and the canons of judicial ethics on this subject."[54]

B. Brunswick Corporation v. Long: The problem of minor stock ownership

Not much was made of the *Darlington* matter in the final analysis except as it had cumulative weight. Far more troublesome for the nominee was *Brunswick Corporation* v. *Long*.[55] *Brunswick* was an appeal involving a minor point of law. It was heard on November 10, 1967, before a panel of three judges include Judge Haynsworth. The Court on that day concluded to affirm the trial court's decision in favor of Brunswick. The opinion was assigned to one of the other judges.

On December 20, 1967, Judge Haynsworth's stockbroker purchased for him some $16,000 worth of Brunswick stock. At that time, the Judge was aware that the purchase was being made. He was not aware, however, that the formal opinion in the *Brunswick* case had not yet come out. Later, the judge to whom the opinion had been assigned circulated a draft which was accepted by Judge Haynsworth, and the opinion was released in February, 1968. No one suggests that Judge Haynsworth used any inside knowledge gained through the case to decide the matter, or that the decision of the case would in any significant way affect the value of the stock. However, Judge Haynsworth, while he was not aware that the case was pending when he bought the stock, was aware that he had the stock when the opinion came to him for his acceptance.

The *Brunswick* case thus presents an odd variant of a problem mentioned earlier, the problem of participation by inadvertence. The special wrinkle here was that the stock was acquired after the event. The more general and common problem in the case is the effect on disqualification of holdings of minor amounts of stock. The $16,000 worth of stock represents a considerable number of shares, but in the entire eighteen million shares in the company, the number is not significant.

The general American view discussed earlier is that a judge should disqualify if he has any stock in a party. There has been some contrary view when the stockholding was regarded as extremely small. My 1947 article was based in part on an actual poll of the senior circuit judges and the state chief justices. While the heavy majority responded unequivocally that any shareholding was a disqualification, there was some limiting comments. Four courts, in notes added to their responses, said that the practice has been in terms of waiver. For example, Judge Biggs, reporting from the Third Circuit said:

"In some cases where the stockholding is infinitesimal the fact of stockownership is stated to counsel in open court and the judge states that he will not sit if either party desires him not to. In every case which has

Footnotes at end of article.

come to my attention counsel has invariably asked the judge to sit,"

The responses of the First Circuit, the State of Delaware, and the Senate of Utah were to the same effect.

Two courts accepted the position now taken by the Fifth Circuit in the cases set forth below. The Chief Justice of New Hampshire responded:

"Where the corporate party is a very large corporation and the judge owns so few shares of stock that the outcome of the case will not affect him financially, he does not usually disqualify."

Somewhat more elaborately, the Chief Justice of Michigan said:

"I have recommended the practice I have followed on the interest of the judge. When the amount involved in the litigation is very small, the number of his shares when compared with the total issue is also small, so that the amount for which the corporation might be held, would have almost a negligible effect on the shares held by the judge, I have always sat. If there might be a very slight effect on my interest, I have refused to sit, unless requested by all parties, in writing, the clerk of the court telling them by letter of my interest. If however I believe that the outcome might affect my interest to any appreciable extent, I absolutely refuse to sit, though I have often been so requested by the lawyers. The ABA Canons of Judicial Ethics are archaic and passed at a time when municipal bonds, mortgages, etc. giving a fair return were available."

In 1968, the Fifth Circuit took the view that, in cases of small stockholding, the judge need not disqualify.[56] While the Haynsworth matter was pending, the question came up anew in that Circuit. In this more recent response, the Court achieved the unusual result of holding that ownership of stock in a party by two of the three judges provided no basis for disqualification, while nonetheless assigning the case to a different panel.[57] Eighth Circuit practice was similar to that of the Fifth. Judge Blackmun also sat in small holding cases and, in a direct parallel to *Brunswick*, once bought stock in a party before a case was out of his court.[58] The American Bar Association Canons of Ethics adopted the view that in the case of any stockholding, the judge should disqualify.[59]

Judge Haynsworth himself accepts the majority view. He testified expressly that if he had been aware that the *Brunswick* case was still in his court, he "would not have bought the stock," and that in light of the experience, if he were to buy stock in the future, he would "check the cases that had been heard in his court and were not disposed of" to avoid such a problem.[60] *Brunswick* was an eminently forgettable matter. Judge Haynsworth did become aware of the situation before the opinion came down. Whether the best thing to do was to require the case to be reargued before a new panel or let it be decided, was a point of judgment, not rising to a level of ethics.

C. Farrow v. Grace Lines, Inc.; Donohue v. Maryland Casualty Co.; and Maryland Casualty Co. v Baldwin [61]

These three cases involved the same legal problem. In *Grace Lines*, Judge Haynsworth owned three hundred shares of eighteen million of the parent company which held stock in the party litigant. In the two *Maryland Casualty* cases, he held sixty-seven of four and one-half million shares of common stock and two hundred of three and one-third million shares of preferred stock, again in the parent company. The question was whether it was proper to sit in those cases.

There is a view, supported by the decision of the California Supreme Court in *Central Pacific Railway v. Superior Court*,[62] that the interest must be in the actual party, and that an interest in a parent company is too remote. While the case does so hold. I doubt that it is good law in California, for it conflicts in principle with a better-reasoned case from the same court.[63] One must blind his eyes to reality to deny that holding stock in a parent is much the same thing as holding stock in a subsidiary.

While in the author's mind, the issue of disqualification in these cases cannot properly be decided on the authority of the *Central Pacific* case, it may very well be decided in favor of participation on the authority of the Fifth and Eighth Circuit practice discussed above. The federal statute expressly requires that the judge not merely have an interest, but that he have a "substantial" interest. Moreover, this must be an interest in the particular case. Irrespective of whether Judge Haynsworth's stockholdings in the *Grace Lines* and *Maryland Casualty* cases are regarded as holdings in a parent or a party, the interest in the cases is quite insubstantial.

It is the better view, I think, that a judge should not sit in any case in which he has even one share of stock in a corporate party. or for that matter, in a parent. If I were making the law, then without hesitation that is the law I would make. On the other hand, if one takes the view of the Chief Justice of the Supreme Court of Michigan quoted above, then we do have a matter of a small case in which "the number of his shares when compared with the total issue is also small," and the result would have "a negligible effect on the shares held by the judge." If one takes this view, then it was proper for Judge Haynsworth to sit.

III. THE APPEARANCE OF IMPROPRIETY: THE COMMONWEALTH COATINGS CASE

Existing Canon 4 of the ABA Canons of Judicial Ethics prescribes that "A judge's official conduct should be free of impropriety and the appearance of impropriety." In 1940, this was extended by Committee opinion to apply to judicial disqualification.[64] This standard as applied to disqualification was most authoritatively blessed in *Commonwealth Coatings Corporation v. Continental Casualty Company*,[65] a review of an arbitration case in which the arbitrator had an undisclosed financial dealing with one of the parties. The United Sates Supreme Court held, particularly in the light of the disclosure provisions of the Rules of the American Arbitration Association, that the arbitrator, though in fact perfectly fair, must "disclose to the parties any dealings that might create an impression of possible bias." Justice Blackmun, interrogated during his confirmation hearings on the "appearance of bias" phrase in *Commonwealth Coatings*, expressly endorsed the passage and explained that it was why he had, after the opinion, abstained from hearing a case in which he held even a small amount of stock in a party.[66]

The appearance-of-impropriety concept had not, before *Commonwealth Coatings*, been overtly applied in the Supreme Court. It may be accepted that the principle was often given implicit recognition in the federal courts, for it is well known that, particularly as the number of judges has increased, federal judges have quietly erased themselves from particular situations which they thought awkward. Nonetheless, as noted above,[67] the articulated view in federal courts is that absent a certain basis for disqualification, a judge was obliged not to remove himself. *Edwards v. United States* [68] presents a vivid illustration of the operation of this principle and its reception by a great judge. In *Edwards*, the case was first decided by three judges, one from another circuit, one who soon after died, and Judge Rives. The Court of Appeals later set the matter for an *en banc* hearing, and it was heard by seven judges. Judge Rives believed that, since he was the only one of the original panel left, to insure "the appearance of fairness to the appellants," he should not sit. After consulting his fellow judges, who divided, he finally concluded that regardless of appearances, he *had* to sit, and this regardless of the absence of the others: "While their absence makes me prefer not to sit, I have not found that it furnishes me any legal excuse." [69]

I believe that *Commonwealth Coatings* conflicts with the spirit of Judge Rives' renunciation of the power to withdraw. The loose and ambiguous standard endorsed by the Supreme Court in *Commonwealth Coatings* is troublesomely vague as a guide to conduct; it comes close to being an appeal to conformity for conformity's sake. It is a standard which in the great cases, at least, is subject to the abuse of manipulation. A determined press or opposition could manufacture an appearance of impropriety, as may be currently happening in respect to Justice Douglas on obscenity cases.

On the other hand, the trouble with Judge Haynsworth's trifling holdings in the *Grace Lines* and *Maryland Casualty* cases is that they do conflict with the appearance of justice. Senator Griffin stressed the concrete case of the injured seaman who claimed $30,000 against Grace Lines and got $50. He quoted Professor David Mellinkoff of UCLA Law School, who said, "By the standards of the marketplace perhaps Judge Haynsworth's stockholding was trifling. But it looms large in the mind of the unhappy litigant searching to discover just what it was that tipped the scales of justice against him." [70] Senators repeatedly adverted to Canon 4 or its principles in voting against the nomination. Of the six dissenters in the Judiciary Committee, three rested very squarely on this ground.[71]

During Reconstruction days, Senator George Boutwell once said of the fourteenth amendment, "The point relating to 'privileges and immunities' came from Mr. Bingham of Ohio. Its euphony and indefiniteness of meaning were a charm to him."[72] "Appearance of impropriety" has that same charm of euphony and indefiniteness. With its present high sponsorship, the phrase will most likely be in the law of disqualification for as long as has been "privileges and immunities"—but probably not with so little practical effect.

IV. THE CARSWELL AND BLACKMUN APPOINTMENTS

With Judge Haynsworth defeated, President Nixon came back with Judge George Harrold Carswell as his new proposal. Judge Carswell had certainly not sat in cases in which he held stock in a party, for he held none; and he had accepted no fees for outside services.[73] His only previous significant involvement in stockholding cases had been as one of three judges in the Fifth Circuit who had recently, during the Haynsworth consideration, declared that a judge might sit if he had small stock holdings and who had then, in apparent conflict with the ruling, proceeded to take those judges out of the case.[74]

Two other disqualification problems received some attention in the Carswell hearings. Senator Kennedy expressed an interest in whether the nominee had heard cases involving former clients. The Judge responded that any such instances would necessarily have been extremely rare, since he had been a United States Attorney and out of the practice for several years before he became a district judge.[75] Judge Carswell stated that he had applied to himself the appearance-of-impropriety test rather than the substantial interest test, preferring to be stricter with himself than the statute requires.[76] Even so, Judge Carswell had a minor uncomfortable moment with what had been a plain lapse of memory or error of judgment. When the

Footnotes at end of article.

Judge was United States Attorney, a liquor violation was tried by his office against a man named Adams. Later, Judge Carswell sat as a district judge in a collateral attack upon a perjury judgment involving testimony given by Adams in the liquor case. On appeal, the issue of disqualification was presented to the Court of Appeals. Two judges found no impropriety, accepting Judge Carswell's statement that while the prosecution had occurred during his administration, he did not know that the case had been in his office. In addition, they stressed that defense counsel had known of the previous involvement and had made no objection at trial. Judge Brown, dissenting, felt that the dates were so obvious on the record that Judge Carswell should have known of his previous connection, there having been only a five-month gap between the original trial and the perjury indictment.[77]

The only other ethical matter raised in connection with Judge Carswell was whether he had allowed his home to be improperly used by others to lobby a horse-racing track bill through the Miami legislature.[78] Upon analysis, this episode appears to be insignificant as do the others. In the committee report and the dissent of several Senators, no one rested his opposition on ethical grounds. Judge Carswell's defeat lay in doubts as to his general competence and as to his attitude on contemporary issues of civil rights, and not in any serious questions of conflicts of interest.

To the general relief, the next appointment was Judge Harry Blackmun of the Eighth Circuit Court of Appeals. Judge Blackmun, obviously capable and obviously ethical, was confirmed without difficulty. In the area of conflict of interest, it was not easy to distinguish his from the earlier cases. He had participated in cases involving corporations in which he had small holdings. He documented fully that this was acceptable practice in the Eighth Circuit at the time, but affirmed that times had changed. More recently, after the Haynsworth episode, he had disqualified in precisely the kind of small interest case in which he previously would have sat.[79] He testified that he would interpret "substantial interest" in the statute as meaning any interest at all so far as it applied to him.[80] There is a further comparison with Judge Haynsworth, who had participated in the disposition of the *Brunswick* case despite his purchase of stock between the time of decision and the final determination. Judge Blackmun had done the same thing, having acquired stock in the Minnesota Mining and Manufacturing Company between the time of the decision of the case concerning that company and the denial of a petition for rehearing.[81]

The Blackmun episodes are hard to distinguish from the Haynsworth situation. Yet, at least the marginal votes which defeated Judge Haynsworth came from Senators sincerely troubled about conflict of interest.[82] I anticipate a stricter practice for the future. Judge Haynsworth was, in truth, the victim of the highly ambiguous federal disqualification statute which requires disqualification only in cases of "substantial" interest.[83] As an aftermath of the affair, Senator Bayh has offered a complete revision of the disqualification statute to bring it up to the standard applied in the Haynsworth case.

V. RESPONSES TO THE NEED FOR NEW LAW: THE TRAYNOR COMMITTEE REPORT AND THE BAYH BILL

As an aftermath of the resignation of Justice Fortas from the Supreme Court, the American Bar Association appointed a committee, headed by retired Chief Justice Roger Traynor of California, to review generally the matter of standards of judicial conduct. This included disqualification. Meanwhile Senator Bayh prepared a bill on disqualification and has circulated it among judges, lawyers, and professors for suggestions.[84]

The Traynor Report.[85] This proposal, as it existed in July, 1970, provided that a judge should disqualify himself in any proceeding in his court in which he knows or should know that he, individually or as a fiduciary, or any member of his family residing in his household, has an interest in the matter in controversy or the affairs of a party to the proceeding. An "interest" for the purpose of this standard includes any legal or equitable interest, no matter how small, in a party or in the *res* or issue in litigation, or any directorial, advisory, or other active participation in any enterprise involved in the litigation. It includes ownership of shares in a mutual fund or other entity holding a substantial interest in a party to the litigation.

The proposal further provides that disqualification should be by full disclosure of record as to the nature and extent of the judge's interest. When such disclosure indicates that a judge's interest is insubstantial, he may, upon written request by all parties to the proceeding, withdraw his disqualification and participate in the proceeding.

The Bayh Bill.[86] The bill, as it existed in July, 1970, provided that:

"Any justice or judge of the United States shall disqualify himself, and shall not accept waiver of disqualification, (1) in any case in which he has an interest, which shall include any stockholding in a corporate party, any stockholding in a corporation which holds 10 percent or more of the stock of a corporate party, any stockholding in a corporation of which 10 percent or more of the stock is held by a corporate party, and the holding of any office of a corporation described in this section; (2) in any case in which he has been of counsel; (3) in any case in which he is so related to or connected with any party or attorney as to create a conflict of interest or otherwise render it improper for him to sit on the trial, appeal, or other proceedings; (4) in any case in which his participation in the case will create an appearance of impropriety; and (5) in any other case in which, in his opinion, it would be improper for him to sit."

The Traynor proposal is a vast step forward from existing federal law, but it would profit from a larger infiltration of the Bayh standards.

I. The Traynor plan still permits waiver of disqualification, and the bill would not. I go with the Senator. Waiver is acceptable when the lawyers need not regularly appear before the same judges. For example, it has been sensibly approved as to arbitration, where the attorneys may never again appear before the arbiter.[87] In the conventional hometown courthouse situation, however, waiver is simply a device for bludgeoning counsel who will have to appear before the judge again and again. It reduces disqualification to a form. According to legend, Judge Learned Hand held twenty-five shares of Westinghouse, of which he advised counsel in cases involving that company; they waived the interest to keep Judge Hand.[88] If one may throw a small dart at the memory of the departed great, it would have been better if Judge Hand had not so warmly cherished his tiny stake in the corporate system and had sold those shares. The statement of Judge Biggs, quoted earlier, of universal waiver in the Third Circuit proves too much. Had Judge Haynsworth not shared this view of small holdings, I suspect he would be a Supreme Court Justice today. In his testimony he said of small holdings that "the judges we have are simply not affected by such things."[89] This, if I may be forgiven, is judicial establishment complacence. Others do not find it so difficult to think ill of fellow men in high places.

In taking this position against waiver, I do not overlook the awkwardness of disqualification. If Judge *A* goes out, a Judge *B* must come in, and from somewhere. The attendant inconvenience is tolerable, however. Today, with an enlarged federal judiciary, only a few states have but one judge, and in those states, the volume of federal litigation is, of course, small or there would be more judges. It may be accepted that those few judges will be compelled to limit their stock holding as an inescapable burden of office. If the nonwaiver standard were adopted by the Traynor Committee and the American Bar Association, it would apply as well to the states. Since these judicial systems commonly have more judges available, any disruption should be minimal.

In short, I have no doubt, upon the basis of extensive communications, that the bar regards any waiver system as a velvet blackjack.[90]

2. The Traynor plan covers any holding in a party, regardless of size. This is as it should be, and the Fifth Circuit and other isolated exceptions should be abandoned. The Traynor plan includes interests in holding companies in general; the Bayh bill gives a concrete measure as to their size, which is appropriate to legislation but not to a general standard. The Senate bill also covers holdings in subsidiaries of a party which, in view of the economic interdependence, is desirable, and this the Traynor report might also well do.

3. The bill, like existing law and canons, covers disqualification because of family relationship, or connection as counsel, or as a material witness. The Traynor draft would profitably include these elements as well.

4. The major difference between the Traynor draft and the Bayh measure is in the proposed statutory provisions for disqualification "in any case in which his participation in the case will create an appearance of impropriety," or "in any other case in which, in his opinion, it would be improper for him to sit." The developing law on this standard, discussed in the proceeding sections of this essay, imperatively must be included in the standards. If nothing else, *Commonwealth Coatings* requires it.

The earlier discussion refers to the doubts of Judge Rives in the *Edwards* case, and his conclusion that me must sit, despite the appearance which troubled him.

The object of these two subdivisions of the Bayh bill is to give Judge Rives and others like him the latitude he felt he lacked. These sections free the judge from the rigid fetters of hard-line rules and let him take into account his sense of appearances as well as his subjective sense of what is right. They wipe out the "duty to sit" rule as an absolute mandate. As has been said, the standards of the Bayh bill are those in fact being applied by the Supreme Court and by the Senate. If this is the law the Court and the Senate intend to apply when passing judgments, then it should be statutory.

Returning to the responses to my 1947 inquiry, the senior judge of the Seventh Circuit, Judge Evan A. Evans, stated, "Our understanding is that each judge must for himself decide whether [he] is conscious of a feeling or a leaning which would make it unfair to his ideals and to the litigants for him to sit." The Chief Justice of Nebraska responded, "Essentially the questions you ask are questions which each judge decides for himself." The Chief Judge of the New York Court of Appeals reported, "In so far as any relationship or interest outside statutory prohibition is concerned, the practice of this Court is for the individual Judge to decide the question." The function of the Bayh provisions is not to dictate how the judge shall use his judgment, but to give him the power to exercise it.

VI. PEREMPTORY CHALLENGE TO THE TRIAL JUDGE

The Traynor report and the Bayh bill overlap on the right or duty of the judge to disqualify himself. However, the bill moves into an area wholly outside the scope of interest

Footnotes at end of article.

of the Traynor Committee when it reaches disqualification of trial judges at the instance of a party.

The existing federal statute permits a party to disqualify a judge for bias and prejudice. What is required is actual bias and prejudice.[91] The affidavit of disqualification is tested by the trial judge to determine whether a complaint states a cause of action.[92] The statute is strictly construed,[93] and some district judges take extreme umbrage when an affidavit is filed.

Many states permit disqualification essentially at the option of a party and leave the disqualified judge nothing to determine except whether the application is timely made. The Bayh bill adopts this liberal disqualification practice by eliminating from existing law any requirement that the party state the facts or the reason for believing that bias or prejudice exist. The affidavit is thus reduced to a form of words; the disqualification becomes the same as a peremptory challenge to a juror, and is simply an expression that the party prefers another judge. The system is thus regarded in states which follow it.[94]

The proposed Bayh revision of 28 U.S.C. § 144, is as follows:

"Whenever a party to any proceeding in a district court makes and files a timely affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. The affidavit shall be timely if filed (a) twenty or more days before the time first set for trial or (b) within ten days after the filing party is first given notice of the identity of the trial judge or (c) when good cause is shown for failure to file the affidavit within such times. A party may file only one such affidavit in any case, and only one affidavit may be filed on a side. A party waives his right to file an affidavit by participating in a hearing or submission of any motion or other matter requiring the judge to exercise discretion as to any aspect of the case or by beginning trial proceedings before the judge."

It will be noted that either side of a case has one opportunity, without limitation, to ask for a different judge.[95] The restriction of one such request to a side does not overlook the fact that there may be conflicting or independent interests on a "side." Rather, the proposal rejects this consideration because the goal is substantial justice within the limits of available judicial personnel and one challenge per side is as many strikes as the structure can carry. There are, of course, cases in which various parties formally aligned on the same side are truly adversary to each other. California, which uses essentially this system, has seen fit to regard each adversary interest as a "side," giving each a possible strike.[96] But there are not enough federal judges for such a luxury, and after the peremptory challenge has been used, there remains in any case the complete and independent protection of section 455, with its six grounds of disqualification still operative. Thus, for example, if Judge *A* is removed by defendant's affidavit under section 144, and Judge *B*, plaintiff's cousin, replaces him, the defendant cannot remove Judge B by affidavit but Judge *B* would commit reversible error under section 455 if he did not remove himself voluntarily.

Disqualification must not be a gimmick for delay. Hence, the proposed revision requires that disqualification be exercised before the eve of trial. On the other hand, most cases are settled. To avoid promiscuous and needless disqualification, the affidavit should not be required much before trial. The bill is designed to suit both the individual and master calendar systems. Where individual calendars are used, the parties know their judge well in advance and must file twenty or more days before the time set for trial. In master calendar systems, parties may not know until very late. Where the assignment is made less than twenty days before trial, the amendment gives the party up to ten days for objection. A "good cause" loophole is left for exceptional cases.

The peremptory disqualification device should also not be a gimmick for waste or maneuver. A party should not be allowed to test the judge, educating him through motions, and then go find someone else because dissatisfied with the rulings. The amendment seeks to limit this possibility.

Predictably, one's response to the disqualification sections of the Bayh bill will reflect the critic's experience under his own state law. The section on the judge's self-disqualification elicits an almost unanimously favorable consensus, as reflected in responses to Senator Bayh's broad-scale inquiry. The response on peremptory disqualification is less uniform. Here, too, one tends to confuse the familiar with the necessary. Those from "hard" disqualification states are shocked to suppose that one can strike a judge as he would a juror. Those from "soft" disqualification states take it as a matter of course.

The proposal is sound, however. The plain truth is that one judge is better than another, and attorneys should be entitled to consider this. Certainly one is better than another for particular cases. If one is too slow to satisfy plaintiffs, or too generous with other people's money to satisfy defendants, or too crotchety to satisfy anyone, why not let litigants take these relevant factors into account? Resistance, I suspect, will be personal and emotional; the judge does not like to be judged. He may be comforted by the fact that the system works without strain or humiliation where it exists.

There will be problems; the matter of a few states with only one judge has been mentioned. But the problems are small in relation to the whole volume of law business, the overwhelming bulk of which is in districts in which cases can be perfectly readily shifted from one judge to another and in which it is often a matter of chance where they fall in the first instance.

The Bayh bill on disqualification would substantially improve federal justice, and much of it can be incorporated into the Traynor Committee standards. Its innovations are modest, well-rooted in existing ABA standards and state practice. If one may paraphrase Justice Cardozo on another theme, there is proposed no seismic innovation. The edifice of justice would stand, its symmetry greater than before.

FOOTNOTES

* (Mr. Frank, author of numerous books on the United States Supreme Court, is presently in private practice in Phoenix, Arizona.—Ed.)

† I have been assisted in this article by Mr. John McLamb, a student at Yale Law School. An article on disqualification, above all writings, should acknowledge its biases. At the request of the Judiciary Committee of the United States Senate, I appeared as an expert witness on the matter of disqualification in connection with the Haynsworth appointment. This was because of my article *Disqualification of Judges*, 56 YALE L.J. 605 (1947) [hereinafter cited as Frank, *supra*]. On most matters, I trail cheerfully along as a respectful camp follower behind the Democratic Senators, including Senator Bayh, who dissented in the Judiciary Committee to the Haynsworth confirmation. However, to borrow Tennyson's phrase, Judge Haynsworth bears without abuse the grand old name of gentleman, and I testified to an abiding conviction that no significant objection to his confirmation should be made on the basis of disqualification. *Hearings on the Nomination of Clement Haynsworth, Jr., to be Associate Justice of the Supreme Court Before the Senate Comm. on the Judiciary*, 91st Cong., 1st Sess. 123 (1970) [hereinafter cited as *Haynsworth Hearings*]. In the case of Judge Carswell, I signed the leading opposition bar letter, *see, e.g.*, The Washington Post, Mar. 16, 1970, § B, at 4, not because of agreement with its details, but because of a general sense of the unfitness of the appointment.

[1] *Hearings on the Nomination of Harry A. Blackmun to be Associate Justice of the Supreme Court Before the Senate Comm. on the Judiciary*, 91st Cong., 2d Sess. 41 (1970) [hereinafter cited as *Blackmun Hearings*]. Disqualification is a subdivision of the general area of conflict of interest. I have written of the non-disqualification aspects of conflicts of interest, discussing matters concerning Justices Fortas and Douglas and others in the December, 1970, issue of *The American Journal of Comparative Law*.

[2] I COKE, INSTITUTES *141a.

[3] 3 BLACKSTONE, COMMENTARIES *361. In so saying, Blackstone consciously rejected the earlier views of Bracton, who had said that a judge should disqualify if he were related to a party, if he were hostile to a party, or if he had been counsel in the case. 4 BRACTON, DE LEGIBUS ET CONSUETUDINIBUS ANGLIAE 281 (Woodbine ed. 1942).

[4] *See generally* Frank, *supra*, at 611.

[5] 28 U.S.C. § I (1964).

[6] North American Co. v. S53, 327 U.S. 686 (1946).

[7] This was a meaningful distinction in the federal system prior to 1949, when the applicable statute applied only to distinct judges and not to appellate judges. Appellate judges then frequently applied the statute to themselves. The adoption of 28 U.S.C. § 455 in that year as a general disqualification statute applicable to all judges makes this term of no consequence now. For discussion of these distinctions between House Judiciary Chairman Hobbs and Chief Justice Stone, see A. MASON, HARLAN FISKE STONE 702–03 (1956).

[8] 8 Co. 107a, 77 Eng. 638 (K.B. 1608).

[9] I COKE, INSTITUTES *141a.

[10] Tumey v. Ohio, 273 U.S. 510 (1927).

[11] *In re* Murchison, 349 U.S. 133, 136 (1955).

[12] II U.S. (7 Cranch) 506 (1813). The connection, or indeed, the possible identical personality, of the Livingstons referred to is not clear from the report.

[13] II U.S. (7 Cranch) 603 (1813); *see* Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304 (1816).

[14] United States v. Realty Co., 163 U.S. 427 (1896).

[15] *See* Testimony of Chief Justice Stone, *Hearings on H.R. 2808 Before the House Comm. on the Judiciary*, 78th Cong., 1 Sess. 24 (1943).

[16] 28 U.S.C. § 455 (1964).

[17] *Id.*

[18] Vernon v. Manners, 2 Plowden 425, 75 Eng. Rep. 639 (K.B. 1572).

[19] Frank, *supra*, at 616.

[20] *Ex parte* Quirin 317, U.S. 1 (1942).

[21] 320 U.S. 118 (1943).

[22] *Id.* at 207.

[23] McGrath v. Kristensen, 340 U.S. 162 (1950).

[24] *Hearings on H.R. 2808 Before the House Comm. on the Judiciary*, 78th Cong., 1st Sess. 124 (1943).

[25] In all cases involving the Federal Communications Commission, Justice Black disqualified during the period that his brother-in-law, Mr. Clifford Durr, was a member of the Commission. *See, e.g.*, FCC v. Woko, Inc., 328 U.S. 223 (1946). However, in the FCC case, Mr. Durr necessarily participated in a judicial capacity in the very matter under Supreme Court review. Judge Learned Hand considered it appropriate to review decisions of his cousin, Judge Augustus Hand, when the former was a circuit judge and the latter a district judge. *See, e.g.*, New York & Albany Lighterage Co. v. Bowers, 4 F. 2d 604 (S.D.N.Y. 1925), *aff'd*, 10 F. 2d 1017 (2d Cir. 1926).

[26] *See generally* Schwartz, *Disqualification for Bias in the Federal District Courts*, 11 U. PITT. L. REV. 415 (1950).

[27] For a documented development of the application of the "philosophy" of the Justices to antitrust cases, see the discussion by Stern, *Commentary*, 38 ANTITRUST JOURNAL, 602, 608–09 (1969). Mr. Stern illustrates that in a period in which Justice Harlan and Stewart have divided about fifty-fifty for and against the plaintiffs and the defendants in the antitrust cases, Chief Justice Warren in sixty consecutive government antitrust cases voted in favor of the government fifty-nine times. He obviously has a strong "bent."

[28] *Ex parte* American Steel Barrel Co., 230 U.S. 34, 44 (1913); Berger v. United States, 255 U.S. 22, 34 (1921).

[29] Craven v. United States, 22 F. 2d 605, 607 (1st Cir. 1927); Price v. Johnston, 125 F.2d 806 (9th Cir. 1942). I attempted to advance a more liberal view of this ground of disqualification as special counsel on a petition for certiorari in *DePinto v. Provident Security Life Insurance Company*, but to no avail. *See* 374 F.2d 37 (9th Cir.), *cert. denied*, 389 U.S. 822 (1967).

[30] *See* Frank, *supra*, at 621–22. I have had pleasant personal relations with most of the Justices, in varying degrees of closeness, over the past thirty years. As one of them has cheerfully said, "I can decide a case against you as well as against anyone else," and quite so. However, I have scrupulously sought to avoid my social contact with a Justice except in the presence of opposing counsel around the time of an argument, and have felt something of a twinge of embarrassment in accidentally finding myself at dinner with one of the Justices on the evening before a case was to be presented.

[31] The bizarre attack of Justice Jackson is exhaustively considered in Frank, *supra*, a study which was occasioned by that event.

[32] Frank, *supra*, at 623–24. Mr. Justice Blackmun agrees with Justice Stone on this point although he seems to set a limit at cases involving former "regular" clients. *Blackmun Hearings* 45.

[33] Mr. Justice Goldberg did disqualify in some labor cases when he had been associated previously with a party. *See* United Steelworkers of America v. NLRB, 376 U.S. 492 (1964); United Steelworkers of America v. R.H. Bouligny, Inc., 379 U.S. 958 (1965).

[34] Bank of the United States v. United States, 43 U.S. (2 How.) 711, 745 (1844).

[35] *See* Edwards v. United States, 334 F.2d 360, 362 n.2 (5th Cir. 1964), a case in which the judge clearly regretted that he could not withdraw. This is the general federal view. Cases to the foregoing effect, grouped by circuits, are: *D.C. Circuits:* Tynan v. United States, 376 F.2d 761 (D.C. Cir 1967); United States v. Hanrahan, 248 F.Supp. 471 (D.D.C. 1965); *1st Circuit: In re* Union Leader Corp., 292 F.2d 381 (1st Cir. 1961), *cert. denied*, 368 U.S. 927 (1961); *2d Circuit:* Wolfson v. Palmieri, 396 F.2d 121 (2d Cir. 1968); Rosen v. Sugarman, 357 F.2d 794 (2d Cir. 1966); Town of East Haven v. Eastern Airlines, Inc., 393 F.Supp. 184 (D. Conn. 1968); Cranston v. Freeman, 290 F.Supp. 785 (N.D.N.Y. 1968); United States v. Devlin, 284 F.Supp. 477 (D. Conn. 1968); *3d Circuit:* Simmons v. United States, 302 F.2d 71 (3d Cir. 1962); United States v. Valenti, 120 Supp. 80 (D.N.J. 1954); *5th Circuit:* Edwards v. United States, *supra; 6th Circuit:* United States v. Hoffa, 382 F.2d 856 (6th Cir. 1967); Pessin v. Keeneland Association, 274 F. Supp. 513 (E.D. Ky. 1962); *7th Circuit:* Tucker v. Kerner, 186 F.2d 79 (7th Cir. 1950); *In re* Federal Facilities Realty Trust, 140 F. Supp. 522 (N.D. Ill. 1956); *8th Circuit:* Walker v. Bishop, 408 F.2d 1378 (8th Cir. 1969); United States v. Love, 259 F.Supp. 947 (D.N.D. 1966); *9th Circuit:* United States v. Shibley, 112 F.Supp. 734 (S.D. Cal. 1953).

[36] 325 F.2d 682 (4th Cir. 1963).

[37] 397 F.2d 760 (4th Cir. 1968).

[38] We may for other reasons put aside 28 U.S.C. § 144; not only does it relate solely to district courts, but it requires an affidavit procedure, and it is restricted to bias.

[39] This is the clear majority rule. *See* Annot., 48 A.L.R. 617 (1927), *updated in a comprehensive collection at* 25 A.L.R. 3d 1331 (1969). There are some refinements where the holding is very small. *See, e.g.*, Lampert v. Hollis Music, Inc., 105 F. Supp. 3 (E.D.N.Y. 1952) (20 shares of 13,881,016). *See also* Frank, *supra*, at 637, reporting that in 33 state and federal courts there is disqualification in such circumstances, but that two state and two federal courts reported that disqualification might be waived where the holding was very slight, and one federal court reported that a judge had sat where the holding was very slight. I shall return to this subject in detail below. Nonetheless, the view is overwhelming. There are also refinements not necessary to be considered here when the stock is held by a member of the judge's family. *See* Note, 4, MINN. L. REV. 301 (1920). *See also* Goodman v. Wisconsin Elec. Power Co., 248 Wis. 52, 20 N.W.2d 553 (1945).

[40] My 1947 article shows no judges disqualifying because they are taxpayers, and only two areas in which they disqualified because they would be affected by public utility rates. Frank, *supra*.

[41] Goodspeed v. Great Western Power Co., 19 Cal. App. 2d 435, 444, 65 P.2d 1342, 1345 (1937).

[42] *See* 48 C.J.S., *Judges* at 1048.

[43] United States v. Bell, 351 F.2d 868, 878 (6th Cir. 1965); Edwardson v. State, 243 Md. 131, 220 A.2d 547 (1966).

[44] Beasley v. Burt, 201 Ga., 144, 39 S.E. 2d 51 (1946).

[45] Hall v. Superior Court, 198 Cal. 373, 245 P. 814 (1926) (judge owned property in an irrigation district immediately involved in litigation). For a view requiring a party capacity, see Central Pac. Ry. Co. v. Superior Court, 211 Cal. 706, 719–20, 296 P. 883, 888–89 (1931). The proper test is whether the third party has a "present proprietary interest in the subject matter." City of Vallejo v. Superior Court, 199 Cal. 408, 416, 249 P. 1084 1087 (1926). If so, the judge is disqualified or worse. In Anonymous, I Salk. 396, 91 Eng. Rep. 343 (K.B. 1698), the judge was "laid by the heels" for sitting in an ejectment case when he was lessor of the plaintiff.

[46] Bentley v. Lucky Friday Extension Mining Co., 70 Idaho 511, 223 P.2d 947 (1950).

[47] *See* Jones v. American Cent. Ins. Co., 83 Kan. 44, 109 P. 1077 (1910).

[48] *See* Dial v. Martin, 37 S.W.2d 166 (Tex. Civ. App. 1931); Adams v. McGehee, 211 Ga. 498, 86 S.E.2d 525 (1955).

[49] *In re* Farber, 260 Mich. 652, 661, 245 N.W. 793, 795 (1932).

[50] Ala. App. 474, 63 So. 687 (1913).

[51] *Id.* at 477, 63 So. at 688. The same problem arises when municipal bodies are called upon to award contracts for public works. It is frequently held that the mere fact that a municipal officer is a shareholder in a supplier of a contractor is not a disqualification. *See* O'Neill v. Town of Auburn, 76 Wash. 207, 135 P. 1000 (1913).

[52] As was said of a third-party involvement under an earlier form of the statute, where the judge as shareholder of a creditor was wholly unaffected by the case, the interest to disqualify may be "so slight or inconsequential that the rights of the parties would be best served by his proceeding with the cause. . . ." Utz & Dunn Co. v. Regulator Co., 213 F. 315, 318 (8th Cir. 1914).

[53] *See* note 35 *supra*.

[54] HAYNSWORTH REPORT, S. EXEC. REP. No. 91–92, 91st Cong. 1st Sess. 34 (1969).

[55] 392 F. 2d 337 (4th Cir. 1968), *cert denied*, 391 U.S. 966 (1968).

[56] Kinnear-Weed Corp. v. Humble Oil Refining Co., 403 F.2d 437, 440 (5th Cir. 1968). The decision rests upon the fact that the interest is not "substantial" and holds in effect that the addition of this word to the statute in 1948 changed its meaning.

[57] Austral Oil Co. v. Federal Power Commission, No. 27492 (5th Cir., filed Oct. 17, 1969).

[58] *Blackmun Hearings* 19, 46. The Blackmun matter is discussed below.

[59] ABA COMM. ON PROFESSIONAL ETHICS, OPINIONS, No. 170 (1957).

[60] *Haynsworth Hearings* 271.

[61] Farrow v. Grace Lines, Inc., 381 F.2d 380 (4th Cir. 1967); Donohue v. Maryland Casualty Co., 363 F.2d 442 (4th Cir. 1966); Maryland Casualty Co. v. Baldwin, 357 F.2d 338 (4th Cir. 1966).

[62] 211 Cal. 706, 719–20, 296 P. 883, 888–89 (1931).

[63] City of Vallejo v. Superior Court, 199 Cal. 498, 249 P. 1084 (1926).

[64] ABA COMM. ON PROFESSIONAL ETHICS, OPINIONS, No. 200 (1957). I find no subsequent ABA Committee opinion on point. The canon is incidentally and tangentially applied by the New York County Lawyers Association. N.Y. COUNTY LAWYERS ASS'N ON PROFESSIONAL ETHICS, OPINION No. 346 (1956).

[65] 393 U.S. 145 (1968).

[66] *Blackmun Hearings* 49. Judge Haynsworth also expressly endorsed the "appearances" standard. *Haynsworth Hearings* 295. A thought similar to *Commonwealth Coatings* appears in Berger v. United States, 255 U.S. 22, 35–36 (1921): "The tribunals of this country shall not be impartial . . . but shall give assurance that they are impartial . . ."

[67] *See* text at note 35 *supra*.

[68] 334 F. 2d 360 (5th Cir. 1964).

[69] *Id.* at 362 n. 2.

[70] HAYNSWORTH REPORT, *supra* note 54, at 46. Senator Griffin felt that Judge Haynsworth had also improperly sat in Nationwide Mutual Insurance Company v. Akers, 340 F.2d 150 (4th Cir. 1965) and Toole v. Nationwide Mutual Insurance Company, 353 F.2d 508 (4th Cir. 1965), because he held 500 shares of stock in a company affiliated with Nationwide Mutual Insurance Company.

[71] They were Senators Bayh, Tydings, and Griffin. HAYNSWORTH REPORT, supra note 54, at 37, 52, 46.

[72] 2 G. BOUTWELL, REMINISCENCES OF SIXTY YEARS, 41 (1902).

[73] "It is simply that in my position, I have not accepted and will not accept any fees for outside services, period." *Hearings on the Nomination of George Harrold Carswell to be Associate Justice of the Supreme Court Before the Senate Comm. on the Judiciary*, 91st Cong., 2d Sess. 43 (1970) [hereinafter cited as *Carswell Hearings*). Judge Carswell, as a representative of the Fifth Circuit, had voted for the strict Judicial Conference Resolution of June, 1969, and continued to endorse it.

[74] Judge Carswell referred to this case, Austral Oil Company v. Federal Power Commission, No. 27492 (5th Cir., filed Oct. 17, 1969), as one in which "we disqualified the entire panel." *Carswell Hearings* 43. He refused to be drawn into any decisive discussion as to his standing on small holdings.

[75] *Carswell Hearings* 26–34.

[76] *Id.* at 34.

[77] Adams v. United States, 602 F.2d 307 (5th Cir. 1962). Judge Brown's dissent raised a plain question of integrity. He said, "I am at a loss to understand how we conclude that Judge Carswell knew nothing of the prior activity—that is, was not aware of the 'significance' of what he was doing." *Id.* at 311.

[78] *Carswell Hearings* 49.

[79] *Blackmun Hearings* 49.

[80] *Id.* at 49–50.

[81] Minnestota Mining & Mfg. Co. v. Superior Insulating Tape Co., 284 F.2d 478 (8th Cir. 1960); *see Blackmun Hearings* 19, 46. Blackmun heard four cases involving corporations in which he held stock: Hanson v. Ford Motor Co., 278 F.2d 586 (8th Cir. 1960); Kotula v. Ford Motor Co., 338 F.2d 732 (8th

Cir. 1964), *cert. denied*, 380 U.S. 979 (1965); Mahoney v. Northwestern Bell Telephone Co., 377 F.2d 549 (8th Cir. 1967); and Minnesota Mining, *supra*. He held fifty shares or less in Ford and fewer than fifty in Northwestern Bell's parent corporation, A.T.&T. In the *Kotula* case, Blackmun ruled for Ford; in *Hanson*, he ruled against Ford. He ruled for Northwestern Bell and against Minnesota Mining. *Blackmun Hearings* 30, 46–47. The Judiciary Committee was not troubled by the conflict caused by these "minuscule interests." COMMITTEE ON THE JUDICIARY, S. EXEC. REP. No. 91–18, 91st Cong., 2d Sess. 2 (1970).

[82] Senator Bayh believed that a major distinction between the two nominations lay in the fact that Judge Blackmun had no parallel experience to that of Judge Haynsworth with Vend-A-Matic. 116 CONG. REC. S7031 (daily ed. May 12, 1970).

[83] 28 U.S.C. § 455 (1964).

[84] The bill was also introduced by Senator Tydings, Chairman of the Subcommittee on Improvement of Judicial Machinery of the Senate Committee on the Judiciary. I worked with Senator Bayh in preparing this bill, which was, in earlier draft form, widely circulated by Senator Bayh to attorneys, professors, and judges for comment. It was then revised in the light of the suggestions received.

[85] Interim Report of the Special Committee on Standards of Judicial Conduct (mimeo. June 1970).

[86] The Senator's proposals are set out in their entirety in the Appendix.

[87] *See* Commonwealth Coatings Corp. v. Continental Gas Co., 393 U.S. 145 (1968).

[88] *See* Testimony of Judge Lawrence Walsh, *Haynsworth Hearings* 154.

[89] *Id.* at 296.

[90] As Senator Bayh suggested in his statement upon the introduction of his bill, "Such waivers are often made because counsel dare not jeopardize their relationship with the judge before whom they appear regularly by seeming to question his impartiality."

[91] 28 U.S.C. § 144 (1964).

[92] *See, e.g.*, Tynan v. United States, 376 F.2d 761 (D.C. Cir.), *cert. denied*, 389 U.S. 845 (1967); Rosen v. Surgarman, 357 F.2d 794 (2d Cir. 1966).

[93] Skirvin v. Mesta, 141 F.2d 668 (10th Cir. 1944) is typical of this report.

[94] If an affidavit "is seasonably filed the judge may no longer sit in the case, the affidavit operating as a peremptory challenge to the judge." Conkling v. Crosby, 29 Ariz. 60, 68, 239 P. 506, 509 (1925).

[95] The affidavit form is retained as a gesture of deference to the familiar, and to the fact that some cases seem to regard at least a perfunctory affidavit as constitutionally necessary. *See* Austin v. Lambert, 12 Cal. 2d 73, 77 P.2d 849 (1938); Daigh v. Schaffer, 23 Cal. App. 2d 449, 73 P.2d 927 (1937). These cases are discounted by limiting language in Johnson v. Superior Court, 50 Cal. 2d 693, 329 P.2d 5 (1958); State v. Sixth Judicial District, 58 Nev. 456, 83 P.2d 1031 (1938); State v. Vandenberg, 203 Ore. 326, 280 P.2d 344 (1955). I do not believe that this form is required, and think that a simple motion would be of equal validity with an affidavit.

[96] The existence of the two sections avoids the problem considered in Johnson v. Superior Court, 50 Cal. 2d 693, 329 P.2d 5 (1958), which deals with the problem of having adverse parties on a side.

ANNOUNCEMENT OF POSITION ON A VOTE

Mr. STEVENSON. Mr. President, I was unavoidably absent from the Senate on June 17, 1971, when the Senate voted on Senator KENNEDY's amendment No. 120 to the military draft bill H.R. 6531. This amendment would have required publication of selective service regulations in the Federal Register 30 days before they become effective. Had I been present, I would have voted "yea" on Senator KENNEDY's amendment.

DEATH OF ADMIRAL AND FORMER SENATOR THOMAS C. HART

Mr. RIBICOFF. Mr. President, Adm. Thomas C. Hart, a senior naval commander during World War II and a former U.S. Senator from Connecticut, died this past Independence Day in his home in Sharon, Conn. He was 94 years old.

Admiral Hart was appointed to the Senate February 8, 1945, by Gov. Raymond E. Baldwin to fill out the term of the late Senator Francis T. Maloney who died in office. Admiral Hart, who sat with the Republicans but was noted for his political independence, chose not to seek election and resigned from the Senate November 5, 1946.

The admiral's service in the Senate brought to a close his naval career that began in 1893 when, at the age of 16, he finished first in a Naval Academy competitive examination in his native Michigan.

At Annapolis, Midshipman Hart was in the same class of 1897 that included other future admirals such as Henry E. Yarnell, Arthur J. Hepburn, and William D. Leahy. Admiral Hart later became Superintendent of the Academy, serving there from 1931 to 1934.

Admiral Hart was given command of America's Asiatic fleet in 1939. "My ships were old enough to vote," the admiral remarked about the aging collection of vessels he commanded as this Nation entered World War II.

The surprise Japanese attack at Pearl Harbor December 7, 1941, was less a shock to Admiral Hart, for he had warned Washington some 2 weeks earlier that Japan's naval movements in the South China Sea indicated a military offensive was being readied.

Admiral Hart was credited with having implemented defensive actions in anticipation of the Japanese attack that saved all his surface ships and considerable numbers of merchant vessels.

Recalled to Washington in February of 1942, Admiral Hart was appointed to the Navy's General Board, the senior naval advisory group, and was also assigned the task of managing the Navy's inquiry into the Pearl Harbor disaster.

Admiral Hart was a most dedicated, selfless American. His distinguished record of public service to his country in time of great need will not be easily matched. He led a full life and he lived it with uncommon grace and dignity. We mourn his passing.

The Hartford Courant and the New York Times noted Admiral Hart's many achievements in articles of July 5, 1971. I ask unanimous consent that these articles be printed in the RECORD.

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

[From the Hartford (Conn.) Courant, July 5, 1971]

ADMIRAL HART DIES; FORMER U.S. SENATOR

SHARON.—Thomas Charles Hart, 94, of Main Street, retired Navy admiral, former U.S. senator from Connecticut and former Naval Academy superintendent, died Sunday at his home after a short illness.

Born in Davidson, Mich., he lived in Sharon 26 years, after serving 52 years in the Navy.

At the age of 15, with only two years of high school behind him, he bested 10 older candidates in a competitive examination and won appointment to the U.S. Naval Academy. He was graduated in the Class of 1897 and almost immediately, as passed-midshipman, saw action in Cuban waters during the Spanish-American War.

"I didn't miss any of it," Hart reflected later. "It was the last gentleman's war ever fought. The days of chivalry hadn't ended."

In later life, Adm. Hart commented: "Luck, all through my life, has been the most important element in it. As I look back, I think I'm probably the luckiest man that the Navy ever had, and that goes for everything —career, marriage, family and everything else."

Hart, during a tour of duty in the Bureau of Ordinance in Washington met Caroline Brownson, daughter of Rear Adm. Willard H. Brownson, one-time superintendent of the Naval Academy and chief of the Bureau of Navigation in President Theodore Roosevelt's day.

The Harts were married in March, 1910.

At the beginning of the 20th century Hart served for three years on the U.S.S. Hartford, an old square rigger sailing ship that once served as flagship for Admiral David Farragut. Looking back on it, Adm. Hart said, "In those three years I saw much more of the world than in any other period of my life." He retained a keen knowledge of sailing ships until he died.

SUBMARINE COMMAND

In Navy circles Hart was often identified with the submarine service, although he spent only eight years there. It was a new branch of the Navy when he entered in 1914 and there was ample opportunity for his enthusiasm, independence and daring. When the United States entered World War I, Hart was sent to Europe in command of all the U.S. submarines, which were based in Ireland and the Azores.

Later, in 1929, his first command as a flag officer was of all submarines in the Atlantic and Pacific oceans.

Many awards and decorations came to Hart in his career, but none held for him the esteem he had for one—quite an unofficial one—from the men of the submarine service, "in appreciation," as they said, for what he had "contributed in pioneering the development and preparation which made them (the submarines) tick during World War II."

In rare moments of confidence, a visitor to historic King House, the Hart home in Sharon would be treated to a display of this plaque.

In 1922 there was a new direction to the Hart career, taking him into the scholastic world. First there was a course of graduate study at the Naval War College in Newport, R.I., followed by another at the Army War College.

The Army then asked him to stay at the college for another year and teach a course in quite a new subject—amphibious warfare. There were no textbooks and little historical precedent for this branch of naval warfare, which became paramount in the war with the Japanese.

NAVAL ACADEMY

In 1931 he took over as superintendent of the U.S. Naval Academy and stayed for three years. Stories are legion among other older naval officers of the Hart regime in Annapolis. He was known as a strict disciplinarian but always a fair one. He made important changes in the curriculum and, as he said "humanized it somewhat."

Every naval officer of flag rank looks back on one particular command in his career with nostalgia. Hart felt that way about his

two years as captain of the battleship Mississippi.

When he turned her over in 1927 to his successor at Hampton Roads, Va., he went ashore, wandered into the grounds of the Old Soldiers' Home and sat on a bench to mediate and look out over the water at his beloved ship.

"It was a doleful hour," said Hart. "My thought was that my useful and enjoyable life was over, that I would never have anything again as good as those two years."

Perhaps this feeling for the Mississippi was surpassed only by his love of the Heavy Cruiser Division, command of which was his subsequent sea duty.

After the Naval Academy superintendency, Hart was offered command of a division of battleships in 1934. It was evident that he was "definitely in favor"—but characteristically, he turned down the offer and asked in stead for a division of the heavy cruisers.

"They were a new thing," said Hart. "I felt stimulation and challenge in their development. For a simple sailor like me, I saw more fun in the fast ships."

COMMANDS FLEET

War clouds were forming over the Pacific in the summer of 1939. Hart was ordered as commander-in-chief of the Asiatic fleet. It was a four star job, but the ships under his command were not many and for the most part outdated.

"I used to say, when asked about it, that all my ships were old enough to vote."

Nevertheless, Hart labored in Manila, as the naval counterpart of Gen. Douglas MacArthur on land, to prepare for the day that seemed more and more inevitable.

When the Japanese struck Pearl Harbor, Hart managed to save his ships at Manila and he was proud of the fact that he also saved about 40 merchant vessels, more than 200,000 tons of bottoms—a point he made later to President Roosevelt when he returned to Washington.

Hart had been retained in command of the Asiatic fleet after his normal retirement date. With the loss of the Philippines, President Roosevelt and Prime Minister Winston Churchill of Britain decided that allied military and naval forces, then based in the East Indies, should be under a single command. The A(merican) B(ritish) D(utch) A(ustralian) command was formed and Adm. Hart was designated as the naval commander.

Later it was decided that this leadership should be turned over to the Dutch and Hart relinquished his slender forces to the Dutch Adm. Helfrich, and returned by a circuitous route to the U.S.

Back home the Navy kept him busy with duties on the General Board, the Navy's senior advisory group with a special mission to gather testimony from naval personnel all over the world concerning the Pearl Harbor disaster, and with speech-making tours of the United States in the interest of morale and industrial production.

Adm. Hart received his first Distinguished Service Medal for his services in the Azores during World War 1. President Roosevelt presented him a Gold Star, equivalent to a second Distinguished Service Medal, for his "sound judgment" while commander of the Asiatic fleet and for his conduct of operations after the outbreak of war.

In January 1942 the admiral received the Grand Cross of the Order of Orange-Nassau from Queen Wilhelmina of the Netherlands for his services as commander of the allied fleet in the Far East.

APPOINTED SENATOR

Suddenly in February, 1945, there was a dramatic turn in the admiral's career, Gov. Raymond Baldwin of Connecticut asked him to accept appointment as successor to the late Sen. Francis Maloney, Hart served two years in the United States Senate, bringing to a close his unprecedented naval career. Hart had never been identified with politics. Although he sat with the Republicans, his entire term was noted for its independence.

He leaves his wife, Caroline Brownson Hart; a son, Roswell R. Hart of Sharon, three daughters, Mrs. Laverne Baldwin of Taconic, Mrs. Dana R. Bergh of Rochester, N.Y. and Mrs. Francis B. Sayre of Washington, D.C.; 13 grandchildren, and a great-grandchild.

Another son, Lt. Comdr. Thomas C. Hart, a submarine officer, died in WW II action.

The funeral will be Wednesday at noon at the First Church of Christ Congregational, with the Rev. Francis B. Sayre, dean of the National Cathedral, Washington, D.C., and the Rev. Frederick Stimson, rector of Christ Episcopal Church, officiating. On Thursday, a 10 a.m. service at Ft. Myer, Va., will be followed by burial in Arlington National Cemetery.

At Sharon mourners will walk from the Kenny Funeral Home, Main Street to the church, a short distance away.

There are no calling hours. Memorial contributions may be made to the U.S. Naval Academy Foundation, 1341 New Hampshire Ave., Washington, D.C.

[From the New York Times, July 5, 1971]

ADM. THOMAS C. HART IS DEAD AT 94

SHARON, CONN., July 4 (AP)—Adm. Thomas C. Hart, U.S.N., retired, Commander in Chief of the Asiatic Fleet at the time of Pearl Harbor and a former United States Senator, died today in his home at the age of 94.

HELD A TOP COMMAND

(By Farnsworth Fowle)

Admiral Hart, who entered the United States Naval Academy in 1893 and retired in 1945 to serve for two years as an appointed Senator from Connecticut, filling a vacancy, was one of the senior commanders in World War II.

He was sent to Shanghai in 1939 to take command of the Asiatic Fleet and in December, 1941, braced his small force for the Japanese onslaught on the Philippines, Dutch East Indies and Malaya. Called to Washington in February, 1942, he resumed a seat he had held on the Navy's General Board and was entrusted with compiling the Navy's report on the Pearl Harbor disaster that had beset less vigilant commanders at the Hawaiian base.

About two weeks before the aerial attacks on Dec. 7, 1941, Admiral Hart, without consulting Washington, had ordered his PBY–2 (Catalina) long-range flying boats to maintain a discreet surveillance on Camranh Bay on the southeast coast of Vietnam.

They found a massing of Japanese vessels in that anchorage as a portent of Japanese readiness to strike south. Admiral Hart relayed this to Washington and felt no great surprise when Washington sent a "war warning" message calling for "defensive deployment" to him and to the Pacific Fleet commander at Pearl Harbor a day or two later.

ISSUED ATTACK ORDER

Before the week-long battle of the Macassar Straits, Admiral Hart issued an order to attack that said "no vessel will leave the scene of action until it is sunk or its ammunition is exhausted."

On his return, President Franklin D. Roosevelt added a second gold star to his Distinguished Service Medal. The citation praised the admiral's "sound judgment and marked resourcefulness in dealing with the difficult military and diplomatic situation" on the eve of conflict, and for handling his fleet as well as could be done in combat.

Born in Davidson, Mich., on June 12, 1877, he was finishing his second year at Flint High School when he learned that a competitive examination for a Naval Academy appointment was being arranged by his Representative. He took the exam, came out first, and then, though just 16, passed the entrance examinations by cram-studying.

As a midshipmen he was coxswain of crew, at a time when he was getting his first taste of deep-sea sailing on the frigate Constellation, a sister-ship of the Constitution.

GRADUATED IN 1897

He graduated with the class of 1897, which included such future admirals as Henry E. Yarnell, Arthur J. Hepburn and William D. Leahy.

The young officer had his first taste of combat in the Spanish-American War, on the battleship Massachusetts and the ex-yacht Vixen. He ran messages from Navy to Army headquarters and occasionally accompanied Col. Theodore Roosevelt of the Rough Rider regiment when the future president came to the Vixen in search of good dinner in the officers' mess.

In World War I, Admiral Hart commanded submarine units in British and Azores waters, emerging a captain with his first Distinguished Service Medal. His work with submarine forces was credited with "making them tick" in World War II.

He commanded the battleship Mississippi for two years, but later, to the surprise of many, turned down an invitation to command the Navy's battleships, a prize post before Pearl Harbor, in favor of the challenge of the more lightly armed but speedier heavy cruisers.

Shore duties between wars included Naval War College and the course at the Army War College, where he spent a second year by Army request as an instructor in amphibious war. From 1931 to 1934 he returned to Annapolis as Superintendent. Cadets of those years remember him as strict but fair, and that he made an attempt to broaden the curriculum.

His first tour on the Navy's General Board was from 1936 to 1939, when he was sent to Shanghai with the four stars of a full admiral to command the Asiatic Fleet, of which he said: "All my ships were old enough to vote."

Reading the signs of coming conflict, he moved his headquarters to Manila. He was credited with dispositions that saved all his surface ships and more than 200,000 tons of merchant vessels in the initial Japanese attack.

In February, 1942, he was ordered home, turning over command of his fleet to the Netherlands commander of the Allied fleet. Though a year overdue for retirement, he was immediately recalled to active duty and a seat on the General Board, while Congress voted him permanent four-star rank.

One of his wartime duties was to collect depositions for the Navy's inquiry into the Pearl Harbor disaster, before memories faded. For this, he traveled extensively through the combat theaters and also spoke and wrote at home to publicize the Navy's war effort.

Admiral Hart had made the King house, a historic mansion in Sharon, Conn., his family home since 1924. In February, 1945, he accepted appointment by Gov. Raymond E. Baldwin, a Republican, as Senator to fill the vacancy caused by the death of Francis T. Maloney. It was at that time that he stepped down from the General Board.

As a Republican Senator he maintained that he was not a Navy spokesman and subsequently declined service on the Naval Affairs Committee, although he later agreed to serve on the Military Affairs Committee after being assured that the Army would welcome his presence.

He was an opponent of the merger of the armed services into a single Department of Defense. He contended that a separate Air Force would combine with the Army to diminish the Navy's role—and he also thought that the combination of air and

48-059 O - 72 - pt. 18 - 33

surface forces in a single branch, as in the Navy, was more effective militarily than their separation.

Admiral Hart did not seek election in 1946.

In October, 1947, he warned that Korea probably would become the 17th Soviet Republic. "A Sovietized Eastern Asia," he said, "is fully as menacing to us as would be a Sovietized Western Europe, and the probability that it may happen is decidedly greater."

He regretted in the light of later events that the United States had sought Russian entrance into the war against Japan, saying that "Japan's China army gave up, the Russian troops were not needed at all and the estimate was wrong."

Last November, he welcomed the election of his Sharon neighbor, James L. Buckley, as Conservative Senator from New York. "I always knew Jimmy had the stuff," he said.

In Sharon, he was active in such civic enterprises as the reforestation of Sharon Mountain, the Sharon Hospital, and in establishing the Sharon Historical Museum to which he gave his collection of firearms.

Admiral Hart is survived by his widow, the former Caroline Brownson, daughter of an admiral; a son, Roswell R. of Sharon; 3 daughters, Mrs. LaVerne Baldwin of Taconic, Conn., Mrs. Dana Bergh of Rochester, and Mrs. Francis B. Sayre Jr. of Washington; 13 grandchildren and a great-grandchild.

A funeral service will be held Wednesday at noon in the First Church of Christ, Congregational, in Sharon. Burial will be in Arlington National Cemetery following a service in the chapel at Fort Myer in Arlington, Va., on Thursday at 10 A.M.

PROTECTION OF ST. CROIX ESSENTIAL FOR CONTINUED RECREATIONAL EXCELLENCE

Mr. MONDALE. Mr. President, on June 18, the Minneapolis Star published an interesting editorial concerning the lower St. Croix River, which the Senator from Wisconsin (Mr. NELSON) and I have asked Congress to protect under the National Wild and Scenic Rivers Act.

As the Star points out, the St. Croix River is exceptionally valuable because its natural beauty and recreational potential are available to residents of the Twin Cities metropolitan area. If this river is not protected, the editorial adds, the St. Croix River Valley will no doubt become quickly overdeveloped and thus lose its attraction as a close retreat for Twin Citians.

Mr. President, because the editorial so succinctly summarizes the reasons why the St. Croix River should be afforded the protection of the Wild and Scenic Rivers Act, I ask unanimous consent that the article be printed in the RECORD.

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

MYSTERY OF THE ST. CROIX

How Minnesota and Wisconsin could come this far without having the St. Croix River Valley they share overwhelmed by development is a mystery. But they can be thankful that, despite the pressure of the nearby urban area, the St. Croix remains essentially a beautiful, if somewhat overworked, recreational river.

Sens. Mondale, D-Minn., and Nelson, D-Wis., have introduced legislation to include the St. Croix from St. Croix Falls to the Mississippi River under the protective cover of the national scenic and wild rivers system. A federal-state study team suggests spending about $7.5 million to preserve 8,250 acres along the river, either through purchase or scenic easements.

While probably something less than one-fourth of the valley is still undeveloped, most of what is developed has a low profile. It's still possible to preserve much of the valley's basic recreational appeal, which, incidentally, was the recommendation of a Metropolitan Council staff report recently.

Without restrictions, on the other hand, it isn't hard to predict the overdevelopment of the valley and its loss as a place to retreat from the urban crush. While circumstance has provided a chance to save this valley from and for ourselves, the opportunity can't last forever. Congress should move quickly to approve the Mondale-Nelson proposal.

PROMISES WITHOUT PERFORMANCE

Mr. BAYH. Mr. President, as chairman of the Juvenile Delinquency Subcommittee, I have been especially concerned about the need to realize the full potential of our young people. One of the prerequisites of their fullest development is a supportive environment free from fear, insecurity, and hunger. I am deeply concerned about the number of children—our greatest resource of the future—who are not only living in poverty but are struggling day to day without adequate food.

At present, our children comprise almost half of the 25.5 million citizens who live below the poverty line. In other words, about 13 million or 12.8 percent of all citizens under the age of 25 are probably suffering emotionally and physically from inadequate nutrition. It has been shown that severe hunger can impair an individual's mental abilities. Therefore, I believe that elimination of hunger should be one of the Nation's first priorities.

Earlier this year, the Department of Agriculture repeatedly urged the cities to expand their summer feeding programs. Consequently, requests from the cities were far greater than available funds. But suddenly, on June 17, the Department of Agriculture announced that it would be unable to fulfill its earlier promises to the cities to fund the expanded summer lunch program under section 13 of the National School Lunch Act. Now it appears that hungry children are going to become the victims of the administration's "promise without performance."

Mr. President, we all have read that on June 28 the Department of Agriculture announced proudly that it was prepared to spend $18.1 million on the 1971 summer lunch program as compared with $5.8 million spent in the summer of 1970. What the Department of Agriculture cleverly and purposely omitted was the fact that the $18.1 million is about $15 million less than the appropriation they led the cities to believe would be available. Not only did the Department of Agriculture deceive the cities about the appropriations, but they continued to encourage them to plan and initiate expanded programs right through the month of May. Then in June, they suddenly notified the cities that the promised funds would not be available. Such an abrupt and undeserved termination of funds places an additional problem in the laps of our already burdened cities. I am astounded by the casual treatment which cities have received from the Department of Agriculture. Less than 2 weeks before funds were terminated, the Assistant Secretary of Agriculture, Mr. Richard Lyng, testified before a Senate committee that the Department had sufficient funds to carry out all the provisions of the School Lunch Act. It begins to appear that these recent pronouncements and decisions by the administration have been somewhat whimsical.

My own State of Indiana is a prime example. As late as May the Regional Office of the Department of Agriculture urged the Indiana School Lunch Agency, through telephone calls and written correspondence, to contact churches, day-care centers and other organizations in order to plan the summer lunch program. Assurances were made that additional money would be available for the programs.

Buoyed by the written and verbal encouragement of the Regional Office, Indiana proceeded with its plans for the programs by buying food and making commitments to various organizations. In June only $1,618.32 remained of the initial funding and Indiana was unable to pay for debts incurred during April and May. The school lunch agency requested by telephone an additional $105,412 to cover debts and to start summer programs. A tentative letter was received saying the money would be coming, but to date no letter of credit has been received.

Shortly thereafter—around June 1—the Indiana office was informed that not as much money was available for summer programs as previously indicated and funding would not go beyond June 25. No new programs were to be implemented and some programs already in operation were to be terminated.

As we are well aware, Congress responded to the needs of the cities for additional funds by passing overwhelmingly H.R. 5257 by June 22. This bill extends summer feeding programs and authorizes $32,000,000 for fiscal year 1972, an increase of $12 million over funds for last year. It further authorizes the Secretary of Agriculture to use during the next 2 years up to $135,000,000 in money available under section 32. It was the clear intention of the Congress that the Secretary use that authority to provide full funding for the summer programs—and to use as much additional transferred money as necessary for the year-round programs. What we are faced with is an intentional frustration of the intent of Congress. Accordingly, I have sent a letter, with 40 other Senators to George Schultz, Director, Office of Management and Budget, urging his immediate reconsideration of the funds available for the summer lunch program. I sincerely hope that the repeated requests of Congress and the cities for more money will lead the administration to use the money available to feed our hungry children.

What will happen to the millions of children in New York and Newark, in San Antonio and Los Angeles, in Chicago and Indianapolis, and in many other cities throughout the Nation who will not be fed? It is hard for a person to con-

centrate on constructive summer activities, when the mind is preoccupied with hunger pains and searching for the satisfaction only food can provide.

The situation is ironic. The Department of Agriculture could reportedly save $200 million per year by supporting a reasonable farm subsidy limitation—a limitation of $20,000 per year, per crop. Two hundred million dollars would more than pay for the summer lunch program. However, the Department has chosen to sacrifice the health of our young to a program of welfare for rich corporate farmers. It is a tragedy when men play politics with our Nation's young. What is even more tragic is that if the streets of the cities become agitated during the summer by hungry young people, the administration will join the chorus of those who will not be able to grasp or comprehend the reasons. The same question will be asked, as it has in the past by these people. The question—why?

STATEMENT BY SENATOR GRAVEL AT SUBCOMMITTEE SESSION CONVENED BY HIM

Mr. CRANSTON. Mr. President, a week ago, my good friend, seatmate, and classmate in this august body, the Senator from Alaska, made a deep, personal decision—the kind of decision each of us is called upon to make at one time or another during our careers in the U.S. Senate.

Deprived of a Senator's right to the Senate floor by a parliamentary tactic, when Senator GRAVEL proceeded to convene a subcommittee session he knew that the procedure might be subject to question by some Members of the Senate. But it was a deeply felt and intensely personal decision that led him to pursue the course he did.

I ask unanimous consent that the words Senator GRAVEL spoke at the outset of the subcommittee session be printed in the RECORD. His comments provide strong insights into the fabric of his personal decision.

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

STATEMENT BY SENATOR MIKE GRAVEL

Mr. President: Can anyone doubt that these are agonizing times for America?

Can anyone doubt that this nation is being torn apart by war that sears its conscience?

A terrible shadow of suspicion is across the land. Suspicion that we have made a terrible mistake. That we have spent lives and wealth in pursuit of an unworthy goal.

Suspicion that Government has not been, in this representative nation, of the people or by the people.

For 20 years this nation has been at war in Indo-China.

We began with the assumption that French influence must be preserved. Preserved so that Southeast Asia would not have a Communist government.

We supported the French with American tax dollars, to such an extent that by the war's peak, Americans were paying 80 percent of the total cost of the war.

That was a policy endorsed by American leaders as a means of halting the spread of communism without expending American lives.

Virtually without exception, American leaders have built upon those policy origins, each step following with apparent logic after the last step in seeming responsible and orderly fashion.

The logic of helping the French involved us in helping to frame the Geneva peace.

Involvement in the peace led us to decisions to provide massive economic and political assistance to those who governed in the name of anti-communism.

The logic of supporting the Diem regime impelled us to rise to its defense when threatened. First, through providing economic support, and weapons. Then, military advisers. And finally, as the threat increased, the full-scale, total commitment of American lives and wealth.

After 20 years of pursuing that policy, and as a direct result, millions of Asians have died, millions more have been maimed or become refugees in their own land.

After 20 years of pursuing that policy, and as a direct result of that policy, tens of thousands of Americans have been killed, half a million wounded. Hundreds of billions of dollars have supported the war effort—money that obviously could have found a use at home.

Our economy is in a precarious condition.

Inflation has eaten deeply into each individual's personal resources. The jobless rate is critical. The dollar in jeopardy.

After 20 years of our Indo-China policy, and as a direct result of that policy, our youth have virtually abandoned hope in the ability of their government to represent the ideals for which the Republic stands. They have dangerously departed from a feeling of unity with this nation's leaders, this nation's purposes, this nation's commitment to individual worth and humanity.

For the past 20 years, the people have placed increased trust in the Executive Branch of Government.

As technology has contributed to life's complications, as the horror of weaponry has escalated beyond comprehension, the people have felt the need to trust in those who serve them; trust, to make wise decisions; trust, to keep faith with the governed.

But now, as a direct result of our Indo-China policy, that trust is rapidly eroding, and we all fear the result.

Can anyone seriously argue the consequences of our policy as I have stated them?

These are not forecasts of doom; these are facts. Facts staring at us baldly from through the doors that connect this chamber with the outside world.

Mr. President, recently I gained possession of the Pentagon Papers. I do not have them all, but believe that I possess more than half of the total work.

I did not seek these papers. When they were offered I accepted them. I have reviewed the papers in my possession and read much of the material.

It is a remarkable work.

Remarkable, for what it says about those chiefly responsible for managing our efforts in Southeast Asia in 1967.

They knew our Southeast Asia policy was bankrupt. They knew with a certainty that can only flow from full possession of the facts. They knew that we would achieve no worthy goal and reap only the consequences.

The study was not an attempt to build upon the origins of our policy, as our leadership had built. It was an effort to look at the foundations of that policy to see what went wrong.

It was an attempt to discover how such a great nation, a nation of elected representatives, a nation whose total resources overwhelm the resource wealth of all others—how such a nation could have made such a colossal mistake.

That study was commissioned in 1967—before the Tet offensive. Our failure was evident within the Pentagon before reality broke upon the vast body of Americans in early 1968. It was evident within the Defense Department four years ago—or more.

The Pentagon Papers are not military documents, they are policy documents.

The study is not so concerned with military tactics or logistics as it is with the detailed analysis of the development of our Southeast Asia policy.

In its own words, the report states:

"The purpose of this study is not only to tell what happened, but to help explain why it happened; not only to describe a sequence of decisions, but to help understand why these particular choices, and not others, were made, and (in order to draw lessons for the future) how things might have been otherwise.

The authors were true to their charter.

They spared no hard language, no sensitive analysis. They based their work on available documents which without question support the authors' conclusions.

These documents have been classified by the Executive Branch of Government. As of this moment, the public has no access to them. As of this moment, the newspapers in possession of the documents have no freedom to publish them.

As I understand the requirements and duties of our system of representative government, Congress makes policy and the Executive Branch implements it. Yet, until public pressure became overpowering, the Executive would not share these documents with the Legislative Branch. And even now we have them under the most stringent circumstances imaginable.

Mr. President, there is no defensible justification for failure to disclose the contents of these documents to the American people.

In the name of all this great nation and great people stand for, the people must know the full story of what has occurred over the past 20 years within their government.

The story is a terrible one. It is replete with duplicity, connivance against the public and public officials.

I know of nothing in our history to equal it for extent of failure and extent of loss in all aspects of the term.

We cannot leave the truth to be told by historians, for the same reason the Defense Department determined in 1967 it could not leave the story to be told by historians.

The war is still in progress. People, human beings, are being killed as I speak to you. Killed as a direct result of policy decisions we, as a body, have made.

Arms are being severed; metal is crashing through human bodies—because of a public policy this government and all its branches continue to support.

For what purpose?

One may respond that we have made such a sacrifice to preserve freedom and liberty in Southeast Asia.

One may respond that we sacrifice ourselves on the continent of Asia so that we will not have to fight a similar war on the shores of America.

One may respond that if Vietnam is governed by those in Hanoi all nations on its borders will suffer a loss of representative government and become bastions of Communist rule.

One can make these arguments only if he has failed to read the Pentagon papers.

That is the terrible truth of it all.

The papers do not support our public statements.

The papers do not support our best intentions.

The papers prove that for 20 years, and certainly for the last ten years, we have been victims of our Southeast Asia policy, not masters of it.

The greatest representative democracy the world has ever known, the nation of Washington and Jefferson and Lincoln, has had its

nose rubbed in the swamp by petty war lords, jealous Vietnamese generals, black marketeers and grand scale dope pushers.

We have been the victims.

The policy has not been Vietnamization of Vietnam. Rather, it has been the victimization of America.

What do we do, Mr. President?

What do I do?

The war goes on.

People die.

America continues to lose faith in itself and material strength to advance itself, to preserve itself.

The war goes on, one decision seeming to logically flow from the one before it, as decisions have flowed for twenty years.

We may get out next year, or the year after that.

We may fight on other battlefields to protect our investment made to date.

We may return in force if this or that contingency comes to pass.

When, Mr. President, will the war end?

Why not today? Why not tomorrow?

Most Americans, on the evidence presented thus far, believe it should be ended as quickly as we can withdraw our forces.

Yet the war goes on.

I do not believe the war can continue once the people and their duly elected representatives have the story that is contained in the Defense Department documents.

I do not believe this Congress or this nation can reject the meaning of these documents.

I do not believe we can burn the books and forget they were written.

I do not believe we can close our eyes and continue to pretend that we live in a separate world.

I do not believe our concern for reputations or bureaucratic prerogatives will transcend our obligation to react to the honest message that has been delivered.

Mr. President, I reject the executive restraints that have been imposed to prevent full legislative use of and debate over the facts at hand.

The American people have an absolute right to know matters of overwhelming importance to their own informed decision-making.

It is my Constitutional obligation to protect the security of the people by fostering the free flow of information absolutely essential to their democratic decision-making.

The American people and the framers of the Constitution have never agreed that the truth of the performance of their elected officials should be hidden from public discussion and review.

The American people are the true sovereign.

I will not accept the notion that the President of the United States can manipulate the United States Senate into silence.

Let those who now fear the truth test themselves in the area of public judgment. That is the purpose of it all. What more basic principle underlies the government of this nation and the charter all our citizens have with it?

Mr. President, there is a great yearning in our land. And a great awakening.

There is a yearning for peace, and the growing realization that we need never have gone to war.

There is a yearning for a more open and free society . . . and the emerging recognition of increasing repression of peoples' lives, their right to know, their right to dictate the course of events.

There is a yearning for mutual trust between those who are governed and those who govern. And the sudden revelation that it has not been the people who have lacked faith in their leaders, but the leaders who have lacked confidence in the people.

For it is the leaders who have been found lacking, *not* the people. It is the leaders who have systematically misled, misunderstood and, perhaps worst of all, ignored the people and the Congress in the pursuit of a reckless foreign policy which the people never sanctioned.

This nation's public never has failed to support its government and its policies once it was convinced of the rightness of those policies. But it should not be expected to support those policies if it does not believe them to be right.

This is not a time for Stephen Decatur's philosophy of "My country, right or wrong." Rather, this is a time to right our wrongs . . . to admit our mistakes and to try and correct them. This is the true test of the patriot.

Mr. President, at this moment, free discussion of the Pentagon papers has been circumscribed in our nation's press. Free discussion must not be circumscribed on the Floor of the United States Senate.

As I speak now, the war goes on.

Immediate disclosure of the contents of these papers will change the policy that supports that war.

If we act today, perhaps one life will be saved, one village not bombed.

If we act today, the value of action is greater than action tomorrow.

And so I intend to read from the documents now, and for as long as I am physically able.

I would hope that other Senators would join with me to continue the reading until all the documents have become a matter of public record. Or I would hope that the reading itself will prompt immediate and full disclosure.

I have enough confidence in the democratic process to believe that disclosure will prompt decisions in an orderly way, through the democratic process and through our recognized and legitimate institutions of power.

And so, Mr. President, I begin with a reading of summary sections dealing with the origins of our policy in the Administration of President Harry S. Truman.

HARLEM PREP SCHOOL, NEW YORK CITY

Mr. MONDALE. Mr. President, among the many graduation exercises this June in which thousands of young people have participated, one such ceremony seemed to be especially significant—the graduation of students from the Harlem Prep School in New York City.

Most often, we like to assume that when students graduate from high school—especially those going on to college—the ceremony represents a culmination of many events: Of past educational and academic achievement, of a solid preparation for adulthood and independence and, generally, a rich and rewarding learning experience. Unfortunately, for many, this is not the case. The sad reality is that many students who graduate this June—and others who will never reach graduation at all—will be barely able to read or even do simple arithmetic. These young people represent the failure of the public school systems and other institutions to meet their needs; they are the dropouts who have been "pushed out" along the way.

In my view, one of the most exciting educational endeavors is a school housed in a renovated supermarket in the middle of Harlem—where educational prospects have at best been dim—which is making an effort to reach these pushouts and prepare them for college. Harlem Prep recognizes that the difference between the college-bound high school graduate and the "pushout" is often not ability, but motivation. As a testimony to the success of the school's philosophy, Harlem Prep recently graduated 116 former dropouts of all ages—all with scholarships to colleges and universities in the United States and abroad.

Mr. President, I read with pleasure in a recent article by Barbara Campbell, and published in the New York Times, that Harlem Prep has survived a financial crisis which threatened to close its doors this spring. I commend the students and faculty of Harlem Prep for their outstanding achievements. I ask unanimous consent that this encouraging article be printed in the RECORD.

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

EX-DROPOUTS GRADUATED IN HARLEM

(By Barbara Campbell)

The Harlem Preparatory School graduated 116 former high school dropouts yesterday, all with scholarships to such institutions as Harvard, Wesleyan, Columbia and the University of the New World in Switzerland.

The school's philosophy is that the dropouts it accepts do not lack the ability to go to college, but the motivation. That is what Harlem Prep seeks to provide.

Four hundreds persons attended the graduation on a cordoned-off block of Seventh Avenue between 124th and 125th Streets.

Four months ago it was uncertain whether any of the students ranging in age from 17 to 40 years old, would be graduated. The private school, at 2535 Eighth Avenue, was low on funds and threatening to close its doors after former donors had made no firm commitments.

NEW GRANTS RECEIVED

An obviously relieved and happy Robert J. Mangum, newly elected chairman of the school's board of directors, said that Harlem Prep had received several major grants after news of its imminent closing was made public in March.

"We already have our budget for next year, said Mr. Mangum, who is also Commissioner of the State Division of Human Rights. He added later that the budget had been cut from $600,000 last year to $462,000.

The Standard Oil Company (New Jersey) had guaranteed the school $100,000, enabling it to remain open, and $150,000 over a two-year period.

The Ford Foundation has approved a $250,000 grant, and major contributions will come from the Sheila Mosler Foundation, a consistent supporter of the school, and the Chase Manhattan Foundation.

Smaller contributions have also been coming in from individuals and from local organizations. At the graduation, a representative of the United Friends of Harlem Prep gave the school $3,500.

RETURNING ALUMNI

Among the guests at the ceremony were many graduates of the school, who believe it is their duty to return each year to celebrate the achievement of the students.

Among them were 30 graduates who will be college seniors next year. They were members of the first class of 39 students, which graduated in 1968 at Harlem community center. Two of the 39 are in the military and the other seven are no longer in college.

One reason such a high percentage of Harlem Prep graduates stay in college is the determination of such alumni as Mrs. Mabel

Blackwell, a mother of four children who graduated from the school after three years at the age of 29.

Mrs. Blackwell, who has completed her first year in the nursing school at the City College, said:

"I've got my foot in the door now and I'm going to keep on pushing." Her eventual aim is to become a doctor.

As teachers read off numerous awards, including those for scholastic excellence as well as perseverance—one student was found to have been riding a subway for a month because he had no place to stay—some of the students stood to give the clenched-fist black power salute.

"It was the toughest year we ever had," the school's headmaster, Edward F. Carpenter, told the class, which gave him a standing ovation.

But he encouraged the graduates to call the school for assistance if they needed money for emergencies.

"The money will be difficult to come by," he said, "but I want you to keep on calling on us."

SEQUENCE OF HISTORICAL EVENTS

Mr. McGEE. Mr. President, as the furor continues over the Pentagon papers and unreasoned recriminations continue to be leveled in connection with our involvement in Vietnam, I feel it would behoove all to restrain from making rash judgments based on inadequate data and inadequate research into this period of our Nation's history.

The Washington Post today published a column by Henry Owen devoted to this very point. In his column, entitled "A Deadline for Declassification?", Mr. Owen devotes his attention to the history of the public's view of the origins of each major conflict of this century. He states the public's view has been marked by three successive phases. The first phase is when the wartime official view is readily accepted. The second phase is when "a spate" of memoirs and other secret documents "persuaded people that it was largely the fault of their own wartime leaders." The third phase is when the professional historian "showed the truth to be a lot more complicated than any of these 'devil' theories would suggest."

Mr. Owen points out that we are presently in the second stage of this sequence of historical events. The final analysis, more than likely, will be completely different. It is more than likely that the final analysis will be completely different, if history holds true to form, than the verdict currently being rendered by many who have chosen to twist what little information they have to fit the confines of their own unreasoned view of Vietnam.

I have long advocated that history, and only history, can be the true judge of a nation's actions. That is why it is so very important that all of us leave the final judgment of Vietnam to the historians. It can serve no purpose to make that judgment at this time when highly speculative impressions are running rampant.

I ask unanimous consent that Henry Owen's column be printed in the RECORD.

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

OPEN FILES REVEAL THE COMPLICATED TRUTH: A DEADLINE FOR DECLASSIFICATION?

(By Henry Owen)

The current furor over secret Vietnam documents fits into a familiar pattern. The public's view of the origins of each major conflict (save Hitler's war) in the last century has been marked by three successive phases: Phase I, when the wartime official view was readily accepted; Phase II, when a spate of memoirs and other secret documents persuaded people that it was largely the fault of their own wartime leaders; and Phase III, in which professional historians showed the truth to be a lot more complicated than any of these "devil" theories would suggest. We are now in Phase II on Vietnam; the need for moving as soon as possible to Phase III can be better understood if we look to past experience.

CASE ONE: In 1914–18, the view that the Kaiser had single handedly brought on the war was universal outside Germany. Then came postwar memoirs and the publication of Austrian, German and Russian secret documents; this led such revisionists as the late Harry Elmer Barnes to suggest that the war was largely the fault of Poincare and the Russian military. Finally, serious historians got to work. While they differed among themselves in distributing the blame, a succession of professional studies—culminating in Albertini's definitive three-volume history published in the 1940s—suggested that both the wartime and revisionist theories were at fault. None of the statesmen involved had wanted a general war; there were divided counsels in each government; and there was a large amount of miscalculation and at least as much incompetence as criminal intent all round.

CASE TWO: On December 8, 1941, most Americans were fairly clear that Hirohito had attacked a peaceful America out of the blue. After the war smoldering hostility toward President Roosevelt exploded in a burst of revisionist commentary, which suggested that he had tempted and provoked Japan into firing the first shot. The U.S. Government, in a burst of candor, gave two eminent scholars—William Langer and Everett Gleason—the run of its archives and invited them to form and write their own view. Phase III, which began with their two-volume work in the early 1950s, has been reflected in a succession of scholarly studies ever since. These studies have reached varying conclusions, but no one who reads all of them is likely to return to the simplistic theories of the 1940s: The failures of last-minute U.S. and Japanese efforts to avert war are, as John Toland points out in his recent work, too tragic and complicated a business to be explained by seeking out heroes and villains.

On Vietnam, we are now in Phase II. Secret documents have been revealed; wartime leaders are being discredited. But the revealed documents are inevitably a partial record: They do not include White House files; and they do not indicate either the context in which, or the tactical purposes for which, the memoranda they cite were written. They cannot fully reflect the doubts and torments of officials reaching for decision—which are, by the very nature of the government's operations, rarely committed to paper. The authors who analyzed these papers were not able to conduct interviews with the participants; as indicated in these volumes' preface, they sometimes lacked the research experience required to assess evidence which was necessarily, as a Washington Post editorial has pointed out, neither complete nor balanced. These are some of the reasons why such men as George Ball and Averell Harriman have warned against trying to draw sweeping conclusions from these documents.

One remedy was suggested by three noted historians before the current storm broke. In 1969 Professor Ernest May of Harvard proposed that all classified government records, except for those few whose disclosures would directly, surely, and powerfully prejudice national security, be opened after a fixed period to qualified professional historians. Professor James McGregor Burns of Williams followed with a similar, if more general, proposal and suggested that the waiting period be fixed at eight years. In light of recent events, this period might well be shortened. The proposal was promptly endorsed by Professor Langer, who pointed out that "systematic declassification is patently impossible: the records are so voluminous that it would take large teams of highly qualified personnel years to complete the assignment."

Professor May had in mind that a group of these historians, based in universities would then launch a major effort to produce scholarly histories of U.S. postwar foreign policy—perhaps under a foundation grant, which might be managed by an appropriate professional association or by a group of these associations. Outlining the advantages of such a historical program in persuasive terms, Professor May concluded: "Policymakers and their staffs would possess more reliable knowledge about events which they use as trend gauges and action indicators . . . Legislators, journalists, and others commenting on current actions would have less excuse for basing comparisons on legend rather than reality . . . and students would leave the classroom with somewhat more awareness than now seems common that the world is a complicated place and that the color of truth is often gray."

At the time these professors' proposals were made, they attracted scant attention. In light of current events, they warrant serious exploration. The President might appoint a mixed commission of eminent American historians and government officials to study the matter and report back to him with specific recommendations. This would be a different operation from the inter-agency study on declassification which is already underway in the U.S. Government.

In the meantime, private studies can make a modest contribution in pointing the way. Leslie Gelb, who coordinated the compilation of Pentagon documents, is embarked on a three-year analytical history for the Brookings Institution of how five successive U.S. administrations perceived and acted on U.S. interests in Indochina from 1940 to 1965. His object is not to figure out who struck whom and why, but to show the inter-relation between official decisions and the international and domestic environment in which they were taken. His research is based on public sources; the first published results, published recently in Foreign Policy and the "Outlook" section of The Washington Post, suggest that his conclusion will be both more balanced and perceptive than those now being widely drawn from the Pentagon documents often by people who haven't even read them, but have heard of them at second or third hand.

Whatever may be the verdict of history in Vietnam, one thing is sure: It will differ from many of the verdicts now being pronounced with such speed and enthusiasm on the basis of a scattered and incomplete returns.

CHANGE FOR THE BETTER IN SELECTION OF DELEGATES: WHITE HOUSE CONFERENCE ON AGING

Mr. CHURCH. Mr. President, on June 25, I directed several criticisms at the method by which the Secretary of Health, Education, and Welfare wished to select State delegates to the forthcoming White House Conference on Aging.

It seemed peculiar to me that the Sec-

retary had called upon the Governor of each State to send a list representing 150 percent of the approved number of delegates from each State. This list was to be sent to Washington, where HEW would make the final selection. This arrangement, I pointed out, could be regarded as an attempt to "stack the deck" politically in a conference where politics should not enter at all.

In addition, I asked Governors to reject the new HEW formula on the grounds that it is an affront to each Governor, that it usurps plans which have been months in the making, and that it would put the selection of delegates into the hands of Federal officials who are somehow deemed more qualified than State officials to choose the final list of State delegates.

Similar criticisms, I understand, were made by leaders of national organizations on aging and by directors of individual State agencies on aging.

Apparently, the protests have been heard, to judge by the following letter sent by the HEW Secretary on June 28 to all Governors:

On June 4, 1971, I sent you a letter outlining the nomination procedure for your State's delegation to the White House Conference on Aging to be held in Washington, D.C., November 28 to December 2, 1971.

Subsequent to that mailing some questions have arisen in several States regarding my request that the Governors nominate 150% of their State's quota. As was stated in my letter, I feel the 150% request is necessary to reduce the delay in the processing of your State's delegates in the event of duplicate nominations.

To clarify this situation, I am requesting that you submit a list of proposed delegates equal to the number of delegates assigned to the State and an additional list in the order of your preference, equal to 50% of your assigned number of delegates that we may turn to in the event such duplications occur.

Puzzled as I am by the view that a full 50 percent additional number of names is needed to prevent duplication, I nevertheless welcome the change in policy. It should help ward off the fears caused by the letter of June 4. It also indicates that the administration may be paying more attention than it has in the past to the sentiments of those who feel that the White House Conference on Aging—due to begin November 28—shall offer the broadest possible opportunity for full and free discussion of the very real issues which face 20 million older Americans of today and many millions more in the next decade. Their problems and their hopes for the future cannot be constricted or shaped into any special dogma or outlook. The people should be heard at this Conference, and they will insist on open proceedings, fairly arrived at.

CURRENT STATUS OF LAOS SECRET SESSION TRANSCRIPT

Mr. SYMINGTON. Mr. President, last June 30 I reported to the Senate the status of the transcript of the Senate's secret session on Laos which was held on June 7.

In that report I presented that the Committee on Foreign Relations had been informed on June 25 that a memorandum detailing the points of disagreement between the committee and the executive branch was being cleared within the executive branch prior to its presentation to the Secretary of State.

Yesterday, Mr. Joseph Wolf, the Secretary of State's designated representative for matters having to do with the Laos transcript, informed the committee staff that the memorandum in question had been cleared by the appropriate officials within the executive branch and was now awaiting action by the Secretary of State.

Let us hope that the executive branch will agree to final publication of this transcript at an early date. The people of this country are entitled to know far more about U.S. operations in Laos.

In the meanwhile, I have written to the Secretary of State in effort to secure additional background information regarding past and present U.S. financing of Thai troops in Laos. My request for this information was prompted by a public statement on U.S. financing of Thai troops made by the Department of State spokesman on the very afternoon of that Senate secret session.

This statement contained specific assertions as to the origins, the nature, and the legality of U.S. financing of Thai troops in Laos; and my letter asks the Department of State to provide the Senate with the facts regarding the actions in question, so that the Senate can examine those facts and draw its own conclusions before voting additional funds for Laos; also before deciding whether a ceiling, such as the one I have proposed, should be placed on U.S. expenditures in Laos.

I ask unanimous consent that my letter of June 29 to the Secretary be printed in the RECORD.

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

JUNE 29, 1971.

Hon. WILLIAM P. ROGERS,
The Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: On June 7 a State Department spokesman told the press that the United States support for Thai troops in Laos began as a program authorized by President Kennedy, that the troops are in Laos at the request of the Prime Minister of Laos and that United States financing of these troops is "fully consistent with all pertinent legislation." As Chairman of the Subcommittee on United States Security Agreements and Commitments Abroad, I am interested in obtaining background information and documentation relevant to these assertions by the Department's spokesman.

In this connection we would appreciate your furnishing the Subcommittee with the following information.

(1) A description of the specific decisions taken by President Kennedy to authorize United States funding of Thai troops in Laos, and of the subsequent actions taken by United States diplomatic and military authorities to implement such decisions.

(2) An explanation of the funding procedure used to provide financial support for Thai troops pursuant to President's Kennedy's original authorization.

(3) A description of Prime Minister Souvanna Phouma's request for Thai troops, including answers to the following specific questions:

(a) When was the Prime Minister's request (or requests) made?

(b) In what form was the request made?

(c) To whom and to what government or governments was it addressed?

(d) What specifically did the Prime Minister request?

(e) What did the Prime Minister's request say with regard to arrangements for financial support and publicity concerning Thai troops?

(f) What response was given to the Prime Minister by the person, government or governments to whom the request was addressed?

(4) An explanation of how Souvanna's request relates to the various undertakings of the Royal Lao Government in the Geneva Agreements of 1962.

(5) A detailed explanation of any discussions, arrangements and agreements, formal or informal, involving the United States Government and the Royal Lao Government or the Government of Thailand relative to past or present United States financing and support for Thai troops in Laos.

(6) An identification of the departments or agencies which have provided funds for support of each of the various programs involving Thai troops in Laos.

Because the above request is relevant to the Senate's consideration of pending legislation having to do with United States expenditures in Laos, we would respectfully request that the information be provided at earliest opportunity.

Sincerely,

STUART SYMINGTON,
Chairman, Subcommittee on U.S. Security Agreements and Commitments Abroad.

THERE IS NO "FREE" CARE

Mr. HANSEN. Mr. President, the American Medical News on June 28, in an article entitled "Nothing Is Free," pointed out that the American people should look beyond labels and examine content and cost of content in regard to national health insurance proposals.

The article makes the point that:

What everyone must realize is that no system provides "free" care for the public.

And that—

The public must pay for that care, whether the money comes out of the individual's pocket, is withheld from his paycheck for health insurance, is withheld from his paycheck for taxes, or is a part of the hidden costs of each product he buys.

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

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

NOTHING IS FREE

Organized labor and Sen. Edward Kennedy (D., Mass.) have teamed up to sponsor the National Health Security Act, which, they would have the public believe, would meet all the costs of illness suffered by taxpayers.

However, when the director of the AFL–CIO Dept. of Social Security, Bert Seidman, appeared recently on the radio program "Labor News Conference," the way the program would work was clarified.

Following are some excerpts:

Q. "Mr. Seidman, wouldn't your bill actually eliminate the existing health insurance industry?"

A. "I don't think it would eliminate the health insurance industry. Some parts of medical care are not covered by even the health security bill.

"The health security bill would cover a larger percentage of the costs of medical care than any other proposal that has been

made. It would cover 71% of the family's health expenditures. There would be no deductibles—no co-insurance—as there is in all the other proposals.

"But, it would not, for example, in the early stages, cover the adult dental care.

"It would not cover certain types of long-term care in nursing homes, beyond a certain limit.

"It would cover prescription drugs only under certain circumstances.

"All of those types of medical costs could be covered by private insurance.

"Private insurance could play another role as the fiscal agent of groups of doctors, if they wanted a private insurance company to do that. . . ."

In response to a question about financing of the program, Seidman said:

". . . the program would be financed by the payment . . . of 1% of the worker's wage.

"The employer would pay 3⅓% of the worker's wage.

"Self-employed people, and people earning income other than employment-type income, would also pay into the program.

"Fifty percent of the costs would be met from general revenues—that is from the regular resources of the federal government. . . .

"[That money] would come from our general taxstream, and since we have a tax system, at the federal level, which is closest to the principle of ability-to-pay, the program would be financed in the most equitable way that we can have, under our present tax system."

What everyone must realize is that no system provides "free" care for the public. The public must pay for that care, whether the money comes out of the individual's pocket, is withheld from his paycheck for health insurance, is withheld from his paycheck for taxes, or is a part of the hidden costs of each product he buys.

A FINE WAY BACK TO OUR PRAIRIE PAST

Mr. MONDALE. Mr. President, Life magazine for July 2 has published, in the form of a book review written by Senator GEORGE MCGOVERN, a nostalgic view of life in the Dakotas.

Reminiscing about his childhood on the prairie, Senator MCGOVERN recalls:

It was a hard life in a hard country, but our family not only endured those hardships, it seemed to thrive on them.

But the review also looks ahead and urges us to preserve "the spirit of individualism that gives our Nation strength" especially by making "life in rural America attractive to young Americans."

Here is an eloquent appeal for the preservation of our family farms and our small towns—in short, those places in America where a sense of community is the strongest.

Mr. President, I ask unanimous consent that Senator MCGOVERN's review be printed in the RECORD.

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

A FINE WAY BACK TO OUR PRAIRIE PAST: MRS. WILDER'S "LITTLE HOUSE" SERIES

(NOTE.—For four decades, ever since her classic "Little House in the Big Woods" appeared, Laura Ingalls Wilder has captivated children and parents with her series of Little House books, quiet chronicles of her pioneer life on the wild prairies of the American Middle West in the 1870s and 1880s. To the eight books in the series—over two million copies of which have been sold since she began writing—has recently been added a ninth, The "First Four Years" (Harper & Row, $4.95), discovered among her effects when Mrs. Wilder died at the age of 90. And in September the original eight will appear in a paperbook set, illustrated by Garth Williams, who painted the jacket pictures shown here. To commemorate the happy occasion, Life asked presidential aspirant George McGovern, a fellow Dakotan whose five children are all Little House enthusiasts, to comment on Laura Ingalls Wilder and the way of life she wrote about.)

Dakota is a word that rings with history. Although several generations separate me from the late Laura Ingalls Wilder, her Little House books of life in South Dakota's early days bring back memories of days when the frontier was not something reserved for official history books.

My father was a prairie preacher in Dakota. He moved from one small town to the next, building a congregation and a church, and then beginning again. It was a hard life in a hard country, but our family not only endured those hardships, it seemed to thrive on them.

I grew up in Dakota during dust bowl years, when eking out a living took most of one's time and energies, and the family was the main source of comfort and enjoyment. In many ways our situation was similar to the one Mrs. Wilder knew in her own childhood and described in her books. Everyone was aware of the family struggle, but it was accepted as a way of life. Time for relaxing and "visitin' " were all the more enjoyable for it.

Here was the sense of community that seems to have been lost by many in our country. We had to trust one another in order to survive. This has not been completely lost in America. Even today on South Dakota farms, the sense of a family that is really the entire community remains. The young find the pull of the city, with its congestion and pollution, less attractive. They leave rural America only because they cannot find jobs.

Many young people who have never lived in these rural areas now tell us that they want to move there. They seek the confrontation with nature and with themselves that they cannot find in urban America. They yearn for a less formal and more honest life where they can test themselves.

This rural life often means running a farm. The Wilder books show clearly what we mean when we talk of the "family farm." And what she writes in *The First Four Years* of those farms in the late 19th century remains true of them today: "It would be a fight to win out in this business of farming, but strangely she felt her spirit rising for the struggle. The incurable optimism of the farmer who throws his seed on the ground every spring, betting it and his time against the elements, seemed inextricably to blend with the creed of her pioneer forefathers that 'it is better farther on'—only instead of farther on in space, it was farther on in time, over the horizon of the years ahead instead of the far horizon of the west."

Thomas Jefferson saw this farming spirit as a mainstay of our democracy. In the intervening decades, we have learned that it is the spirit of individualism that gives our nation strength. And now we understand that this spirit must be kept alive in the factory and the city as well as on the farm. Yet the family farm remains an American institution uniquely worthy of preservation.

For those who cannot become farmers, we have an obligation to nurture small-town life in other forms. Just as the federal government gave Laura and her husband a homestead in Dakota, it should now help to make life in rural America attractive to young Americans.

These stories stimulate the imagination of her young readers, because, with great skill and artistry, Mrs. Wilder rewove her life into history. One can detect through her writing the quickness of Laura's mind and catch the twinkle in her eye. She was a kind of Grandma Moses, writing with simple honesty about a simple and honest life.

DEATH OF DOROTHY ANDREWS KABIS, TREASURER OF THE UNITED STATES

Mr. HRUSKA. Mr. President, it was with deep regret and a great personal sense of loss that I noted the untimely death of Dorothy Andrews Kabis last weekend.

Her passing deprives our Nation of one of its valiant patriots and a dedicated leader at a time when we can ill afford to lose her type of leadership.

It was my great privilege to know and work closely with Mrs. Kabis on many occasions in the past decade. Her dealings with everyone with whom she came in contact were honest, cooperative, and constructive, representative of the qualities which we all seek in our relations with our fellow man.

She was a vocal, active, and persuasive Republican, but more than that she was a loyal and conscientious American. She was a booster of our Nation—the kind of booster that is in short supply today. Yet she was not blind to our shortcomings and through both her political and civic activities she worked persistently to improve the Nation.

As Treasurer of the United States for the past 3 years, she employed the same energy and vigor, and provided the same conscientious service which she had brought to the presidency of the National Federation of Republican Women and to the many other organizations with which she was associated.

On reporting her death, one newspaper commented that she was little known outside the Treasury Department. I would have to take issue with that statement. She was well known and well respected, with a reputation for being a worker and a vital force in any organization which was fortunate enough to attract her interest.

For the millions who knew her only through her signature on our currency, I say it is most unfortunate that they did not enjoy the pleasure of knowing this great lady personally.

Her love of the soil kept her feet on the ground philosophically. It gave her a sense of practicality which seems to be slipping away from elements of the Nation today.

As the operator of a large nursery in Delaware for many years, she experienced firsthand the problems of business, of labor, and of our basic industry, agriculture. She understood so well the virtues that built this great Nation and support it, and she epitomized those virtues in all her endeavors and stimulated them in those with whom she worked.

My deepest condolence goes to her husband at this time of great loss. We can understand and reflect his sorrow, Mr. President, because the loss to our Nation is equally grievious.

NIXON ADMINISTRATION PROPOSALS ARE UNACCEPTABLE

Mr. CHURCH. Mr. President, recently I expressed my strong opposition to proposals advanced by the Nixon administration to license the recreational use of

public lands by the American people, through the sale of annual, individual permits.

In my opinion, this plan is no more than a proposal for dogtagging the American camping public.

In reaction to my statements in opposition to the plan, I have received many letters of encouragement and support from concerned Idahoans. One letter, which I feel is representative of the strong feelings expressed by those who have written me, was sent by Mr. Edward C. Herr of Grangeville, Idaho. Mr. Herr's letter is excellent and points out in no uncertain terms the sentiment of the people of my State in opposition to this new proposal. I commend Mr. Herr's letter to the attention of the Senate and ask that it appear at this point in the RECORD.

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

SENATOR FRANK CHURCH,
Senate Office Building,
Washington, D.C.

MR. SENATOR: I recently read in the papers of your opposition to the park fee system, and although I've never voted for you in the past, you have my vote in the future and any other help I can be of to you.

I very seldom use any of the State or Federal parks for camping, but each year (or rather until this year) I purchased a Golden Eagle Pass. I use it maybe once a year and sometimes not at all, and I know there must be many others just like me.

I'm not concerned for myself, but for the working man with a family, who buys a camper or trailer so he can take a vacation because he cannot afford the out-of-reach prices of a motel and cost of meals.

I don't think most people object to a $1.00 entrance fee (I do), but now it is $2.00 and $3.00 a night camping fee, and I have heard some ask more. If this was for as long as you would stay in any certain park, a person wouldn't object too much, but it's too much for one night for a man with a low salary, which most people who use the parks come under.

Another thing is the so-called Rest Areas on the Interstate Highways. The same poor individual and his family drives until 9 P.M. and is worn out. He sees one of these beautiful oases and stops to find a big sign, 'No Camping", or "No Overnight Parking", goes a little farther and his pet catches it, a sign "No pets except in marked areas", so on to the marked area and another sign, "Pets on leash only". A beautiful rest area with flowers, green grass, tables, etc., but don't rest, just stop and move on. The only thing lacking is a sign "Rest Limit 15 minutes". Then they wonder why so many people are killed on the highways. It is because a person can't afford the $10 to $20 per night motel and takes his chances by driving all night.

I wonder why some money hungry so-called servant of the people like Mr. Harrison Loesch and others hasn't thought of pay toilets and .05 for toilet paper. Another idea they haven't thought of is parking meters in the camp and rest areas, charge for drinking water, firewood (some parks already charge for wood) and for the air we breathe.

It is a pleasure to see in the paper this day and age that there is Senators like you, Sen. Hatfield of Ore., Sen. Moss of Utah and others working in behalf of the people, who have to use the parks instead of motels, dude ranches and other high price resorts for vacation and overnight stopovers.

The people who are always thinking of new ways to make more money in the parks must forget that there wouldn't be any parks or high paying jobs for them if it wasn't for the same people they are stepping on. If the truth were known, people like Mr. Loesch would never be seen in a rest area or park campground on his vacation, but gripes just as much on the cost of airplane, ocean cruises, safaris, etc. on his vacation as the man who has to use the parks.

In closing, whether you people who care get anything done or not, you would be surprised to know how many people feel the same way as I do on this subject. It looks like someone is trying to drive people out of the parks, rest areas, etc. back to the motels and hotels again, but I think the little man will stay home first.

I don't know whether you will ever see this letter or not, but thanks for giving me the opportunity to blow off some steam. As I said before you have my vote in the future.

Yours truly,

EDWARD C. HERR,
Grangeville, Idaho.

CRLA FULLY VINDICATED: 17-MONTH FUNDING GRANTED

Mr. CRANSTON. Mr. President, I think it is fair to say that I have not been lavish in my praise of OEO Director Frank Carlucci in terms of his handling of the California rural legal assistance refunding matter.

I have differed with him for the last 6 months over the manner, timing and substance of decisionmaking regarding CRLA. On December 30, 1970, I made clear to him that I strongly disagreed with his vacillation on refunding CRLA when its last annual grant expired, and when, based on all the facts then available, a prompt refunding decision was clearly indicated. Similarly, I objected to his January 30, 1971, decision further to postpone making a decision and instead to appoint the CRLA Commission to assist him in reaching a judgment that a reasonable man could make in only one direction. Finally, I voiced my displeasure on July 1 with his ambiguous and misleading June 30, 1971, statement regarding the decision to refund CRLA, and I continue to be unhappy with his redistribution of the text of his misleading June 30 statement.

I have not changed my mind about any of these matters. In my judgment, Mr. Carlucci should have made a forthright decision to refund CRLA by last December 31. All that has happened since then only confirms my initial judgment to that effect.

But, the fact is that he has now reached the right decision—the one which I urged him to make 6 months ago under regular OEO processes. Today, I wish to pay tribute to him for his efforts in the past week to produce an "honorable, workable arrangement." He has indeed—as he said he would on March 30, 1971—leaned very heavily on the Commission recommendations in reaching a decision on CRLA, and in doing so, he has reached his decision by June 30—as he said he would try to do.

I regret that part of the price was a $2.5 million judicare grant apparently to be administered through the State OEO, but the principle and the integrity of legal services has been sustained. That is the crucial thing.

For that, Mr. President, Frank Carlucci is owed a substantial debt of gratitude by all poor Americans receiving and in need of legal services assistance and indeed by the whole Nation. I applaud the insight and deftness he has displayed during this trying negotiation process. I thank him personally and on behalf of the people of my State for the decision on CRLA refunding.

Mr. President, as we conclude this needlessly prolonged drama of the "Political Perils of CRLA," I would like to describe the basic "honorable, workable" arrangement which has been reached.

On June 30, in the Extension of Remarks section of the CONGRESSIONAL RECORD, I described the difficulties facing the California rural legal assistance program as a result of the statement of that date by Mr. Carlucci in the wake of the June 25 report of the Commission on CRLA released that day by Mr. Carlucci. I noted certain serious questions left unclear by Mr. Carlucci's statement and deplored the possibility of a continuation of months of uncertainty for CRLA attorneys and employees and, most importantly, for the rural poor they serve. On June 30, I placed in the RECORD, for study by Senators, Mr. Carlucci's June 30 statement and the main body of the Commission's June 25 report.

On July 1, after I had an opportunity to study Mr. Carlucci's statement carefully, along with the Commission report, and after I had received some clarification of Mr. Carlucci's statement, I issued a full statement to the press regarding both documents. Mr. President, I ask unanimous consent that the complete text of my July 1 CRLA press release be printed at this point in the RECORD.

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

(Following is a statement issued today by Senator Alan Cranston (D., Calif) regarding the June 30 press release issued by Mr. Frank Carlucci, Director of the Office of Economic Opportunity explaining his decision on refunding CRLA and the report of the Special Commission on the California Rural Legal Assistance Program:)

Despite ambiguous and misleading language in his June 30 statement, it is clear that Mr. Carlucci has decided to approve a 17 month grant to CRLA for $2,655,000 subject to certain conditions I will discuss later. For this positive decision, under the most strained and delicate political circumstances, I am extremely grateful. Though certain basic issues still remain unsettled. California's rural poor will have full recourse for the next year and a half to the legal and administrative tribunals of society and to the advice of counsel in order to vindicate their legal rights and legitimate interests.

I have thoroughly studied the complete report of the Commission on CRLA.

The people of California and the nation, especially the poor served by CRLA and the federal taxpayers paying CRLA's costs, should feel gratified to know that the Commission has unequivocally vindicated CRLA and fully endorsed its operation and grant performance.

The Commission reports that it took voluminous testimony from 105 witnesses during 20 days of public hearings and reviewed hundreds of exhibits. The Commission concluded that CRLA has operated, and is still operating, in accord with applicable OEO standards and standards of professional responsibility, and its OEO grant restrictions and "that CRLA has been discharging its duty to provide legal assistance to the poor under the

mandate and policies of the Economic Opportunity Act in a highly competent, efficient, and exemplary manner."

The Commission made no mention of the need for any further review of CRLA or of any special conditions to be attached to its grant.

In the body of its report the Commission exhaustively reviewed every significant charge leveled against CRLA by the Uhler report to Governor Reagan. The Commission consistently found that CRLA acted "responsibly" and "absolutely ethically", and that the Uhler charges were "completely unwarranted" and "unfounded" in each basic category. The Commission found that "the charges in the California Evaluation (Uhler Report) . . . were totally irresponsible and without foundation."

In report Appendix A, the Commission sets forth a point-by-point analysis of each of 135 incidents or charges included in the Uhler report. It found that these charges were without merit or evidentiary support in 124 instances and trivial in three other instances. In only eight instances did the Commission find any substance to the charges, though the Commission characterized them as "not of any great magnitude". The Commission found only isolated instances of a lack of judgment by individual CRLA attorneys and specifically exonerated CRLA of any organizational wrongdoing.

Moreover, Commission members stated they were "most favorably impressed" by CRLA's internal policies and its fiscal and management controls over both its operations and the conduct of its attorneys.

It concluded: "The evidence from all sources made it clear beyond peradventure that CRLA attorneys are legal craftsmen of the first order. In addition, they are thorough, intelligent young men dedicated to vindicating the legal rights of their clients."

The Commission report makes it unquestionably clear that there is no justification whatsoever in law, fact or logic for any further delay, doubt or equivocation about CRLA's future operations. I can only conclude that attaching special conditions to the 17 month grant and reqiring still further evaluation of CRLA were political concessions to Governor Reagan.

Mr. Carlucci, CRLA and the rural poor of California are caught between the conflicting political ambitions and political interests of President Nixon and Governor Reagan. I regret that situation deeply. But I appreciate that given that most unfortunate political reality, Mr. Carlucci and CRLA are doing the very best each can to salvage an honorable, workable arrangement.

After receiving clarification of Mr. Carlucci's statement, I understand that Mr. Carlucci alone will make the decision whether to continue funding at the end of this year based on CRLA's compliance with the grant conditions. Mr. Carlucci's decision will not be subject to Governor Reagan's veto. I understand that if an adverse decision is reached at that time, it will be subject to OEO administrative hearings and full appellate rights and protections applicable to grant terminations. In reaching this year-end decision, Mr. Carlucci will be guided by an evaluation of CRLA's adherence to grant conditions to be conducted by representatives of the American Bar Association, the National Leagal Aid and Defenders Association, the California State Bar Association, O.E.O., the State and perhaps others.

The basic remaining issue resolves itself down to the precise nature and language of the 22 conditions which OEO proposes to attach to the grant.

Based on the full exoneration which the Commission gave CRLA, I do not believe there is any justification for attaching conditions to the CRLA grant.

The imposition of conditions was obviously felt necessary to give Mr. Reagan the appearance, at least, of having won a point from OEO. The precise language proposed for the 22 conditions is presently under negotiations between OEO and CRLA. It is imperative that these conditions in no way impair the ability of CRLA attorneys to provide the fullest, most effective representation for their clients consistent with the canons of ethics and the code of professional responsibility, nor impair their freedom to carry out personal non-CRLA activities which do not conflict directly with the CRLA responsibilities. Whatever conditions are finally accepted by CRLA are very likely to be imposed by OEO on every new legal services grant and to be advocated by the administration as necessary for inclusion in the new National Legal Services Corporation bill.

Finally, I am extremely concerned over the new $2.5 million OEO grant to the State of California to conduct a Judicare program. Throughout his statement Mr. Carlucci indicated that the California state Office of Economic Opportunity will be intimately involved in the planning and operation of that Judicare grant. That office, in my judgment, has disqualified itself from carrying out a program aimed at serving the needs of the California poor. The recent evaluation of its activities by both the General Accounting Office and the federal OEO have established beyond dispute that the State OEO's lack of dedication to alleviate the conditions of poverty or to act as an advocate for the poor or to exercise proper control over the expenditure of funds. Moreover, the CRLA Commission report found the CRLA evaluation prepared by that state office (the Uhler report) to have presented totally irresponsible charges and unfairly and unjustly attacked the professional integrity and competence of dedicated CRLA attorneys.

I find it incredible that OEO would permit this discredited state office to have any involvement with the new experimental Judicare program in California.

I regret very much that it was found necessary to continue the doubt and uncertainty surrounding the operation of CRLA for the rest of this year. The announced purpose for appointing the Commission was to settle this matter once and for all. This has not been done. Instead, OEO's action keeps the sword of uncertainty dangling over CRLA's head for still another six months.

This latest episode in the "Political Perils of CRLA" underscores the urgency of enacting the National Legal Services Corporation Act to remove legal services from politics. I am a principal sponsor of that bill. The provisions of that bi-partisan measure (S. 1305) have already been added by the Poverty Subcommittee to the bill to extend the expired Economic Opportunity Act.

Mr. CRANSTON. Mr. President, in my July 1 statement I stated that the CRLA "Commission has unequivocally vindicated CRLA and fully endorsed its operation and grant performance." I quoted representative passages of the Commission report in unqualified praise of CRLA and castigation of the Uhler report to Governor Reagan. I noted that the end of 1971 review of CRLA adherence to the grant special conditions would be made by an independent, broadly based panel, composed largely of bar representatives, and that the decision on compliance would be made by Mr. Carlucci and not be subject to Governor Reagan's veto.

I concluded on July 1 that the "basic remaining issue resolves itself down to the precise nature and language of the 22 conditions which OEO proposes to attach to the grant—the precise language (of which) is presently under negotiation between OEO and CRLA." I concluded that:

> Mr. Carlucci, CRLA and the rural poor of California are caught between the conflicting political ambitions and political interests of President Nixon and Governor Reagan. I regret that situation deeply. But I appreciate that given that most unfortunate political reality, Mr. Carlucci and CRLA are doing the very best each can to salvage an honorable, workable arrangement.

Mr. President, I am delighted to report today that late in the evening on July 1 CRLA and OEO reached an agreement, approved by Governor Reagan, which will commit funding to CRLA through December 31, 1972, and impose no new restrictions on CRLA's operation. The 23 special conditions agreed to are those already attached to CRLA's present grant as well as some added drawn from CRLA's own internal policies and regulations. I am advised by the Director of CRLA that the standard I called for in my July 1 statement regarding any special conditions to be attached to the CRLA grant has been fully satisfied by the 23 conditions finally agreed upon on July 1:

> It is imperative that these conditions in no way impair the ability of CRLA attorneys to provide the fullest, most effective representation for their clients consistent with the canons of ethics and the code of professional responsibility, nor impair their freedom to carry out personal non-CRLA activities which do not conflict directly with their CRLA responsibilities.

Mr. President, I hope that this matter has been settled once and for all. Given the not unreasonable grant conditions finally agreed upon, the yearend review should pose no problem at all for CRLA. It can continue operating in the same ethical, dedicated, and highly reasonable manner which has won it national plaudits and general recognition as the best legal services program.

I fervently hope and trust that CRLA's embattled attorneys and administrators will be able now to return to the business of providing essential legal services to California's rural poor and that the unnecessary, unjustified, artificially imposed crisis of the last 6 months has thoroughly abated.

THE PENTAGON PAPERS

Mr. McGEE. Mr. President, in today's Washington Post, columnists Rowland Evans and Robert Novak comment on what I feel to be the valid perspective of what the Pentagon papers actually represent.

In an article devoted to a memo written just after the Communist Tet offensive by Dr. Daniel Ellsberg, both columnists point out the gross misinterpretation Dr. Ellsberg gave to this event. Dr. Ellsberg's prophecies were completely off base.

In exploring the errors Dr. Ellsberg made in his interpretations of the consequences of Tet, the columnists have called into question the very validity of the Pentagon papers, and for good reason. It is incomprehensible that credence has been given to an individual who was proven so wrong in his past assumptions. What is even more incomprehensible is

that credence should be given to a study endorsed by the same individual as a true and definitive report of our involvement in Vietnam.

I ask unanimous consent that the column be printed in the RECORD.

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

A TET MEMO FROM ELLSBERG

(By Roland Evans and Robert Novak)

The flawed vision of Daniel Ellsberg in viewing the Vietnam war, a failing that was to have profound implications for his country, was laid bare in a private memorandum he wrote for the Pentagon on Feb. 28, 1968, spectacularly misinterpreting the just completed Communist Tet offensive.

Ellsberg, then a Vietnam expert for the Rand Corp. think tank, had been asked to interpret the bloody Tet offensive for the Defense Department's Office of International Security Affairs (ISA). His memorandum was apocalyptic: "I think that the war is over"—Communists taking over the countryside, the South Vietnamese government and army deteriorating, a rapid renewal of the Communist offensive. "Two months from now . . . things are going to get much worse," he said, precluding any possibility for improvement.

No prophecy could have been more false. In truth, the Tet offensive was the Communist high-water mark, triggering a three-year decline in their Vietnamese strength (which may now be ending). But Ellsberg, exasperated with Saigon's corrupt government and shoddy army, could see in Tet only the vindication of his own warnings. It was a view widely shared in ISA, whose staffers wrote the Pentagon Papers.

Thus, the spectacular mistakes of Ellsberg's 1968 memo transcend the personal. His flawed vision is the flawed history of the Pentagon Papers. It is the all-is-lost syndrome that deeply influenced U.S. policy in the months after the Tet offensive and finally led to Ellsberg's disclosure of the Pentagon Papers.

For these reasons, Ellsberg's errors about Tet are worthy of examination. Herewith are some prophecies he sent the Pentagon along with the actual outcome of events:

Ellsberg prophecy No. 1: The Communist Tet offensive of Jan. 29–Feb. 29 was a prelude to "the takeover of the countryside" by the Vietcong, "inexorably sucking" South Vietnamese and U.S. forces "toward the environs of the towns and cities, away from the hamlets and outlying regions."

The actual outcome: by their desperate Tet attacks, the Communists depleted their forces in the countryside and have not adequately rebuilt them since.

Ellsberg prophecy No. 2: The Vietcong will be drafting ever more recruits, whereas South Vietnamese armed forces "will probably be considerably smaller." By April 1, Saigon's force "will be, at most, 75–80 per cent of its actual strength in December, 1967, and quite possibly closer to 60 per cent" because of heavy desertions.

The actual outcome: Saigon forces *increased* by 122,000 the next six months, finally surpassing one million. In contrast, Vietcong recruiting in the countryside was never the same, and the Communist war effort was increasingly carried by regulars from the North.

Ellsberg prophecy No. 3: "It is the death of pacification"—Communist control of South Vietnam will steadily increase never receding. By April 1, "U.S. sub-sector teams will be withdrawn from a number of districts, and a number of province towns will be under siege. Some will have fallen." Some 400,000 U.S. troops would be needed to prevent this.

The actual outcome: Far from U.S. teams being withdrawn or province towns falling, Communist control of the countryside steadily receded, without any increase in U.S. troops.

Ellsberg prophecy No. 4: "The best guess is that the VC (Vietcong) cadres are busy learning lessons from the initial attacks on how to do better next month." By early April, there will be another round of heavy attacks, including renewed pressure of the U.S. Marine base at Khe Sanh.

The actual outcome: The Vietcong were hopelessly decimated by the Tet offensive. Not since then have they even contemplated an offensive comparable to Tet. By April 1, the relief of Khe Sanh had begun.

Moreover, Ellsberg completely missed this point: By their brutal assault on villages, the Communists irrevocably diminished their own political base in South Vietnam. While Ellsberg's memo predicted post-Tet tensions would result in U.S. air and artillery attacks on South Vietnamese villages, U.S. sensitivity about such politically self-defeating tactics has greatly increased since then.

Flawed though Ellsberg's judgment was, however, this mentality—in high places in and out of government—helped erode U.S. support of the war and undermine a political consensus at home. Now, in the confusion wrought by publication of the Pentagon Papers, the mistaken Dr. Ellsberg is apotheosized while those who correctly interpreted Tet as a calamitous Communist setback are in disgrace.

PRESCRIPTIONS FOR THE DOCTOR SHORTAGE

Mr. KENNEDY. Mr. President, according to the Carnegie Commission on Higher Education, the most serious shortages of professional personnel in the United States today are in the field of health services. The current doctor shortage is estimated at 50,000 by the U.S. Public Health Service. By 1980, that figure will increase to 80,000. Over 26,000 students have applied for fall admission to America's medical schools, but there is room today for fewer than 12,000. The Association of American Medical Colleges says that three-quarters of the 14,000 rejects are scholastically qualified to become doctors. Tragically, it appears that these qualified students will never get the opportunity to study at an American medical school.

Two recent articles explore the crisis in health manpower and education in America. The first article, "Needed: Rx for the Doctor Shortage," by Mr. David Zinman, appears in the June 8 issue of Newsday. The crucial questions he asks are, "Why do we have such a large shortage of doctors? Wasn't anything done to anticipate the greater demand for more doctors?"

Dr. David Rogers, faculty dean of Johns Hopkins University School of Medicine, feels that medical schools are to blame for the failure to expand their output of doctors. Dr. Carl H. Ruhe, AMA medical-education director, says that today's demand is greater than anyone had anticipated. Mr. Clark Kerr, chairman of the Carnegie Commission on Higher Education, contends that the early warning signals were present before 1960. The imminent passage of medicaid and medicare—the opening of health services to millions of poor and elderly patients—should have removed any doubt of the need for more medical personnel.

The second article, a lengthy editorial in the February issue of School and Society, entitled "Medical and Dental Education for the Health Care Crisis," explores some of the recommendations made by the Carnegie Commission on Higher Education. If all medical schools reduced the time required to train a doctor from 8 to 6 years, the number of doctors trained each year would increase by one-third. The development of nine new university health science centers, and the establishment of 126 "area health education centers," would put 95 percent of the population within an hour's drive of medical care. In addition, the Medex program—training for medical ex-corpsmen with experience as doctor's assistants—would also help reduce the shortage of medical personnel and, at the same time, it would free doctors from many routine duties which could be handled by less highly trained personnel.

The two articles, "Needed: Rx for the Doctor Shortage," and "Medical and Dental Education for the Health Care Crisis," supply important information needed in planning an adequate health care system for all Americans. I ask unanimous consent that the articles be printed in the RECORD.

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

NEEDED: RX FOR THE DOCTOR SHORTAGE

(By David Zinman)

Michael Conforti is a 21-year-old Hofstra graduate who wants to be a doctor.

Conforti, who has a straight-B average, has applied to 20 medical schools. All 20 have turned him down.

Like thousands of other pre-med students, Conforti has found that the odds he will achieve his ambition are against him. Over 26,000 students have applied for fall admission. But the country's 103 medical schools have room for fewer than 12,000. The total exceeds the number admitted in 1927 by only 5,400.

Ironically, while some schools are turning away 30, 40 and 50 applicants for every one they accept, the federal government says the country is short more than 50,000 doctors. By 1980, that figure is expected to jump to 80,000. An even more bitter irony is the fact that the American Association of Medical Colleges says about three-quarters of the 14,000 rejects are scholastically qualified to become doctors.

"These are personal tragedies, every one," says Dr. Clinton Young, national chairman of the Medical Committee for Human Rights. "I've met many of these kids. They really want to get trained. They really want to serve . . . So we have this enormous paradox. On the one hand, a spectacular need and fully qualified applicants. And on the other, inadequate facilities to train them."

The fact is most medical schools are approaching bankruptcy or are so financially strapped they are unable to respond meaningfully to the nation's health-manpower shortage. For example, Marquette University's medical school was so short of funds it took a $3,200,000 grant from the Wisconsin legislature and a change in status from private to semipublic to bail it out. "Medical schools are not crying wolf," says Dr. John Cooper, AAMC president. "They are in serious financial straits."

Medical schools in the red. A critical doctor shortage. Fourteen thousand student rejects. All this did not happen overnight. Where did we go wrong?

"Many of the problems we now face can be laid directly at the doors of our medical

schools," says Dr. David Rogers, faculty dean of Johns Hopkins University School of Medicine. "Medical schools . . . have failed to significantly expand their output of physicians despite clear evidence that this was needed."

Not so, says Cooper. "Back in the 1950s, we undertook to stimulate expansion of class size of medical schools and increase the number of schools. But we were not joined in that campaign by the American Medical Association. At that time, their position was there was plenty of physicians."

Only a half-truth, counters the AMA. It was impossible to have foreseen all these troubles, says Dr. Carl H. Ruhe, AMA medical-education director. "Gearing up to meet supply is dependent on anticipation of demand," Ruhe says. "But today's demand is greater than anyone had anticipated."

Clark Kerr, chairman of the Carnegie Commission on Higher Education, contends the early warning signals were clear before 1960. Certainly, Kerr says, the imminent passage of Medicaid and Medicare—opening health services to millions of poor and elderly patients—should have removed all doubt.

"But all kinds of arguments were raised," Kerr says. "It costs a lot of money to build a medical school. States had little incentive to pay for them because doctors go all over the country. In Illinois, for example, 70 percent of their graduates leave the state. Why should Illinois train them to go elsewhere?

"Then, some doctors said, 'Well, you know, we can't be sure about the future shortage. And maybe with the breakthrough in drugs, the emphasis ought to be in research. We'll take care of health through research—not care.'

"It was easy to pass the word to go slow. The medical profession is highly organized. They know every congressman personally through his private doctor. There didn't have to be any public campaign.

The figures show that where medical schools were accepting almost 60 per cent of applicants in 1960, they practically turned the figure around over the next 10 years. By 1969, they were rejecting almost 60 per cent of their applicants.

In many ways, the successful candidates were remarkably alike. In the late 1960s, 41 per cent of medical students came from families with incomes of $15,000 or more—the top 12 per cent income bracket. About half of these same students were from families with incomes of $25,000 or more—the upper two per cent income category.

Blacks compose 11 per cent of the U.S. population but make up less than three per cent of the country's physicians. Most are trained in two schools—Howard University and Meharry Medical College. Women comprise 51 per cent of the population, but only eight per cent of the nation's doctors are women. This compares to 26 per cent in France, 30 per cent in England, and 75 per cent in Russia. The U.S. percentages are improving, but slowly, and only after long and intensive social pressure.

"It's easy to point fingers and look back and say, 'You ought to be ashamed'," says the AMA's Ruhe. "Maybe we should have done more. But doctors are part of a cross section of society. We did no more nor less than the rest of society of that day."

It was when medical schools began facing up to their obligations and taking expanded enrollments that they ran into problems threatening their very existence. It costs between $15,000 and $20,000 to cover a year's medical-school training. But tuition pays for only a fraction of this. And so each new student put a further strain on a school's resources. Meanwhile, medical schools have been hit by a drop in private support and a cutback in federal research grants.

The research reduction has had wide repercussions because schools use these grants to pay faculty salaries. In fact, about one-half the teaching staff of medical schools are at least partially supported by research grants. Dr. Walter Bornemeier, AMA president, says: "It's possible that the chief cause of the shortage of funds . . . is that many schools are overspending their financial resources in a maladjusted effort which emphasizes research at the expense of teaching."

But the biggest single cause of the doctor shortage may be the inability of medical schools to produce the kinds of physicians the nation needs. About 10 per cent of graduates go into research, administration or teaching. Of the 90 per cent who do practice, only 20 per cent are general practitioners. The trend has been to specialization, which offers more prestige and higher fees but helps fewer patients. All this is compounded by uneven geographic distribution. Doctors crowd the suburbs and more affluent city areas, neglecting rural sections and the ghetto, where the need is greatest.

Though troubles are many and formidable, there are nevertheless some hopeful signs. For one thing, the problems have been identified. The AMA has finally recognized the doctor shortage and urged medical schools to revamp their training. The schools are developing new leadership and they appear receptive to ideas for reform. Here are some of the new approaches that have been advanced:

The Carnegie Commission calls for medical schools to increase their output by 50 per cent in this decade. It urges, among other things, cutting the time to train a doctor from eight to six years. This change alone, if adopted by all schools, would increase the number of student places by a third.

The Commission also advocates establishment of nine new medical schools in cities on the theory that each urban area of 350,000 should have a university health-sciences center. The goal is a national complex of 126 health centers, combining schools and hospitals, located within an hour's drive of 95 per cent of the population.

AMA President Bornemeier would reemphasize teaching. That is, he would have more teachers devoting all their time to students rather than to research.

Other proposals call for holding summer sessions, 12-month semesters, night schools, even enrolling two classes a year (instead of only one, in the fall).

Most important, says AAMC President Cooper, is the federal government's role. It must, he feels, assume a substantial and continuing responsibility for support of medical education. The Carnegie Commission says that support must rise to a cool $1 billion per year by 1980.

"I think a good deal of this is going to happen," Kerr says. "Within this decade, there will be some form of national health insurance for everybody. When that happens, if we don't get the manpower to go with it, the inflation we have seen in the past three years will seem minor by comparison . . . I think every national and political leader is aware of this."

Still, this optimism is little solace to today's rejects like Conforti. While he ponders his future, Conforti works nights and weekends as a technologist at Mercy Hospital in Rockville Centre. It is as close to medicine as he can come now. It may be as close as he ever comes.

REJECTED BY MED SCHOOL: WHERE DO THEY GO?

What happens to the 14,000 students rejected by medical school for fall admission?

Those who can afford it go to medical schools abroad. Others drift into allied health professions like psychology, podiatry or osteopathy. Some take graduate courses to bolster their chances for admission to U.S. medical schools, then reapply.

But the vast majority never become doctors.

One group of students, some 600 U.S. medical students studying in Mexico, is suing the American Medical Association and three other medical groups. They are trying to knock down a controversial barrier delaying their return to the U.S. to serve as interns.

The Educational Council for Foreign Medical Graduates, formed in part by the AMA, requires a foreign student to have met all the requirements to practice medicine set by the country in which he received his medical education. This means two years or more of training beyond medical school—generally, one year of interning and one of residency. Then, on returning to the U.S., he must pass a stiff special Council exam before he can intern here. About two-thirds of all who take the exam fail. One student took it 17 times before passing.

The AMA says many foreign schools are not up to U.S. standards and the exam serves to screen out poor students. But U.S. students studying abroad—there are about 4,000 of them—point out that state licensing board exams could accomplish the same thing. As it is, they must serve a foreign, then eventually a U.S. internship, while U.S. students intern right after med school. So they say this amounts to discrimination. And in a time when American hospitals are in immediate need of intern help, they say the practice makes no sense.

MEDICAL AND DENTAL EDUCATION FOR THE HEALTH CARE CRISIS

Extensive reform of medical and dental education, development of nine new university health science centers, and establishment of 126 "area health education centers" across the nation were recommended in a recent report by the Carnegie Commission on Higher Education. Action is needed now, the commission said, to alleviate a crisis in health care in the 1970's. The most serious shortages of professional personnel in the U.S. today are in the health services, according to the report. They will become more serious if, as seems likely in the not-too-distant future, a comprehensive national health insurance program extending coverage to millions of additional citizens is adopted. It takes a long time to train health professionals, especially physicians and dentists.

Reducing the time required to educate doctors and dentists is a key recommendation of the commission, which recommended that the time required to obtain an M.D. degree be cut from four years to three years after the bachelor's degree. This would create space in existing facilities for about 4,500 more medical students by 1976. The commission also recommended that dental students be trained for three instead of four years for the D.D.S., and that the number of years required for postdoctoral training of physicians generally be reduced from four to three. The total reduction for physicians would be two years—from eight to six.

A central theme of the commission's report is that impending changes in medical and dental education must be geared to changes in patterns of health care. Physicians and dentists increasingly will provide their services through prepaid group practice plans and in such facilities as neighborhood health centers. They will delegate more of their activities to physicians' and dentists' assistants and other health workers. University health science centers should train their students to function effectively under these conditions and should conduct research for improving health care systems. "But no matter how many health professionals are educated," commission chairman Clark Kerr said, "and no matter how adequately medical education facilities are distributed throughout the nation, Americans will not receive adequate health care unless a system is developed to deliver services to those who need them—regardless of income, geographical location, age, or race."

The world's most affluent society, Kerr

said, lags seriously behind other industrial nations in the general health of its citizens. In 1967, the U.S. ranked sixth in female life expectancy and 19th in male life expectancy among 22 industrial nations. Infant mortality—higher than in several industrial countries—was 21.7 deaths per 1,000 live births in 1968. The nation spent nearly seven per cent of its GNP on health care in 1969, but the health care dollar is buying less services because of rapidly rising costs.

To help bring essential health education services within an hour's driving time of most Americans, the commission recommends developing 126 area health education centers as satellites of university health science facilities. Such centers usually would have a community hospital as a nucleus. They would be visited regularly by university medical school faculty. Selected patients throughout the surrounding area could be treated there. M.D. and D.D.S. candidates would receive part of their clinical instruction at the area centers, as would students in the allied health fields. The centers also would be responsible for the continuing education of practicing physicians and dentists and would be responsible for coordinating local health care training facilities in community colleges and comprehensive colleges.

The new area health education centers are proposed for regions without sufficient population to warrant full-scale university medical centers or for densely populated metropolitan areas inadequately served by existing health care facilities. Although the report suggests 126 locations, it urges states and municipalities to proceed with development of them only after making regional studies.

According to the commission report, the number of university health science centers should be increased to coordinate medical education and to assist other agencies in improving systems of health care, with the goal of a university health science center in or near every metropolitan area of 350,000. The number of medical school entrants should be increased from the estimated 1970 national total of 10,800 to 15,300 in 1976, and to 16,400 by 1978, an increase of about 50%. The productivity of doctors and dentists could be augmented if trained associates were available to work under their general supervision, and assistants to work under their specific direction—the Medex program of training medical ex-corpsmen with military experience as doctors' assistants is a promising effort of this kind, which, by 1979, could train at least 3,500 associates and assistants per year.

A National Health Manpower Commission should be appointed to study shortages in all areas of health manpower; many of the new medical and dental school entrants should be women and members of minority groups—only about six per cent of U.S. physicians are women, in marked contrast to some Western European countries where women comprise up to 30% of all doctors, although American women make up four-fifths of all persons employed in nursing and other health services, and only two per cent of physicians in the U.S. are black, compared to more than 11% of black citizens in the population.

A Federal program should be established to provide grants of up to $4,000 a year per student for low-income medical and dental students and for students enrolled in associate and assistant programs. An Educational Opportunity Bank also should be developed to provide student loans, with repayment to be excused during periods of service as a house officer or member of the armed forces.

Voluntary National Health Service Corps should be created, with partial loan forgiveness as an incentive for young doctors and dentists to participate; the Federal government—which already supports most of the costs of medical research—should provide institutions with a cost-of-instruction-allowance-per-student supplement, and should make construction grants of up to 75% of total cost to universities to build or expand health science facilities; costs of all Federal support, recommended by the commission, would total $785,000,000 in current dollars by 1975 and $1,000,000,000 by 1980—in the first year, if the commission's proposals were accepted, Federal assistance would increase by $225,000,000; the levels of support of medical schools by states should be more nearly equal—a uniform tuition should be charged, medical school requirements for state residence status should be abolished, and states should help support private medical schools; as an economy measure, training in the basic health sciences at specialized centers should be combind with science programs on general university campuses, thus reducing duplication of faculty and laboratories, but the major economy measure would be shortening the period of training by one-fourth; there is a strong case for awarding a master's degree after completion of the basic science curriculum and enabling students with these master's degrees to work toward a Ph.D. in health sciences or toward the M.D. or D.D.S.; curricular reforms favored by students, including more flexible admission standards and more training in community medicine, should be considered seriously; and the number of places for training dental students should be increased in the 1970's by 20%.

THE MILITARY JUNTA IN GREECE

Mr. PELL. Mr. President, in October 1968, more than 2½ years ago, I spoke in the Senate on specific reports of brutal torture of political prisoners by the military junta in Greece. In the succeeding months, I brought to the attention of the Senate continued reports of these inhuman practices.

More recently there had been some indication that the situation in Greece had improved a bit; that the revulsion expressed by the American and European people may have led to the abandonment of torture as an administrative practice and as a means of political suppression.

There may be improvement, but it is apparent that there are many exceptions. In this regard, I believe Senators may be interested in an article that appeared in today's New York Times entitled "The Torture of the Greeks." The article consists of letters smuggled out of an Athens prison, written by students who have been subjected to torture.

Included in the article is a list of police officers most frequently mentioned by the victims as tormentors and torturers. I find it most disheartening to note that many of these names have a familiar ring to them. Of the nine names listed in the Times article, three are names of men I listed in the CONGRESSIONAL RECORD of October 12, 1968, and a majority of the names in the Times article also were listed in the book, "Barbarism in Greece," by James Becket—a book for which I was honored to write a foreword.

When I first made public the names of these men, I stated my hope that "the white light and heat of publicity" might have "an inhibiting effect on the actions of individual police or security agents," in Greece.

This Times article indicates mine was a vain hope, as it indicates was my hope that the Greek junta would make a concerted effort to completely eliminate torture, and would transfer these agents to assignments in which they would have less opportunity to exercise their evil natures.

On the basis of the New York Times article, it seems that the torture in Greece was going on, despite all of the junta's denials and assurances, as late as January of this year.

I ask unanimous consent that the New York Times article entitled "The Torture of the Greeks" be printed in the RECORD.

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

THE TORTURE OF THE GREEKS

NOTE.—The following article is taken from letters written on tissue and smuggled out of an Athens prison. They came from members of the student resistance organization, Rigas Ferraios, and describe their treatment by Greek security police.

(These are the names of policemen, all officers, given most often in the accounts by the victims as their chief tormentors and torturers: Babalis, Kalyvas, Karapanagiotis, Kravaritis, Lambrou, Loucopoulos, Mamodis, Smailis, Vasilakopoulos.)

My name is Fotis Provatas. On Christmas Eve, 1970, five individuals in civilian clothes, without a search or arrest warrant, searched my home for hours and then forced me to follow them to the general security of Athens. For 22 days I was kept in strict solitary confinement in a damp, dark, dirty cell in the basement of the security. From 14/1/71 to 20/1/71, day of my transfer to the Korydallos Prison, I was kept in a room of the fourth floor of the security.

They undressed me by force and threatened to rape me. As I was standing naked they punched me repeatedly in the face, the back, the stomach, the legs, the buttocks and on the heart. They repeatedly hit and squeezed my genitals. They dragged me around from the hair for long. They threw me naked on the floor, where they trampled me down. They kicked me, they hit me with a thick wooden club, while someone smothered my shouting with a nylon typewriter cover. They threatened that they would throw me down from the terrace. They threatened that both my friend Costarakos Costas and myself would be lost in a car accident. From the continuous blows given with a thick wooden ruler on my joints and in the palms of my hand, the bones finally broke in both palms.

My name is George Theodosius Spiliotis. Right from the start of my arrest they hit me on the head and threatened that they would throw me off a precipice on Mount Parnes. They also struck a pistol in my temples and threatened to kill me. They beat me till 11 o'clock in the evening in an office. They punched me on the head. They banged my head against the wall, dragging me by the hair. They punched me on the heart, on the ribs, on the stomach. They gave me repeated electric shocks. The blows on the head caused my nose to bleed. They put their fingers in the sockets of my eyes, they pretended to attempt to strangle me and they squeezed my genitals.

After all this, they took me on the terrace for "falanga." They tied me on a bench and started beating the soles of my feet with a thick iron pipe. The pain pierced through my body and on to the head which they kept beating at the same time. They again beat my genitals with a stick, they pressed my eye-bulbs with their fingers, or alternatively the throat to the point of strangulation. At the same time, with thick sticks they beat my fingers and my knees.

While they kept me tied on the bench, they would occasionally stop the beatings on the soles and start squeezing my genitals. The pain would make me turn on my face—I was lying on my back—and this caused new terrible pains from the ropes around my legs.

My name is Lycourgos Flessas. Agents of the general security of Athens arrested me without warrant. They took me to the Athens General Security. They immediately started slapping my face, giving me electric shock and punching me up. They pushed me in the laundry room. There they tied me on a bench and left my feet sticking out a bit. A police lieutenant started to beat the soles with an iron pipe, while somebody else threw his coat over my head to smother my shouting. Another police lieutenant hit me hard on the stomach and threatened that he would torture my girl friend, whom they had arrested the previous day. After a couple of hours they made me stand up and got me to walk about. They threw me in cell 7. In a nearby cell my girl friend was. She had suffered a nervous breakdown and was moaning all the time. They held her in this condition for one week.

My name is Costas Costarakos. On 23/12/1970, I was arrested in the house of my childhood friends. They were also arrested, together with my brother, my brother-in-law, my sister and my financée. They took me to the general security, where, right from the start, in the office of a police captain, three policemen in plain clothes started beating me and punching me in the stomach, shouting "Get ready to die." Right after this, after handcuffing my hands behind my back, they took me to the terrace laundry room. There, without taking off the handcuffs, they stretched me on the bench, they stuffed my mouth with pieces of rope and scrap paper, so as to smother my shouting and they started the falanga torture. Pain is terrible in the head. At the same time they squeezed and hit my genitals, and they also banged my head on the wall. During this torture, my torturers by shrieks and bangings tried to build up an atmosphere of false emotional tension, in order to terrify me. This lasted about three hours, in the night of 23 to 24, December. After this they threw me in a cell.

DRUG ABUSE PROCEDURES ACT OF 1971

Mr. TOWER. Mr. President, I am very much pleased that I have the opportunity to join with Senator HRUSKA and Senator MCCLELLAN in cosponsoring S. 2192, the Drug Abuse Procedures Act of 1971.

In May of this year, the Comprehensive Drug Abuse Prevention and Control Act of 1970 became effective. We will hopefully begin to see the positive effects of this legislation in the immediate future. However, certain limitations are already evident. In order to expedite the prosecution of cases concerned with narcotic drugs, we need to make certain additions to existing legislation. The Drug Abuse Procedures Act of 1971 would provide for admitting into evidence the certified findings of a chemist's analyses without the personal appearance of the chemist, unless requested by the defense. This accommodation would save the time of all individuals involved without prejudicing the defendant. The second proposal of this act would allow evidence gathered in a foreign country, in accordance with the laws of that country, to be admitted in court proceedings concerned with offenses committed overseas. These additions and refinements to the present law would increase our effectiveness in prosecuting drug violations without endangering the rights of the defendant.

Mr. President, at this time, I would also like to take the opportunity to commend President Nixon for his program of international diplomacy in the fight to curtail the flow of the drug traffic. Last week, the Turkish Government announced that it would abolish the cultivation of the opium poppy within a year. This act will eliminate the source of an estimated 60 percent of the illegal heroin smuggled into the United States. The Turkish Government is also to be commended for its statesmanship. Turkey does not have a serious drug abuse problem. Furthermore, the cultivation of the opium poppy is financially lucrative to the individual farmers and is a folk tradition that is centuries old. In abolishing the cultivation of the poppy, the Government of Turkey has risen above its own interests and has shown a great concern for the welfare of the United States. Hopefully, Turkey has set an example that will be followed by our allies in Southeast Asia and Latin America.

TRUTH IN ADVERTISING

Mr. McGOVERN. Mr. President, the truth in advertising bill which I have introduced with the cosponsorship of Senator Moss, the distinguished chairman of the Consumer Subcommittee, continues to receive important endorsements.

The June 21 issue of Advertising Age contains an editorial which urges the adoption of the McGovern-Moss bill as a more constructive measure than the recent FTC decision to review advertising on an industry-by-industry basis. While I think the FTC decision is a step forward, we must give to the consumers themselves the right to protect their own interest.

I have learned from Senator Moss that his subcommittee will hold hearings on this bill in October. I hope those hearings will provide the occasion for a full-scale discussion of the pending legislation, so we can move the early Senate action on it.

Mr. President, I ask unanimous consent that the editorial in the June 21, 1971, Advertising Age entitled "Legislation Yes; FTC No" be printed in the RECORD.

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

LEGISLATION YES, FTC NO

Although we support in principle the idea that business men should be willing to document their advertising claims to anyone who's interested (as would be required in the Moss-McGovern bill), we're against the Federal Trade Commission's move to require such substantiation because (1) it's doubtful whether FTC has the authority to make such demands and (2) because the Moss-McGovern bill is fairer and more equitable to both advertisers *and* consumers.

FTC is relying on a little used subparagraph in the act setting up the commission as authority for its new demands. The subparagraph in question, which authorizes FTC to make reports to Congress and the public, has been virtually unused since FTC was created 57 years ago, yet a commission official said without cracking a smile that "we believe this is exactly what Congress had in mind."

It's been obvious for some time now that the commission is painfully anxious to be well thought of by Ralph Nader and other consumerists, after years of neglect and disdain. But they are letting their desire for respectability get the better of their legal judgment.

If FTC wants to take on this new authority, it should be required to hold hearings and entertain dissenting opinions from interested parties. We strongly urge the Assn. of National Advertisers, the American Assn. of Advertising Agencies, the American Advertising Federation and other groups to challenge the FTC's authority to promulgate its sweeping new "ad substantiation" ruling.

AA continues to support the Moss-McGovern bill requiring that all advertisers make available such documentation to whoever wants to see it. First of all, it would be fairer and more equitable to require substantiation from every advertiser, rather than just the handful that FTC swoops down on. Under the Moss-McGovern bill consumers would be free to write directly to the advertiser—any advertiser—for substantiation of his ad claim. Under FTC's setup, real consumers (not the highly vocal, organized kind) would have an easy time getting access to the information.

A TET MEMO FROM ELLSBERG

Mr. ALLOTT. Mr. President, Mr. Daniel Ellsberg is the former superhawk, now a superdove, who took it upon himself to steal and distribute the classified documents and analyses that have come to be known as the Pentagon papers.

As though additional evidence were needed, we now have additional evidence that Mr. Ellsberg's judgment is not to be trusted. Wednesday's Washington Post contains a fascinating column by Messrs. Evans and Novak on one of the memoranda which Mr. Ellsberg did not turn over to the New York Times.

The author of this memorandum was one Daniel Ellsberg. The errors contained in this document are ably recorded by Messrs. Evans and Novak. I ask unanimous consent that the article be printed in the RECORD.

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

A TET MEMO FROM ELLSBERG

(By Rowland Evans and Robert Novak)

The flawed vision of Daniel Ellsberg in viewing the Vietnam war, a failing that was to have profound implications for his country, was laid bare in a private memorandum he wrote for the Pentagon on Feb. 28, 1968, spectacularly misinterpreting the just completed Communist Tet offensive.

Ellsberg, then a Vietnam expert for the Rand Corp. think tank, had been asked to interpret the bloody Tet offensive for the Defense Department's Office of International Security Affairs (ISA). His memorandum was apocalyptic: "I think that the war is over"—Communists taking over the countryside, the South Vietnamese government and army deteriorating, a rapid renewal of the Communist offensive. "Two months from now . . . things are going to get much worse," he said, precluding any possibility for improvement.

No prophecy could have been more false. In truth, the Tet offensive was the Communist high-water mark, triggering a three-year decline in their Vietnamese strength (which

may now be ending). But Ellsberg, exasperated with Saigon's corrupt government and shoddy army, could see in Tet only the vindication of his own warnings. It was a view widely shared in ISA, whose staffers wrote the Pentagon Papers.

Thus, the spectacular mistakes of Ellsberg's 1968 memo transcend the personal. His flawed vision is the flawed history of the Pentagon Papers. It is the all-is-lost syndrome that deeply influenced U.S. policy in the months after the Tet offensive and finally led to Ellsberg's disclosure of the Pentagon Papers.

For these reasons, Ellsberg's errors about Tet are worthy of examination. Herewith are some prophecies he sent the Pentagon along with the actual outcome of events:

Ellsberg prophecy No. 1: The Communist Tet offiensive of Jan. 29-Feb. 29 was a prelude to the "takeover of the countryside" by the Vietcong, "inexorably sucking" South Vietnamese and U.S. forces "toward the environs of the towns and cities, away from the hamlets and outlying regions."

The actual outcome: by their desperate Tet attacks, the Communists depleted their forces in the countryside and have not adequately rebuilt them since.

Ellsberg prophecy No. 2: The Vietcong will be drafting ever more recruits, whereas South Vietnamese armed forces "will probably be considerably smaller." By April 1, Saigon's forces "will be, at most, 75–80 per cent of its actual strength in December, 1967, and quite possibly closer to 60 per cent" because of heavy desertions.

The actual outcome: Saigon forces *increased* by 122,000 the next six months, finally surpassing one million. In contrast, Vietcong recruiting in the countryside was never the same, and the Communist war effort was increasingly carried by regulars from the North.

Ellsberg prophecy No. 3: "It is the death of pacification"—Communist control of South Vietnam will steadily increase, never receding. By April 1, "U.S. sub-sector teams will be withdrawn from a number of districts, and a number of province towns will be under siege. Some will have fallen." Some 400,000 U.S. troops would be needed to prevent this.

The actual outcome: Far from U.S. teams being withdrawn or province towns falling, Communist control of the countryside steadily receded, without any increase in U.S. troops.

Ellsberg prophecy No. 4: "The best guess is that the VC (Vietcong) cadres are busy learning lessons from the initial attacks on how to do better next month." By early April, there will be another round of heavy attacks, including renewed pressure on the U.S. Marine base at Khe Sanh.

The actual outcome: The Vietcong were hopelessly decimated by the Tet offensive. Not since then have they even contemplated an offensive comparable to Tet. By April 1, the relief of Khe Sanh had begun.

Moreover, Ellsberg completely missed this point: By their brutal assault on villages, the Communists irrevocably diminished their own political base in South Vietnam. While Ellsberg's memo predicted post-Tet tensions would result in U.S. air and artillery attacks on South Vietnamese villages, U.S. sensitivity about such politically self-defeating tactics has greatly increased since then.

Flawed through Ellsberg's judgment was, however, this mentality—in high places in and out of government—helped erode U.S. support of the war and undermine a political consensus at home. Now, in the confusion wrought by publication of the Pentagon Papers, the mistaken Dr. Ellsberg is apotheosized while those who correctly interpreted Tet as a calamitous Communist setback are in disgrace.

DR. V. D. MATTIA

Mr. WILLIAMS. Mr. President, on Sunday, New Jersey and the Nation lost one of our truly outstanding men with the death of Dr. V. D. Mattia.

He was only 48, yet, since 1966 he had headed one of the world's largest pharmaceutical and research firms, Hoffman-LaRoche, Inc.

Certainly, that in itself is testimony enough to the brilliance and achievement of the man.

But those of us who were privileged to know him—and it was a privilege all too briefly enjoyed—measured his success in other terms. Dr. Mattia was a warm, generous, socially acute human being who seemed to have distilled the essence of why we are here and what we should be doing in this life.

Long before the focus of national attention fell upon the issue of corporate responsibility, Dr. Mattia said that the success of a company cannot be measured by the results of the corporate balance sheet. And, that remained a guiding rule.

As president of Hoffman-LaRoche, he initiated a pioneering program to provide free pharmaceuticals for indigent patients.

He set up a major research program, the Institute of Molecular Biology, at Nutley, to study life processes, the first such privately funded effort.

And, he established a corporate policy of helping the less fortunate in this life.

Despite the extremely heavy responsibilities of his position, he gave unstintingly of his time for civic and charitable activities.

He was president of the Essex County Heart Association; a member of the State Board of Higher Education; chairman of the Rutgers Medical School Advisory Committee and a trustee of the New Jersey Symphony to mention just a sampling of these activities. And for "Barney" Mattia these were all working jobs, not figurehead positions.

In 1969, B'nai B'rith recognized his tremendous achievements by presenting him with the International Humanitarian of the Year Award. No man ever deserved such an award more.

Ironically, one of Dr. Mattia's most strongly held scientific beliefs was that the productive life of man could be extended to 100 years. He did not enjoy the luxury of that long a life but few men ever crowded a lifetime with more accomplishment.

Mr. President, one particularly appropriate tribute to Dr. Mattia came from a newspaper columnist who had known him for years.

I ask unanimous consent that that tribute by John Soloway, published in the Star Ledger of Newark, N.J., on July 6, be printed in the RECORD.

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

JERSEY BUSINESS

(By John Soloway)

Grievous as is its loss, the business community—in New Jersey and at-large—suffers not alone from the untimely death of Virginius Dante Mattia. Many more are poorer by his premature passing.

As chief executive of one of the nation's major business enterprises, "Barney" Mattia occupied a position of prominence and international influence in the ethical pharmaceutical field.

But Dr. Mattia was much more than a visionary, dedicated medical man and industrial leader; more than an inspirational, extremely able corporate administrator; more than a disciple truly devoted to research aimed at extending the life span, improving the health, and adding to the productive years of his fellow man.

First, and foremost, Barney Mattia was a humanitarian, and he long will be remembered as a human being in the broadest meaning of the term.

The worldwide B'nai B'rith Organization, itself a formidable force in the interest of humanity, bestowed upon him this signal recognition some years ago, and subsequently numerous others had sought—in proposed similar fashion—to focus public attention on his words and deeds, his dedication to the causes of the oppressed and the poor and the sick.

As graciously as he could, he declined such proffered encomia with an apologetic explanation that was simple and sincere and in keeping with a modesty that was truly a trademark.

"Just because I am privileged by position or circumstance, to be enabled to do my bit," he recently told me, "ought not to call for testimonials."

And, as if he had a premonition of his own abbreviated lifetime—and the remaining days should be put to greater purpose—he had added with a heavy sigh: "There is so much more than needs to be done."

Long before it became fashionable for corporate chieftains to be concerned about and committed to the welfare of the indigent, the under-privileged and the ill, Barney Mattia preached—and practiced—a philosophy now forged as a principle of enlightened management.

"How successful a company is," he had said to me in an interview more than a decade ago, "cannot be measured by the results of the corporate balance sheet."

He was then 36, newly named as general manager of the ethical pharmaceutical division of Hoffmann-LaRoche. He had gone through two wars and he was yet to endure an excruciating coronary a year before he was to become the youngest chief executive of one of the major drug manufacturing and research entities in the world.

But even at that early age, he had set his sights, had forged his resolve. He envisioned a new longevity for man, a better health, a greater usefulness. "A life span of 100 years," Dr. Mattia had predicted then, "should be a quite common thing if we can make certain basic discoveries . . . Moreover, they'll be health-filled, productive years for most people," he had prophesied.

Thus, when he became president in 1966, he set about almost at once to establish the Institute of Molecular Biology at Nutley, the world's first privately-funded study of life's processes, a multi-million dollar facility the quest of which and the work of its 200 eminent scientists, must go on as a memorial to the purpose of Virginius Dante Mattia.

The purpose of Barney Mattia had been evidenced even earlier when as executive vice president, he staunchly stood up before important stockholders and directors of the enterprise on two memorable occasions. In both, the issue was profitability.

One had to do with the establishment of the company's program to aid the indigent ill, a costly proposal. Under it, any doctor can prescribe without charge to the patient any Roche product for as long as the need remains.

The other revolved around research into which the company, having poured millions into the particular effort, was reportedly about to abandon its quest for the compound which is today perhaps the world's most-prescribed drug—Librium. Here again, Barney Mattia prevailed, and the world of medicine and man are the principal beneficiaries.

A national publication, recounting these and other contributions of Dr. Mattia a couple of years ago, characterized him as a "maverick of the pharmaceutical industry," an appellation also ascribed to him by some competitors less gifted and certainly less responsive to the needs of the times.

It may well be that Barney Mattia was a "maverick." Be that as it may, the fact is that his deeds were many and noteworthy—even as his feeling for his fellow man were deep and abiding.

IS THE PRESS FAIR?

Mr. McGOVERN. Mr. President, there are those, particularly in the administration, who appear to believe that the press is biased against the Government and that Washington reporting is especially unfair. In fact, the administration goes to considerable lengths to circumvent the Washington press corps.

A recent Louis Harris poll demonstrates, however, that a majority of those in his national sample believe that Washington press coverage is fair.

This finding is a tribute both to the Washington press corps and the commonsense of the American people.

Mr. President, I ask unanimous consent that the Harris survey on Washington news coverage be printed in the RECORD.

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

HARRIS SURVEY: DISTRICT OF COLUMBIA NEWSMEN SEEN "GOOD" REPORTERS

(By Louis Harris)

A majority (59 percent) of the American people rate the quality of news coverage out of Washington as being "good" to "excellent," as against 37 percent who say it is "poor" to "only fair." Six in 10 say they feel newspapers and television have been "fair in reporting news of the Nixon Administration," with TV scoring somewhat higher than the print medium.

Here are key findings from a nationwide Harris Survey on the public's evaluation of Washington press coverage. (This survey was taken before the controversy over the New York Times release of the Pentagon study of American participation in the Vietnam war.)

A national cross section of 1619 households was recently asked:

"How would you rate the quality of the news coverage you receive out of Washington, D.C.—excellent, pretty good, only fair, or poor?"

Quality of Washington coverage

[In Percent]

	1971	1969
Excellent	8	8
Pretty good	51	46
Only fair	30	33
Poor	7	7
Not sure	4	6
Positive	59	54
Negative	37	40
Not sure	4	6

Questions about newspaper handling of the Nixon Administration were asked in two ways:

"Do you feel the newspaper you read most often is fair in reporting news of the Nixon Administration or not?" and "Do you feel the newspaper you read most often is unfair in reporting news of the Nixon Administration or not?"

Newspaper coverage of Nixon administration

[In Percent]

	Fair	Unfair
Is	59	21
Is not	25	61
Not sure	16	18

On the television side, the questions asked were:

"Do you feel the news on the television station you watch most often is fair in reporting news of the Nixon Administration or not?" and "Do you feel the news on the television station you watch most often is unfair in reporting news of the Nixon Administration or not?"

Television coverage of Nixon administration

[In Percent]

	Fair	Unfair
Is	64	20
Is not	24	65
Not sure	12	15

By whatever measure, it is evident that public confidence in the fairness of news coverage of the Nixon Administration is high.

DOROTHY ANDREWS KABIS

Mr. TAFT. Mr. President, we who knew Dorothy Andrews Kabis were saddened Saturday to hear of her tragic death. Her passing is a great loss to her family and to the Nation.

Serving as a delegate from her native State of Delaware to the Republican National Convention in 1960, she exemplified a role of leadership in all of her endeavors. I was pleased that President Nixon appointed her as Treasurer of the United States, a post which she served with distinction until her death.

Those of us who knew her will remember her sense of dedication, her gentle ways, and her pleasant smile. Her sudden death while visiting the grave of her father, brings a sense of great loss that we all share.

I wish to extend my deep-felt condolences to her family and many friends.

DEATH OF LOUIS "SATCHMO" ARMSTRONG

Mr. PELL. Mr. President, in the last week we have seen the demise of both a legendary figure and of a historic event in the annals of jazz. A year ago at this time, I had the distinct pleasure of introducing to thousands of Rhode Islanders and to many more visitors to Rhode Island that great jazz king, Louis "Satchmo" Armstrong, at the annual Newport Jazz Festival.

Now jazz has lost both Louis Armstrong, who fought a losing battle for his life in a Manhattan hospital and the Newport Jazz Festival which, under the direction of George Wein, lost another kind of battle.

Bunk Jones, Kid Ory, King Oliver, Fletcher Henderson were the legendary jazz figures of the past who influenced the great Louis Armstrong. Through his trumpet which echoed around the world, as he toured country after country as America's "Mr. Ambassador of Jazz," millions came to love and respect this master of the trumpet. His career in music dated back to Chicago in 1917, but as recently as 1964, his superb rendition of "Hello, Dolly" reached the top of the charts.

The Newport Jazz Festival was in the midst of presenting one of its greatest renditions of American jazz when disorders broke out among thousands of young people who evidently came to Newport, not to listen to the music, but rather to participate in youthful disturbances so symptomatic of our times.

There may never be another Newport Jazz Festival, although I firmly hope there will be. But even if there is another Newport Jazz Festival, there will be an empty space on the stage. Missing will be the gravelly voice, the high-pitched staccato trumpet, and the hand with a flowing hankerchief, wiping a perspiring brow.

Future generations of Americans will never know the warmth, the humanity, or the greatness of Louis Armstrong as those of us who knew him and saw him smile and heard him play.

He addressed kings and princesses as their equal for surely he was—the King of American Jazz.

ADDRESS BY SENATOR TOWER

Mr. TOWER. Mr. President, on May 6, I had the pleasure of addressing the Council of Savings & Loan Stock Companies at its seventh annual conference in Scottsdale, Ariz. The distinguished immediate past Chairman of the Federal Home Loan Bank Board, and a past employee of the Senate, John E. Horne, also addressed the conference.

Those of us on the Senate Banking, Housing and Urban Affairs Committee, and many other Members of Congress, know John Horne and are familiar with his long years of dedicated service in developing and supporting programs designed to enable the families of America to have adequate housing. His record on the Federal Home Loan Bank Board, both as a member and as Chairman, is one of outstanding accomplishments and contributions to the restructuring and strengthening of the savings and loan industry.

As he pointed out in his speech, the percentage of the Nation's residential financing supplied by the savings and loan industry has increased from approximately 25 percent in the 1940's to more than 50 percent at the present time. The programs developed and approved by Congress during John Horne's years on the Board helped to make this achievement and many other worthy developments possible.

Some of the changes that were made and constructive steps taken to enable mortgage lending institutions to contribute their maximum to a better-housed America, and some idea of what to expect in the years ahead are related in the speech John gave at the conference.

I ask unanimous consent that the speech be printed in the RECORD.

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

SPEECH BY JOHN E. HORNE, CHAIRMAN OF THE BOARD, INVESTORS MORTGAGE INSURANCE COMPANY

(For delivery before Seventh Annual Conference, Council of Savings and Loan Stock Companies, Scottsdale, Ariz., May 7, 1971)

Thank you, Mr. Chairman, for the generous introduction.

And congratulations, Tom Bane, for the breadth and the depth of your program and the talent you have enticed here.

When I read the title of the subject assigned me—"Reflections of the Past—Visions for the Future"—and the name of the room in which we are now meeting—Peace Pipe Room—having been a Member and Chairman of the Federal Home Loan Bank Board, I wondered if there were an intentional connection between the two. All of you are aware that decisions of regulators are not always approved by those regulated. This is, of course, understandable and has its advantages.

A regulated industry should feel free and have the opportunity to raise questions about the proposals and actions of the regulator. A frank exchange usually is helpful to both parties. At the same time, the regulated is aware that the regulator, the Federal Home Loan Bank Board in your case, has several constituencies to serve: its members, the public and the savers. It cannot always satisfy all the groups affected by its decisions.

My assignment is a difficult one and I assure you I undertake it with both humility and trepidation—humility because whatever good was accomplished while I was on the Board was made possible by the efforts of many, and trepidation because of fear of being misunderstood in whatever I say. Even so, I was willing to take the risk because in one capacity or another I have been associated with the thrift industry—borrower, depositor, legislatively, regulator—since the 1940's. I am like the fellow who moved to a new location and had the problem of finding a church of his choice. After trying several in the city, he went to one in the suburbs. He was late arriving and as he sat down the congregation and the minister were reading that part of the prayer book which goes something like this: "I have done those things I ought not to have done, and I have not done those things I ought to have done". The stranger quickly and quietly slipped to his knees and exclaimed to himself, "Thank goodness! I've found my crowd at last".

Before commenting about the first part of the title of my subject, "Reflections of the Past", I want to make several points that hopefully will set an appropriate tone.

1. Nothing I shall say is intended to be critical of the existing Board or past Boards, or of industry members. Nor do I claim credit for what good was done since our program was a team effort. I take the blame for mistakes that were made because I was Chairman.

2. Every legislative measure proposed by the Board while I was Chairman was approved by all three Board Members, and had the support of the overwhelming majority of the industry.

3. Seldom did any Member of Congress vote "No" on final passage, although usually modifications were made in Committee on major legislation.

4. At no time did the Board take it as a personal affront when some member of the industry disapproved of a legislative or regulatory proposal.

5. As evidence that we wanted industry comments, we never submitted legislation or adopted substantive regulations without consultation with the industry. Of course, as I have indicated, there was not always unanimous agreement between the Board and the industry. However, valuable assistance was always derived by the frank and free discusions which transpired.

6. In spite of this procedure, I never felt that the Board was infallible. Understandably, we made our share of mistakes. From the advantage of hindsight, there are some things we would have done differently but, by and large, I believe we enjoyed a creditable performance.

7. Finally, and this may surprise you, we never played partisan politics with personnel or Board decisions. On no occasion did President Johnson, or his staff, or the National Committee, attempt to exert any pressure concerning the Board's decisions.

Now, I do not intend to bore you by repeating the past. But I think it well that occasionally we reflect on the past. It helps to explain the present and to prepare for the future, and thus I am pleased this topic was assigned to me.

Very briefly, I shall endeavor to reflect with you no what the Board had in mind and let you judge the results. Our program was based largely on both the economic and industry conditions that existed at the time as we saw them. Collectively, we sensed that several things were essential if the industry was to remain strong and viable and meet its statutory responsibility of being a safe place for savings and a stable source of economical and sound home financing.

Between the time I joined Senator Sparkman's staff in January, 1947, and resigned from Chairmanship of the Board in November, 1968, the residential financing supplied by the savings and loan industry increased from approximately 25% to more than 50%. Assets increased from approximately $8 billion to more than $150 billion. If for no other reason, but there were others, streamlining and modernization of legislation, regulations and procedures were made necessary by the rapid growth of the industry during this period of time and especially in the 1950's and the 1960's. Let me mention three or four areas in which we felt action was required.

One area was adequate *supervisory authority*.

It was urgent that the Board have power to prevent or stop an unsound practice without having to cancel insurance of accounts of an association. This was the only statutory authority the Board had prior to late 1966 as regards a State-chartered Federally-insured institution. To use this extreme action required prolonged periods of time and actually accomplished little so far as protecting the industry was concerned.

Most of the legal deficiencies were cured by the 1966 Supervisory Act, originally passed to extend for five years but made permanent last year. The provisions of this Act were supported by banking regulatory agencies and by most spokesmen of both the savings and loan and banking industries. Perhaps one of the most meaningful results of the 1966 Act is that it enables the Board to expand considerably case-by-case supervision and thus avoid to a considerable degree having to impose excessively restrictive regulations against the entire industry to get at the small handful who misbehave.

I recall making a speech in this same city at a national convention of a savings and loan group shortly after joining the Board in which I advocated that the Board have adequate authority to use preventive and case-by-case supervisory procedures. The response of the convention was quite favorable and I know this potential of the legislation was responsible for the strong support given by the industry.

Another somewhat more controversial legislative proposal related to savings and loan holding companies. Here again, there were only a very few who abused their savings and loan subsidiaries, but we wanted legislation to bring to a halt such abuses and flexible enough so that the Board could be fair in administering the provisions. Erroneously, some believed the Board wanted to abolish holding companies. That was not the case, and when the law was signed we sat down with holding company representatives to prepare regulations. One of the finest gentlemen in this area of operations—or any other area—is on the Board of the Company of which I am now Chairman.

One further measure which I wish to mention in the supervisory field is the Receivership Act which enables the Insurance Corporation to take over the assets of any association in which the Corporation is forced to pay out insurance of accounts.

Prior to this Act, there were several instances, and the number was growing, in which the Corporation paid off the savers but could not obtain possession of the assets. Some who administered the assets appeared to have little or no concern about protecting the Corporation. There were occasions when evidence indicated that proposed mergers were thwarted so that the assets could be seized and used for purposes contrary to the Corporation's welfare.

The Board and nearly every industry member concluded that this practice was extremely unfair to all insured associations, and the support for the bill was so overwhelming that not a single Member of Congress either in Committee or on the Floor opposed it.

As I reflect on the supervisory statutes today, I think they could have been improved but that on the whole they are sound. They enable the Board to control the few—and there are only a few—who would unwisely impair the image of the many. Experience will show where relaxation, or tightening-up, is justified. I recall that one change was made last year in the holding company law. I think the present Board is administering these statutes conscientiously.

Moreover, these supervisory measures serve to make possible the fulfillment of a second area of need to which I want to make reference and to which the present Board is also giving a great deal of attention.

I refer to a more liberal set of regulations governing the industry's practices which now safely can be permitted because of the added authority granted the Board and its ability, as I have already stated, to act on an association-by-association basis. The Board of which I was a Member had begun the process but there was too little time between the passage and implementation of the statutes and the change of Board membership for many changes to be made.

Whether or not the existing Board and the one of which I was Chairman would have taken identical steps no one can say. Definitely, though, the time had come for the Board to rewrite and modify the rules and regulations relating to the industry. As I have said, the legislation to which I have referred contributed to this process. I recall particularly the several discussions between Bob Rand and me concerning this matter, and I was pleased when he was selected to chair the Committee charged with making a study in depth to be followed by recommendations to the Board. I should like to commend the Board for the appointment and the Committee members for their tireless and conscientious labor.

A third significant achievement in the 1960's was the development of a greatly enlarged and diversified lending authority for the industry. The dual system was of immense help in this achievement because of the traditional tracking by State associations of authority granted Federals, and vice versa.

The service corporation concept, which offers many investment possibilities, is an example of what I have in mind. Educational loans; the authority to invest in urban development projects, even equity investments; increased apartment lending authorization;

mobile home loans, and too many others to discuss here, are among the many new lending and investment rights granted the industry.

Certainly among the most noteworthy new investment authorities is that relating to liquidity requirements. Prior to 1966 only cash and Governments could be considered as legal liquidity. The result was that in 1966 very few associations had real or usable liquidity. When we lowered the liquidity requirements during the 1966 crisis, hoping to make more money available for housing, only a few in the industry could take advantage of it. As a result of 1968 legislation, liquidity can be invested in a multiplicity of items, can be more flexible and thus available for mortgage lending when needed and can also improve tremendously the earnings of an association.

In fact, a student of the industry once told me that more new investment authority—liquidity and otherwise—was provided the industry during the 1963–1968 period than during the previous twenty-five years.

Unquestionably this new lending authority, and more, is essential if the industry or its central Bank System is to compete successfully for funds. Without Regulation Q in the form established in 1966, and a limitation on the size of some Treasury issues and Home Loan Bank Board, FNMA and GNMA issues since early 1970, the thrift industry would have suffered far more during the 1966–1970 period than it did.

The many among us who worked for these measures can take pride in the improvements already made possible. Many other improvements are on the horizon.

There were many other changes which stand out in my mind as being of great value—expansion of services provided members by Regional Banks; the successful negotiation with the Federal Deposit Insurance Corporation which settled for all time, I hope, that FSLIC and FDIC insurance are on par; the creation of a variety of savings instruments designed to appeal to various needs and desires of savers; the improved branch, insurance of accounts and merger procedures, which have been further modified by the existing Board; the improvement of communication between the Board and the industry, and within the System, by the production of the Federal Home Loan Bank Board JOURNAL and other means; the Friend Study authorized by Congress in 1966 and completed in mid-1969, about which initially many doubts were expressed as to its advisability, and which was distorted and inadequately reported in the press, but the great part of which by now has been praised by most of the industry and put into effect by the present Board.

Among our disappointments was the inability to raise adequate funds in 1966 to meet the heavy withdrawals from associations and at the same time supply needed funds for housing. What happened in 1966, how what could have been a catastrophe was averted, and the lessons learned that helped the industry in a similar situation in 1969 would within itself frame an enlightening speech.

The frustration of this experience was compensated for in part by establishing under Regulation Q a rate advantage over commercial banks that is still in effect, and as reported by the industry's good friend, Senator Tower of Texas has just been extended for two years; a greater understanding of the importance of the industry by the Government agencies whose decisions can be highly detrimental; a 100% cooperation with the Board by these Agencies from 1966 through the remainder of my tenure on the Board and since as far as I know; a restructuring of liquidity provisions which enables the industry on Board reduction of liquidity to feed tremendous amounts of money into home financing; and—this may surprise you—complete cooperation from the commercial banks in support of measures designed to help the savings and loan industry through the 1966 crisis.

I should point out one further gain. Both the Federal Home Loan Bank Board and the Federal National Mortgage Association supplied substantially more funds in 1969 for housing than was the case in 1966. In several respects, the experience of 1966 contributed significantly to these highly beneficial achievements.

Another disappointment experienced while I was on the Board was the failure to enact the Federal Chartering bill. The loss was so close and the stakes were so high! In my opinion, the result would have been a much stronger thrift industry. We would have gotten in one package what we shall now be seeking for several years. Passage of the bill would not have affected adversely the dual system of Federal and State institutions nor what Congress will do about Federal stock chartering.

Again, though, there were compensatory developments. We succeeded in lifting some very desirable parts of the proposed measure from the defeated bill and inserting them in the 1968 Housing Act. Among the provisions were the liquidity measure to which I have already referred; change of terminology to deposits and interest; mobile home loans; authority for a greatly expanded variety of savings instruments; and two other provisions as yet to be implemented by the Board—the right of mutuals to issue debentures and for Federals to make certain types of consumer loans.

I feel certain that from my "Reflections of the Past" you sense that I am optimistic about the future, both short- and long-range. I am.

It is already obvious that 1971 will be an exceedingly good year savings-wise for the entire thrift industry, and thus for housing. Even in the first quarter, net savings for associations, including interest credited, amounted to more than $8¾ billion. Compare this with a total of $10,843,000,000 in 1970, a record year until 1971, and you can understand that a dramatic change has occurred during the past five or six months. I doubt if this momentum will carry throughout the year, and possibly the industry hopes it won't. It is interesting to speculate, though, about what you would do with more than $30,000,000,000 of new money.

In January, I estimated that the housing volume, non-farm, for 1971 would be between 18 and 20 million units. I see no reason to change the estimate.

Should rural housing and mobile homes be included we could very well land above the 20,000,000 home mark. The Commerce Department's April survey indicates that consumer plans to purchase homes has increased strongly since the end of 1970. So with increased demand and sharply increased availability of funds, and at lower interest rates, there seems little doubt that the housing market in 1971 will be quite strong.

The lower earnings that may result from the decline in mortgage interest rates and from the reduction in dividends paid on stock by the Regional Banks are minuses but will not be disastrous. The cost of Bank System funds might be lowered by turning over high cost maturing issues with less expensive money. This could improve income on stock dividends. However, because of the excessive supply of savings, the monetary policy of the Federal Reserve Board and efforts of Congress and the Administration to hold down the cost of money, I do not expect mortgage interest rates to rise much, if any, before the end of the year. This will be true even should the savings flow taper off in the immediate months ahead.

Some highly knowledgeable and experienced housing economists strongly believe interest rates will drop further. No one can do more than stay abreast of developments and make educated evaluations on almost a month-to-month basis.

There are those who fear or expect that this industry will not survive in the years ahead. I am not one of them, although I know we must ever be alert to cope with changing demands and needs. Maybe the trials and tribulations of the 1960's conditioned me to this point of view because we overcame so many difficulties then. But I believe the industry's potential is far short of full maximization, that it too learned a valuable lesson in the decade of the 60's, and that it will avoid the temptations of over-building at excessive risks to which some members succumbed in the early 60's.

The industry is also increasingly aware of its responsibility to help make decent housing available to all deserving citizens, to carry its share of the load in all public endeavors, including the recognition that substandard housing and pollution are brothers. Many new powers have been provided that enable the industry to meet these obligations. I have named some. Other programs of enormous value were authorized in the Housing Act of 1968 and in statutes enacted in 1970. Congress seems willing to give you even more assistance as it is required.

In this regard, I think we now have the means to avoid another 1966, or even 1969. And I believe the Federal Reserve Board will be prepared in other such instances not to stand idly by while housing carries most of the brunt of money shortage.

Our capacity to raise housing funds through the industry's central Bank System, through FNMA and other sources are considerably improved over 1966.

We must make certain that the thrift industry is not bypassed in measures designed to fill the nation's housing needs. So many groups, acting in good faith, are concerned about adequate and decent housing and so many proposals are being nurtured that your capacity and knowledge could, at least in part, be disregarded. To a large degree, it is the industry's responsibility to serve as the watchdog in this area.

May I also caution the industry not to neglect the youth market potential. You may be sure that other businesses won't do so. My Company is making a very strong effort to encourage young adults to practice thrift and get in position to make a downpayment on a home.

Unfortunately the younger people today believe more in credit spending rather than in savings accounts. Over 52% of the population is under 30 years of age, and yet the average age of thrift depositors is about 50. That means there are many of your potential customers who could be saving money but are not doing so. Is this really an important market for you? *You bet it is*, since there are over 22 million families in the 25–40 age group. In the next ten years, young adults, those in their 20's and 30's, will increase 34%, a growth of 18 million people. People in all other age groups will increase by 9 million, or a mere 6%.

The young adult market of 22 million family units is the fastest growing segment of the population in the 1970's. If that market is ignored or neglected, your ability to raise money as you are doing today and have done consistently with rare exceptions for many years could be dangerously impaired. As valuable as is your central Bank, let me urge that you regularly court the public for savings so as to avoid being only a conduit of borrowed money and because money raised by deposits usually costs you less.

Help young families to own homes, and support the Savings and Loan Foundation so that it can continue and strengthen its excellent programs that build and retain a favorable public image for your industry.

Two points I wish to make in conclusion—as I view the future, and despite belief from knowledgeable sources to the contrary, there is a need for a specialized industry to finance a program of full and complete housing accommodations for the families of this country. The thrift industry has the know-how to do the job. We must continue to work until you have the means to do it. We are much nearer to this goal than 10 years ago and each year we make some progress. I do not believe nor do I think Congress believes you have to lose your identity to achieve the objective of a decent home for every American family. You cannot do the job alone, but you are carrying more of the load than any other group and you can do more as you are provided the necessary tools.

Finally, let me urge that you become a part of all efforts being made in and out of Government to reduce housing costs, and to find new and more economical methods of supplying homes in attractive surroundings. There are so many sources working on these problems that we either will become too confused to find better and more adequate answers, or we will make a breakthrough that will be dramatic and sensational. The odds are that it will be the latter and I don't want an industry in which you and I have exerted so much effort to be caught napping either at the starting line or the half-way mark.

Yes, I am an optimist about the future of your industry. I intend to continue to help in any way I consider to be appropriate. And I repeat—the savings and loan industry can continue to grow in strength and can be as beneficial to the national well-being as it has the vision and willingness to do so.

A PROPOSAL FOR REVENUE SHARING

Mr. McGOVERN. Mr. President, I have long been concerned with developing a mechanism for insuring that State and local governments receive an adequate share of the total tax dollar. For that reason, I have been encouraged by the increasing attention given to the general concept of revenue sharing and hope that the Congress will be able to adopt a satisfactory program this year.

Many of the programs that have been offered contain positive elements. But they appear to contain major weaknesses especially with regard to Federal supervision of the expenditure of Federal funds, aid to the poorer areas and aid to both urban and rural America. For that reason, I have offered a proposal for revenue sharing which would, I believe, represent the kind of program that would bring the greatest benefit with the greatest equity.

Mr. President, I ask unanimous consent that the summary release and the text of my revenue sharing proposal be printed at this point in the RECORD.

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

STATEMENT BY SENATOR GEORGE MCGOVERN

Senator George McGovern (D-SD) today proposed a revenue sharing plan designed to encourage state and local governments to "adopt a sensible system of progressive taxes" and to aid "those in greatest need."

The revenue sharing proposal was sent to the House Ways and Means Committee, which is currently considering legislation on the subject. McGovern's plan takes the form of a series of guidelines rather than a piece of legislation.

The McGovern proposal provides for monitoring of specific aid programs by Federal agencies. If Federal goals are not met, a portion of allotted program funds would be withheld. The Administration formula contains few safeguards for the use of Federal funds.

General revenue sharing would be intended to encourage the adoption of progressive taxation in order to better meet state needs with state resources and to channel aid to the poorest areas.

The McGovern proposal contains a provision ensuring that there would be a fair distribution of aid within each state, taking into account the differing divisions of responsibilities among governments within the various states. This "pass through" formula would also equalize the financial ability of localities to meet their own needs.

Senator McGovern's proposal differs from major alternatives to the Administration bill in its national scope. His plan would insure massive aid to urban areas while at the same time insuring needed public services for rural America. Another element of McGovern's plan, lacking in other alternative proposals, is the provision for allocations to states to be based, in part, on a poverty index.

The McGovern Revenue Sharing Statement is attached:

A PROPOSAL FOR REVENUE SHARING

The current debate about revenue-sharing results from a growing and legitimate concern that state and local governments are unable to raise the funds necessary to meet adequately the needs of their citizens. Many believe that the Federal government now has a monopoly of the power to raise revenues which hampers the ability of states to provide for their own funding. As a result, the Federal government is called upon to share a part of its income with other levels of government.

The concept of revenue-sharing raises the vital issue of the distribution of Constitutional authority between the federal and state governments. Clearly neither level should have complete authority over government expenditure decisions. It is also evident that, if the Federal government raises revenues, it cannot surrender its responsibility for supervising their expenditures for the common good. Finally, the Federal government cannot be as perceptive about local needs as can local governments, which thus must have some real measure of authority over the distribution of funds.

GOALS

A program of revenue-sharing must accomplish at least three major goals.

First, we must establish some minimum standards of public services for each of our citizens wherever they may live in the United States. To meet such a goal, we need a grant-in-aid program that sets minimum standards and then provides the financial resources to achieve them.

Second, communities should be encouraged, by a national revenue-sharing program, to furnish additional public services that affect those living outside the confines of those communities. For example, communities should be given the incentive to install better sewage systems so that they do not pollute their neighbors' rivers. To meet this goal, we need a grant-in-aid program that induces communities to increase these kinds of public service programs.

Third, we should distribute financial resources more equitably so that each community could potentially buy the same package of public services with the same local tax effort. Rich communities can now afford good public services with much less sacrifice than poor communities. To meet this goal we need a grant-in-aid system that provides grants in relation to local resources. This would mean that the higher the local income, the lower the grant.

The Administration plan fails to achieve all three goals. It does not set minimum standards so it cannot insure that each citizen has some minimum quantity of essential public services. Along this line, it does not even provide assurance that would prevent racial discrimination in the distribution of federal funds.

It has no provision for increasing expenditures for those programs that influence the rest of the country, so it cannot insure that communities will stop adversely affecting their neighbors as they pursue their own programs.

The proposal made by the Administration gives money to state and local governments, but the grants are determined by population and not by economic need or local resources. Thus it cannot eliminate any inequities which now exist. The disparity between rich and poor remains.

If it does not meet any of these legitimate national goals, what is the purpose of the Administration revenue sharing plan? It is clearly a device to eliminate the New Deal and Great Society programs that have increased state and local aid from $6 billion per year in 1960 to $25 billion per year in 1970.

Even the amount of the proposed revenue sharing plan is deceptive. The $5 billion in new unrestricted aid proposed in the fiscal 1972 budget will actually amount to $3.5 billion, because the program is to begin in October rather than in July. The $10 billion in transfers from existing programs and the $1 billion in new aid for block grants in areas such as education are only authorizations, not actual expenditures. Spending in these areas are, in fact, slated to fall in the Administration's next budget to less than their present level of $10 billion. At best we are asked to support a program of new grants amounting to about $10 per person. And we cannot buy much for $10.

A number of alternative plans have been offered to the Administration's proposal. Most of them represent an attempt to compensate for the defects in that proposal, although none meets the three goals outlined earlier. One of the most serious defects of these proposals is that they are not truly national in scope. It is entirely appropriate to focus revenue sharing proposals on the needs of the cities. Millions of poor and disadvantaged Americans are city dwellers and many of the cities have made a great effort to raise their own revenues. The cities are in trouble, and they need the help of the federal government without delay.

But part of the solution to the problems of the cities must lie in rural America. Some 20 million of those now living in cities are recent arrivals from rural areas, driven from their homes by inadequate incomes, inadequate opportunity, and inadequate public services. A higher percentage of rural Americans receive incomes below the poverty level than among city dwellers. Thus, any revenue sharing plan must include aid for rural America. It is a matter of simple justice to insure that revenue sharing attempts to meet the needs of all Americans. That is the best way to aid our cities.

A satisfactory revenue sharing program assigns three tasks to the Federal government. First, it must determine what it seeks to accomplish in such areas as housing or education. Then, it must define those goals in operational terms for state and local governments. In other words, exactly how is success or failure in meeting its goals going to be measured?

Finally, it must develop methods to monitor state and local government efforts to meet the national objectives. This would enable the Federal government to determine when funds for specific areas should be increased or decreased.

The Federal government can legitimately prescribe programs to be accomplished. It should avoid setting out requirements that

tell state and local governments how they should meet Federal goals.

AN ALTERNATIVE PROPOSAL ON SPECIAL REVENUE SHARING

Under the Administration proposal, Special Revenue Sharing—the allocation of funds for specific programs—would receive the larger share of the total funds available for redistribution.

Special revenue sharing without explicit federal goals is a farce. It is simply another name for general revenue sharing since Federal funds can be used in place of local funds, which can then be diverted to whatever purpose state and local governments wish—even tax cuts and reductions in services provided at the State or local level.

Local governments usually know more about local conditions than does the Federal government, but the Federal government is more aware of national needs and goals than local governments. This situation dictates the creation of some type of cooperative arrangement among the various levels of government. An examination of the comparative advantages of the federal, state, and local governments reveals that in many areas, such as housing or education, the aims or goals should be set at the federal level, but the instrumental means for achieving these goals can be left to the state or local governments.

A sensible revenue sharing system should work in the following manner: The Federal government would set some operational goals that it wishes to achieve. Thus, it might want to eliminate all sub-standard housing within a given period of time or it might want to insure that every city's educational standards should be set at or above certain minimums.

Federal grants-in-aid would be made for these purposes, but state and local governments would not be given directives on how they are supposed to achieve the desired goals, as is true in many current grant-in-aid programs. They might build new houses, re-hab houses, or make more effective use of existing standard houses. They might hire more teachers, decide to use different textbooks, use open classrooms, or any other technique that they thought would bring their children up to the minimum standards set by the Federal government. Local initiative would be given full play in the choice of methods to achieve national aims.

The Federal government would monitor the results. It might take a housing survey at the beginning of a period and at the end of a given period. It might test reading and arithmetic scores at the beginning and at the end of a given period and might also set performance standards for a given period. Local governments might, for instance, reasonably be expected to eliminate the percentage of their families living in substandard housing by 50 per cent or to reduce the percentage of children falling below the minimum reading and arithmetic standards by 50 per cent within five years.

Full grants-in-aid payments for a specific program should be made contingent on satisfactory progress. For example, a small portion of the total grant allotment could be held in abeyance until the end of the program period. It would only be paid out if evidence indicated satisfactory progress. In this way, it would serve as an incentive for accomplishment. Future grants-in-aid, however, would not be affected by inadequate performance for a specific program. Failure is not rewarded; future progress is not jeopardized. Nor will the Federal government need to expand its bureaucracy to operate programs in local areas.

In this way, special sharing proposals should be developed to replace many of the present categorical grant-in-aid programs, but they should include explicit, measurable, operational Federal goals. This will oblige the Congress and the Executive branches of the Federal government to set out their goals more clearly than they have done in the past. State and Local government will be unshackled from Federal bureacratic red tape and encouraged to find and implement creative solutions to domestic problems. But for the first time, there will be a method of insuring that grants-in-aid are actually used to accomplish Federal goals.

AN ALTERNATIVE PROPOSAL ON GENERAL REVENUE SHARING

General revenue sharing is also needed, provided it is used essentially to distribute funds to those states and localities that adopt a sensible system of progressive taxes and to those in greatest need. This means devising a distribution formula based on a progressive income tax in combination with a welfare index. S. 1770, introduced by Senator Muskie, recognizes this need in that it allocates funds to states in proportion to population, but includes a small bonus for state personal income tax collections (which meets the need for encouraging progressive taxes to a limited extent), and an allowance for total tax effort. But that bill does not take into account relative need based on the incidence of poverty.

General unrestricted grants-in-aid should be given to states which adopt a progressive income tax and which return some fraction of that income tax to the cities and towns within their jurisdiction in the form of grants. The maximum Federal per capita grant would be given to states that adopt an income tax structure that is the same as the federal tax structure (through a state tax surcharge on federal tax payments) and which rely mainly on income taxes as opposed to more regressive forms of taxation. Federal payments would be scaled down from this level for states whose income tax structure is less progressive than the federal income tax.

Such a system of grants-in-aid has two advantages. First, it encourages state governments to share revenue with local governments. States could be obligated to "pass through" a proportion of the federal grant-in-aid based on the share of total state and local expenditures made by local governments in the previous year. Second, it will persuade state and local governments to adopt a better tax system. The Federal government has not pre-empted the progressive income tax. States can and do have progressive income taxes. An important part of the long-run solution to the financial crises of state and local governments is the adoption of better state and local tax systems—not reliance on additional taxation by the Federal government. Preservation of a strong federal system will ultimately depend upon state governments assuming their proper responsibilities for raising taxes for their own purposes.

Federal grants-in-aid as an incentive for the adoption of a desirable tax structure is preferable to credits on federal tax returns for some portion of state and local taxes (even for state and local income taxes). Tax credits are primarily of benefit to wealthy states and serve to preserve the existing inequities in state and local tax systems. Citizens of wealthy states will be able to write off a far larger amount of their Federal taxes than those from poorer states even if all of them raised their taxes. Tax credits could serve to reward states making a significant effort to raise their own revenues, but they would inevitably aid those states with a bigger tax base more than others. Hence, the main thrust of H.R. 8193, introduced by Representative Byrnes, is not a satisfactory general revenue sharing plan.

A poverty index devised along the lines recommended in S. 1770 (but there restricted to distribution among localities within a state) should be made the basis for determining the factor of the need component in determining funding under general revenue sharing. It is based on the average of a "low-income ratio" (the proportion of families in a state with incomes less than $3,000 a year) and a "welfare ratio" (the percentage of families within a state who regularly receive public assistance.)

Two-thirds of the weight in the distribution formula for general revenue sharing should be placed on state and local tax effort and one-third on the poverty index, since many needs resulting from poverty will already have received specific attention under Revenue Sharing.

THE PROBLEM OF PASS THROUGH FOR GENERAL REVENUE SHARING

A general federal formula for sharing grants-in-aid among governmental units within a single state is difficult to construct. The division of functions between state and local governments differs greatly among the different states. In fiscal 1968–69, for example, the range extended from Delaware, where the state government accounted for 97 per cent of total state and local expenditures, to New York, where the state government only accounted for 23 per cent of total state and local expenditures. As a result, it is obviously inequitable to allocate general revenue sharing funds to localities based on their revenue effort alone, as in the Administration bill and to some extent in S. 1770.

Revenue should only be returned to local governments based on the fraction of total expenditures on a given function made by a local government in a base period, not according to revenue effort. Any other allocation is certain to be unfair to some local governments in every state.

Such an approach does not, by itself, meet the need for equitable treatment of local governments within a single state. Equalization can only occur by earmarking some fraction of general revenue sharing for local equalization—a method of making sure each locality is adequately funded as compared with all others. In general, the S. 1770 "pass through" provisions are acceptable, except for its lack of recognition of differing allocations of responsibility with the important exception already noted between state and local governments in the various states.

Thus, the poverty index proposed on S. 1770, together with the local share of total expenditures (and of total population) can be made the basis for within-state allocation of funds. Thus, one-third of General Revenue Sharing funds might be earmarked for potential equalization. The actual fraction of these funds used to establish equity would be determined by multiplying this 33 per cent by the per cent of total state and local expenditures undertaken by local governments, together with the poverty index. For example, in a state where 50 per cent of total expenditures are made by localities, 16.5 per cent (50 per cent of one-third) of general revenue sharing would be earmarked for per capita equalization grants, and this in turn would be combined with the poverty index to yield the final share for each locality.

With such a system it would be possible to obtain better within-state equalization of the financial ability of localities to meet their needs. Under the Administration bill, within-state inequities are made worse, not better.

BIRTHRIGHT OF PAIN

Mr. PERCY. Mr. President, last week the Chicago Tribune exhibited fine investigative reporting in a series of five articles on health care in Chicago.

The articles paint a horror story of the inequities and callousness that are the consequences of a dual health system. They provide a provocative and poignant

commentary of the need for a single, unified health care delivery system that will insure the right of every American to good health care. Senator HUGH SCOTT, the minority leader, and I have jointly introduced S. 1598, entitled the "Health Rights Act of 1971," as a major legislative effort to eliminate the incidious two-track system of health care in our country and it is now under consideration by the Finance Committee along with other proposals. The need for a better approach than we now have is demonstrated by these articles. I ask unanimous consent that all five articles written over a period of 5 weeks by Patricia Krizmis and Angela Parker be incorporated in the RECORD.

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

[From the Chicago Tribune, June 20, 1971]

BIRTHRIGHT OF PAIN: CARE FOR ILL BLACK CHILDREN IS CHICAGO'S HORROR STORY

(By Patricia Krizmis and Angela Parker)

They are children, Chicago's children.

They receive their birthright of pain, deformity and retardation in their mother's womb and are thrust into an insensitive world from the loins of poverty and disease.

They are black and they are dying.

In a city described by local officials as "the safest large city in which a baby can be born," 1,089 black infants died last year, condemning Chicago with one of the highest black infant mortality rates in the nation.

SURVIVAL NOT ENOUGH

But the story of health care for the black infant and young child is not merely one of dead babies and repugnant statistics.

It is a horror story of those who survive the trauma of birth, of tiny bodies wracked with suffering.

It is the story of real hurt; of medical practitioners who bilk the poor and, indirectly, the taxpayer; and of city officials who take a callous and apathetic approach to the problem.

"The need is so apparent that it is burgeoning thru the doors and windows," said Dr. Alfred Clements, head of pediatrics at the Martin Luther King Health Center, a government-funded center on the city's West Side.

REDTAPE, DISTRUST BAR THE WAY

"We are dealing with more than medical ills," Dr. Clements said. "One man can do a lot, but he can't do everything. Often, you must chip down the wall of fear and distrust with understanding and concern. Often, you must beat the system and its redtape for the sake of the patients."

We lived the health care crisis in Chicago for five weeks. And we saw some of the innocent victims sacrificed each year.

An emaciated 8-month-old boy lies in a bed of torment with tubes running into his skeletal body. He weighs only 10 pounds.

"Obviously the child is suffering from malnutrition," said Dr. Julian Berman, head of genetics and pediatrics at County Hospital, "but it isn't because his mother didn't feed him." The mother is only 15; she probably had no prenatal care, he said. If she had, she might have known to seek help earlier, he added. She tried continually to feed the baby, and when he reached this stage she brought him to County.

A 7-month-old boy twitches in agony, and with each spastic jerk, there is a wail of hurt. His entire body is covered with a skin infection. His mother repeatedly sought help from city-run clinics, but only two days earlier had health workers decided the condition was "serious" enough for referral to County Hospital.

And in a tiny grave in Restvale Cemetery lies one of last year's morbid statistics. The mother rejected Board of Health clinics because she had learned thru experience that sick children are not treated in the ones in her neighborhood.

She sought the help of private physicians. The last one brushed off the ailment as stomach flu, as he had in four previous visits.

Soon after, the child was rushed to a hospital in a coma, and emergency room doctors made desperate attempts to save her, after immediately diagnosing the problem.

THE DOCTOR DID NOT CHECK

The cause of death: acute lead poisoning. The private physician had not bothered to administer the simple blood test that detects the child-killer.

There are many physicians who work among the poor, treating them as they would North Shore patients.

In fact, some of them, angered and frustrated by the health crisis, cooperated in this investigation.

We watched babies born in roach-infested, vermin-ridden hovels that are home for the poor. We saw these tiny human beings enter the world on beds or kitchen tables covered with newspapers, used as a desperate attempt to bring the most primitive forms of sanitation where there is none.

POSED AS PATIENTS

We became victims of the crisis by subjecting ourselves as patients to licensed physicians who have become prostitutes of their profession and to the unlicensed treatment peddlers who pose as legitimate healers and tinker with human life in the slums.

We found these medical swindlers preying on people in pain, in trouble or too young or too uneducated to know better. They prescribe unnecessary medicine, give not even perfunctory examinations and bilk their victims, while, at the same time, urging them to return.

ADVISES HOSPITALIZATION, BUT . . .

And we felt the last ounces of human dignity being drained from us by these medical swindlers as it is every day from the poor in Chicago.

One doctor told a reporter she was so sick she should go to a hospital. When she said she had no money and no welfare care because she had just arrived in the city, he callously told her:

"You should go to the hospital, but if you don't have any money, I guess there is nothing that you can do. I just hope you don't fall out in the street somewhere." There was no attempt to get her into a hospital.

"If Chicago is indeed the healthiest city in the nation, as Mayor Richard J. Daley says, then the rest of America is in deep trouble," said Pierre de Vise, an expert on population, medical and urban problems who has conducted in-depth studies of Chicago's health care crisis.

FOR THE WELL ONLY

The health crisis involves a Board of Health priding itself on its 34 infant welfare stations which in reality are assembly-line factories for distributing pills and dispensing inoculations a few mornings a week to well babies and children.

The sick are turned away. Or, in the bureaucratic rhetoric spewing from the board's offices, parents of the sick infant or child are told to find a private physican or "referred" to County Hospital, where the poor take their hurt when there is no place else to go.

De Vise, project director of the Chicago Regional Hospital Study, pointed to "the incongruity of a 19th-Century Board of Health whose clinics see only well babies and well mothers-to-be." He added:

Many poor people are under the misapprehension that these Board of Health clinics see sick people and are frustrated and delayed in their search for an alternative to the long trip and wait at County Hospital clinics."

Early this year, when Dr. Murray Brown, the city's health commissioner, announced that eight health centers would be opened, he said:

"Altho we have no legal responsibility to provide health care, we felt a moral responsibility because of the magnitude of the problem."

The first center, the Uptown Community Health Center, is at 4414 N. Clarendon Av. It is run by the United States Public Health Service under contract with the city. And Dr. Brown boasts that he goes to the center because of the excellent care provided.

However, the same could not be said for a child under the age of 5. When we visited the center, posing as college students working on research papers, a nurse told us:

"We treat sick children and adults. But this center treats children who are 5 years and over. We don't treat infants and preschoolers here. They go to the Board of Health well-baby clinics."

QUOTA SYSTEM ADDS TO CRISIS

Involved in the health crisis are many of the city's private hospitals. They have their quota system—fill a few beds with patients who are both black and poor and send the others to County Hospital.

"Every patient on welfare has a card that supposedly allows her to have care just as anyone else," said Dr. Robert W. Rhumstein, an obstetrician. "In reality, the poor go to County Hospital or have their babies at home, or if they are very lucky, they get in on the quota system."

"By law and statutes," de Vise said, "the poor of Chicago are free to choose their physicians and hospitals and these private vendors may be reimbursed by the state for their service to the poor.

"In practice, however, it does not quite turn out that way. Cook County Hospital, the only public charity hospital serving the 5 million people living in the 1,000 square miles of the county, is the primary hospital for Negroes, serving over half of the Negro patients residing in Chicago's 24 poverty communities."

[From the Chicago Tribune, June 21, 1971]

MOTHER SHUNS COUNTY: ROACHES WATCH BIRTH IN A SLUM APARTMENT

(By Patricia Krizmis and Angela Parker)

Rain beat hard against the window, and thunder echoed thru the room, heralding the infant's birth in the South Side slum apartment he would call home.

It was 2:45 a.m. when Andy was born on a bed covered with newspapers. Roaches crawled along the wall molding far above him, and below, the floor was dotted with black gummy spots.

The newspapers had been placed on the bed in an attempt to bring the most basic forms of sanitation to the newborn and his mother.

MATERNITY TEAM ARRIVES

A little more than four hours before, a team from the Chicago Maternity Center had arrived at the frame building; a squad car had awaited its arrival. Police escort the teams at night in neighborhoods where the crime rate is high.

"Sure glad you're here," said a large black woman waiting at the door. She led the team down a dark, dingy hall and thru a living room and stopped in front of two long curtains serving as a door to the bedroom where a woman lay waiting her baby's birth.

A reporter's posing as a public health observer, accompanied the medical teams from the center as they traveled thru the city's slum areas delivering the babies of poor women who chose to give birth in their homes rather than go to County Hospital.

For those shunning County, the alterna-

tive, sometimes a grisly one, is to have a neighbor or friend deliver the infant.

DECIDES ON BIRTH AT HOME

This expectant mother had decided a Maternity Center team would deliver her baby.

"I hear we're going to have a baby tonight," said Dave, a Northwestern University medical student.

"You're going to be busy, the water bag broke," the patient said. "Yes, you and Willa [the registered nurse] are going to be busy."

Maternity Center teams had delivered her two other children. She liked the way they treated her; she trusted them.

DELIVER 85 BABIES A MONTH

Last year, center teams delivered 1,183 live babies. There were 10 fetal deaths and 14 neonatal [one month after birth] deaths. The total infant mortality rate for Chicago in 1970, covering both hospital and nonhospital births, was 27.7 for every 1,000 births. The Maternity Center's teams are delivering about 85 babies a month this year, but at times the number jumps to 100.

How severe were the pains; how often did they come, Dave asked the patient as he began timing the contractions. Willa spread newspapers over the brown dresser near the bed before setting down the medical bags and utensils. She then took over the timing detail to free Dave to examine the patient and listen to the baby's heart beat.

PAINS INCREASE

The pains were occurring more frequently now, and the team made every attempt to make her comfortable.

"Breathe deeply, honey, thru your mouth like this," Willa instructed, showing her how.

The Northwestern medical students who volunteer to serve the poor thru the center continually telephone reports to the center to inform them of the patient's condition and receive advice. They keep a constant record of the patient's condition.

Dave was fortunate; this patient had a phone. Often students must run up and down flight of stairs to use a neighbor's telephone.

DOCTOR HANDLES DELIVERY

As the time of birth nears, Dr. Beatrice Tucker, head of the center at 1336 S. Newberry Av., or the doctor in residence there, is called to deliver the baby; first pregnancies take priority.

If complications are anticipated, the doctor comes to the home to examine the patient and determines if she should be taken to Wesley Memorial Hospital, the center's backup hospital.

Andy's mother suffers from high blood pressure. However, the condition did not necessitate hospital delivery, the center doctor determined.

While the patient left the room to provide a urine sample for testing, Willa and the reporter prepared the bed where the baby would be born.

INK ACTS AS STERILIZER

The family had collected stacks of newspapers, knowing a large quantity would be required. Layers of newspapers were spread over the bed, topped with a large piece of heavy plastic and then by more layers of newspapers.

"The ink in newspapers brings about some form of sterilization," a nurse had told the reporter on a previous case, "and bugs don't stay on newspapers."

Willa wrapped three soft drink bottles, lining them up one after the other, in newspapers and did the same with another three bottles. She placed the bottles on the bed in a right angle; the patient would brace her feet against them during the delivery. The bottles also would prevent the seepage of fluids onto the rest of the bed.

It wasn't necessary for Willa to drive a nail into the wall behind the bed or to bend coat hangers on which a bottle for intravenous feeding would be strung. The coat hangers remained from the last delivery.

BEGIN HEATING WATER

Center teams wear disposable paper surgical gowns, caps and masks and use plastic gloves. Every time the medical student conducts a vaginal examination, he wears a plastic glove, which is then discarded.

As Dave conducted the examination, the reporter followed Willa into the small kitchen off the bedroom, to begin heating water in a large kettle to sterilize the instruments and clean up. Newspapers were spread over the stained sink's draining area and atop a small table. First pregnancies are delivered on the firmer surface of a kitchen table and an ironing board is set up for use as a surgical table.

The kitchen was small, made even more cramped by the dilapidated refrigerator which was pushed out from the wall. The floor was sticky, and missing chunks of linoleum exposed the wooden floor beneath. The medical bags were moved to the small table to provide more room in the bedroom.

Dave was sitting in a card table chair at bedside talking to the patient, reminding her to breathe deeply.

"IT HURTS—HELP ME"

Every so often, the large black woman who had met the team at the door pushed thru the curtains to check on her daughter.

The pains were getting very severe now, and the patient was screaming:

"It hurts, Oh, Jesus, please help me."

"Now I don't want to hear no more of that, girl," the grandmother scolded. "Remember, you're a woman, a lady."

The patient's dark eyes darted from her mother to the reporter, who held a wet cloth on her forehead. Her husband had left her; she lived with her mother, her sister, eight nieces and nephews and her own children; she was now on public aid.

DOES NOT EXPECT MUCH

At 24, a series of setbacks and struggles had conditioned her not to expect too much out of life, and she quietly repiled:

"I'm sorry, Mama. I'm sorry."

A diapered toddler ran into the living room, calling for his grandmother. Grandmother pushed thru the curtain toward him and carried him to a large overstuffed chair in the darkened room, where the television blared and the screen provided the only light.

SATISFIED WITH CARE

Years ago, the grandmother had come from Mississippi. She had delivered scores of babies, but she didn't want to talk about it. The Maternity Center was taking good care of her daughters and grandchildren. She was satisfied. There were the prenatal clinics there, where mothers-to-be are examined by doctors, instructed in baby care and told what to eat and how to care for themselves.

In this case, the center had put the patient on a special diet for high blood pressure. After the baby was born, she would be given a six-week checkup and birth control information. A nurse from the center would visit the home daily for a few days after the birth to check on mother and infant. The infant would receive his two-week checkup in the center.

CONCERNED ABOUT SHEET

The patient was crying loudly now and the reporter rushed into the room. The newspapers beneath her were wet and had to be changed. The intravenous feeding had been started. Willa gently placed fresh newspapers beneath her.

The young mother was concerned about the new blue sheet she had purchased for the baby's birth. In her own way, she had tried to do the special little things for her baby. There were the two baby blankets, the robe, the diapers and the four diaper pins with yellow bears on them.

She tugged at the curlers in her hair, trying to remove them before the baby was born, and placed them on the unpainted headboard above her. Suddenly she screamed

"The baby's going to come!"

DOCTOR NOT THERE YET

She was right. Willa quickly supplied the surgical dress and sent the reporter to the kitchen for the boiled water. The Maternity Center doctor hadn't arrived. Dave, the medical student, prepared himself. He gave the reporter explicit instructions on what not to touch and then sterilized the birth area.

The baby's head appeared.

"Come here, come here," the patient shouted to the reporter, who was standing off to the side so as not to interfere. "I want your hand, please."

She clutched the reporter's hand and dug her nails deeply into it. On impulse, the reporter squeezed back tightly, trying to make the hurt go away.

CORD AROUND NECK

"Check the neck for the cord," Willa reminded Dave. The cord was wrapped about the baby's neck; Dave cut it.

The mother was exhausted; she impulsively stopped cooperating with the team.

"Push, push," Dave and Willa commanded, as the shoulders appeared. "Don't stop now, push, push."

The baby was born—a boy.

Dave swabbed the baby's mouth with his gloved finger and gave it the traditional whack across the backside.

There was no cry.

RESPONSE FINALLY COMES

He held the baby about an inch over the bed, and he and Willa snapped their fingers against its arms and legs.

A whimper. Then a cry. Then a fullfledged wail.

Those few seconds seemed like an eternity. As the wail came, so did the resident from the center. There had been another birth, and Dr. Tucker had been away delivering a baby. There were two more births anticipated.

Willa had been cleaning off the baby. Dave worked on the patient and told her:

"It's a boy, a beautiful boy."

The doctor took over, and Dave examined the baby.

Willa announced 2:45 a. m. as the time of birth.

The baby was fine and so was his mother.

AN EIGHT-POUNDER

Willa took a half sheet and placed the baby in it, bunched up the end and attached the scale. "Eight pounds 2 ounces," she announced. Then she dressed the infant.

The team remains for two hours after the birth. After cleaning the area, Willa, Dave and the reporter sat down to help the mother decide on the baby's name.

Then it was 5 a.m., time for the team to leave. The family was grateful. The mother lay holding Andy, and, above them, the roaches crawled into the hole in the ceiling.

[From the Chicago Tribune, June 22, 1971]

CARE HARD TO GET: WHERE DO SICK BLACK BABIES GO?

(By Patricia Krizmis and Angela Parker)

The killers roam Chicago's poverty areas, stunting the lives of their young black victims.

Doctors identify these major contributors to the city's high black infant mortality rate as pneumonia, influenza, prematurity, poisonings and congenital malformations.

THE SLOW KILLERS

There are the slow killers—malnutrition, sickle cell anemia, tuberculosis and infections—diseases and conditions that, like a cancer, eat away the health of the child, leaving him ill equipped to cope with society be-

cause of deformation, chronic pain and retardation.

Despite glowing reports from city officials, the Board of Health has made only piecemeal attempts to improve the health care of the black infant and child here.

For the most part, Board of Health stations serve as preventive and referral agencies, giving the free shots required by law and sending sick babies and children to other institutions.

One pediatrician described Board of Health stations as "factories where pills and shots are doled out by doctors who work a few four-hour days and where workers have an 'I don't give a damn' attitude."

NO HOURS POSTED

There are 34 infant welfare stations and four high risk clinics. The clinics, for infants up to the age of one year, serve babies born of mothers who are considered a high risk because of their age or a disease. Premature babies also are considered high risk.

Posing as college students, we visited Board of Health stations and found that:

1. Doctors spend only three to four hours, two or three days a week, seeing well babies and children in most of the clinics. Many of the 34 stations are housed in storefronts with cramped examining rooms.

2. There are no signs on most of the stations giving the hours or days the doctor will be in to see infants and children. To be served, a child must live in a specific geographical area. There is no followup service.

3. Several babies, stripped to their diapers to speed the process, were held in a large waiting room by their mothers in the station at 4350 W. 16th St. It was 11:30 a.m. on a Monday. When asked if the doctor (there was only one there) treats sick children, a large blonde nurse whose name tag was hidden by a handkerchief pinned to her uniform, replied:

"We send the kids and babies who are sick to the Martin Luther King Center (a federally-funded center). The doctor has been here all morning and we're trying to get rid of the rest of these patients."

STATION LOCKED EARLY

4. All the doors to the station at 3704 S. Vincennes Av. locked at 2 p.m. on a Friday The Board of Health claims the station is open until 4 p.m. A clerk finally responded to knocking at the door.

"The nurses are all upstairs having coffee," she said. "The doctors are gone. We see babies 8 to noon Wednesday and Friday. We give prenatal care the other times." What happens when a baby is sick? "We refer it to the hospital, Cook County Hospital. That's the best one for these people. We have three doctors, sometimes two, sometimes one is in. We give school inoculations, too."

5. In the high risk clinic at 1832 W. Washington Blvd., a licensed practical nurse, whose name tag identified her as Mrs. Pleasant replied to a query about how many doctors staff the clinic and when:

"It fluctuates. We've had a lot of changes. I can't say when they'll be in."

"COME BACK THURSDAY"

6. A reporter took a 3-year-old child to the station at 2231 W. Madison St. It was 11:45 a.m. on a Tuesday. When she entered the door a nurse yelled out:

"We're closed now. Come back Thursday between 9 and noon. Doctor's not in now. He'll be back then."

"The medical care in the city of Chicago is not the responsibility of the Board of Health by statute," said Dr. Murray Brown, the city's health commissioner, "It is the responsibility of the state and the county. Knowing there is a problem, we are looking for federal funds."

Dr. Edward Murray of the Health Department said there are 34 infant stations that serve healthy babies and give inoculations. Four of these clinics also are high-risk baby clinics, he said. There are prenatal clinics in each of the infant stations and 17 of them are high risk pre-natal clinics.

"These children are not treated except for simple things like enemia," Dr. Murray said. "But the really sick are referred to some other pediatric agency or a nearby hospital. Some can go to private doctors."

Dr. Murray said there are seven clinics that see sick children. He first named three of them as the Woodlawn Children's Clinic, 936 E. 63d St., run by the University of Chicago Hospitals; the Near North Children's Clinic, 1441 N. Cleveland Av.; and the Martin Luther King Health Center, 3312 W. Grenshaw St.

CITY FUNDS NOT USED

City money is not used in these clinics. They are financed by the Children and Youth Program of the Children's Bureau of the Federal Department of Health, Education, and Welfare.

Dr. Murray cited four Board of Health clinics which he said see sick children. They are at 6504 S. Cottage Grove Av., 880 N. Hudson Av., 3448 W. Ogden Av. and 4350 W. 16th St.

In effect, these four clinics refer sick children. The Ogden and 16th Street clinics refer sick children to the King center; the Cottage Grove clinic refers the sick to the Woodlawn clinic and the Hudson clinic sends sick children to the Near North Children's Clinic.

COULD USE 10 MORE

"We could use 10 more clinics like this in the city," said Dr. Albert Clements, head of pediatrics at the Martin Luther King Center. "The total family is our target area. However, children under 13 are really under the Board of Health stations 14 and 16."

At the center, there are about 3,000 pediatrics visits every three months. Children wait with their mothers in a large room where tiny chairs are provided for the young patients. When the family's name is called, the mother and child go to an examining room to be seen by a pediatrician. The mother is given time to undress her baby in the examining room.

DOES NOT ACCEPT RESPONSIBILITY

"The Board of Health should have a program for comprehensive health care for the poor where all services would be available," said Dr. Harry Elam, director of Mile Square Health Center, operated by Presbyterian-St. Luke's Hospital with funds from the Office of Economic Opportunity.

"I don't think Mayor Daley has accepted health care as a political priority," said Pierre de Vise, director of the Chicago Regional Hospital Study. "The Board of Health's budget is up to $18 million. But in Chicago, the city doesn't accept the responsibility for health care. They say they made a departure from this with the announcement of the eight health centers (to be constructed by 1972).

"I doubt they will all be built. The announcement came before the mayoral campaign. But in 1966, during that mayoral campaign, the city announced 12 centers would be built. They've even dropped the number."

According to the Blue Cross and Blue Shield medical study in the model cities areas, residents there had a higher incidence rate of the 20 most frequently reported diseases than the city as a whole.

MEASLES RATE HIGH

"The rate of measles was four times the city rate, while the rates for venereal disease and lead poisoning were more than three and one half times," the report said.

"It is the opinion of the Blue Cross-Blue Shield medical staff that the incidence rate for many of the diseases such as measles, mumps, chicken pox, whooping cough, rubella and poliomyelitis could be reduced if preventive techniques were utilized," the report said.

A 3½-year-old child lies in a bed in the pediatrics hospital of Cook County Hospital; his hands are swollen. He is a victim of sickle cell anemia. He is one of the fortunate victims; he is receiving treatment.

NICKNAMED "SICKLY CELLS"

Sickle cell anemia is a slow killer. It is so prevalent that black children have nicknamed it "sickly cells." The hereditary disease, found almost exclusively in Negroes, is carried by nearly 10 per cent of all black people in this country and is fatal to about one out of 400, federal medical reports show. Tho Chicago is 35 per cent black, the number of cases here has never been inventoried.

"The blood test detecting sickle cell costs 2 cents," said one black pediatrician. "It would cost $2,404.72 to test all black children under the age of 5 in Chicago. It would cost about $5,600 to test all black children ages 5 to 14. That's very little to insure the health of children."

NO SCHOOL TESTING

According to 1970 census reports, there are 120,236 black children under 5 and 279,786 children ages 5 thru 14 in Chicago.

Yet, Dr. Brown said there is no school testing for sickle cell in the public schools and the Board of Health has no plans to do so.

"If we get it in time, it is effectively treated," said Dr. Julian Berman, head of genetics and pediatrics at Cook County Hospital. "It is not as much an infant killer, but later in life, it maims, it deforms and affects thinking, depending upon what organ is affected."

Tuberculosis is a killer in poor areas. Yet a study conducted by the graduate school of nutrition of Cornell University shows that tuberculin testing was not part of the prenatal care given at Board of Health prenatal clinics serving pregnant women in Woodlawn, Kenwood, Oakland and Robert Taylor Homes.

FAILURE TO THRIVE

Failure to thrive is a term used by doctors to describe the health condition of many a poor child.

"It is caused by a variety of diseases—there are 100 or more to choose from," said Dr. Berman. Among them are rickets, malnutrition and infections.

"It is neglect of the population," Dr. Berman said. "Think of the worst horror movies you have ever seen. And we see that here."

[From the Chicago Tribune, June 23, 1971]

FIND UNLICENSED DOCTORS

(By Patricia Krizmis and Angela Parker)

An unlicensed practitioner, is posing as a legitimate medical doctor on the West Side.

Le Roy S. Matthews, who practices medicine at 2400 W. Madison St., admitted to The Tribune he is not a licensed doctor. He said he was licensed as a chiropractor in another state.

A Tribune investigation has found that Matthews even sends in claims to insurance companies for treating patients.

WOULD TREAT DURING PREGNANCY

Matthews, who first told one reporter he was a pediatrician, told another reporter he would treat her during her pregnancy.

He leads the poor who come to him to believe he is a medical doctor. The door to his office reads: "Dr. Le Roy S. Matthews." He treats patients in a three-room paneled office on the fifth floor of the Madison Street Building.

The office is equipped with medical supplies and utensils. There is an examining room with stirrups where he treats women patients and a large cabinet is filled with medicine bottles. Matthews wears a white coat worn by doctors. On his desk are stacks of books on gynecology, obstetrics and pediatrics.

NOT REGISTERED WITH AMA

The American Medical Association said Matthews is not registered with it and the Illinois Department of Registration and Education said he is not licensed with it.

The Tribune obtained documents which show that Matthews sent in claims to insurance companies for treating patients as a medical doctor. He also ordered blood tests and pregnancy tests.

The United American Insurance Co., Dallas is one of the companies which paid a claim sent in by Matthews. W. L. Mistrot, assistant vice president of United American, said the company's investigation shows that Matthews is not licensed. Company records show that one of its clients was examined by Matthews last March Mistrot said. The company paid the claim, Mistrot said, but asked Matthews for more information which never was sent.

BARRED FROM MAKING TESTS

Edward Price, attorney for the Department of Registration and Education said a chiropractor is prohibited by law from making blood tests or taking blood from patients.

As part of the investigation, we subjected ourselves as patients to illicit treatment peddlers and to licensed physicians who have become prostitutes of their profession.

After visiting Matthews as patients, we asked him:

Q.—Are you a licensed doctor? A.—Yes [pause]. No, I'm not.

"LICENSED AS CHIROPRACTOR"

Q.—Do you have any license whatsoever that allows you to practice medicine? A.—I was licensed as a chiropractor, but not in this state, in another state.

Q.—What state? A.—I don't want to tell you.

Q.—Do you treat patients here? A.—Well, [pause] I never practiced.

Q.—What did you never practice? A.—I better not say anything else.

BETTER NOT SAY

Q.—Why do you have an examining table with stirrups and other medical equipment? A.—I better not say anything.

Q.—Why did you offer to treat me for pregnancy? A.—I'm not talking.

Q.—Are you aware you are violating the law. A.—I think I better leave this interview off.

At one point, Matthews recognized one reporter.

VISIT BY REPORTER

"You came to me a few days ago, as a patient," he said. "I remember you." He referred to the visit made by the reporter in which she told Matthews she thought she was pregnant.

"Get in there and take off your slacks so I can examine you," he had told her pointing to his examining room. The reporter had told him she would rather have a friend with her because there was no nurse there. He told her to come back any Thursday, Friday or Saturday afternoon.

Another reporter went to Matthews for treatment of a sore throat. He listened to her lungs with a stethoscope and sent her to a nearby private medical clinic after telling her:

"I'm a pediatrician. I see patients on appointments only."

HUMAN DIGNITY LOST

As we visited the offices of various physicians who serve the poor, we felt the last ounces of human dignity being drained from us as it is from the poor every day. Here are our findings:

1. Many physicians practice production line diagnosis, spending only a few minutes with each patient. They offer no cursory examination and give very little explanation to the patient as to what is wrong.

2. Many don't even bother to gown a patient or to provide a sheet for cover. Many employ men who masquerade as physicians and give shots to the patients. These men wander in and out of examining rooms with no regard for the patient's dignity.

3. Many of the offices are vermin-ridden hovels where material is tossed on the floor. Often, the doctors don't even wash their hands between caring for patients.

SENT TO SPECIFIC DRUGSTORES

4. Many refer patients to specific drugstores to fill prescriptions. Others pull pills out of sample bottles and place them in boxes which are given to the patient.

In the clinic of Dr. Leslie S. Kaplan, 3527 W. Roosevelt Rd., a reporter presented herself as a patient with a sore throat. A man, who identified himself as Dr. Kaplan, conducted a brief examination, checking her throat, heart and lungs. No gown was provided.

After he left the room, a man who identified himself as Jim wandered in and told the reporter he was going to give her a shot.

OBJECTS TO SHOT

When she objected to the shot because he refused to tell her what it was, he told her, "I'm a doctor."

She began to complain. He then told her, "I'm a male nurse."

Later when the doctor returned, he explained:

"He is a medical technician, I prefer to have men here for a number of reasons."

But the medical swindlers who prey on the city's poor do more than drain dignity. Often, their lack of concern causes death.

HER DAUGHTER DIES

A mother, who will be identified only as Gloria, is a bitter woman. Her daughter, Stephanie, died last year at the age of 2 years, 28 days. Gloria, a recipient of public aid, took her child to private physicians. The last one has an office at 4809 W. Madison St.

This is Gloria's story:

"I kept taking Stephanie to Dr. F. and told him she was sluggish, not active like she always was. He told me she had a stomach virus and gave her a penicillin shot. He told me to bring her back if she wasn't better."

Stephanie's condition became worse and within two weeks, Gloria took her to the doctor four different times.

LOSING WEIGHT, FAINTS

"I kept telling him she was losing weight. She even fainted once when she was walking into the kitchen. He said she had a lack of vitamins and he gave me vitamins for her. I told him she was vomiting a lot, and she would wake up in the middle of the night crying because her stomach hurt."

Gloria also informed the doctor of other symptoms, but he insisted the child suffered from a stomach virus.

"A few weeks later, I got Stephanie up at 7:30, like I always did, and gave her a bath. She wanted some grapefruit juice. I went to get it, and my son ran into the kitchen screaming that something was wrong."

When Gloria reached her daughter, the child was sitting, staring. Her mother could get no response.

RUSHED TO HOSPITAL

"We wrapped her in a blanket and rushed her to Loretto Hospital—the emergency room. She was shaking so much. Then she passed out. A doctor—Dr. Paul Dunn—examined her. He said she was very sick. He said it might be lead poisoning or a brain tumor. Then they tested her."

LEAD POISONING CAUSE

The doctors determined the child suffered from lead poisoning.

"They worked so hard—those doctors—they really tried to save my little girl. But she died, 11 hours later," Gloria said.

The official death certificate lists acute and chronic lead poisoning as a cause of death. The pediatricians contacted about the case said the symptoms demanded a test for lead poisoning, the private physician never bothered to administer the simple test that detects the child killer.

CAN BE ELIMINATED

"The medical prostitutes would not be there if government did something," said Pierre de Vise, director of the Chicago Regional Hospital Study. De Vise has investigated the care given by many physicians to the poor.

"As in most poverty programs, it is the providers that make the money," he said.

[From the Chicago Tribune, June 24, 1971]

HEALTH CARE FOR BLACKS: SOME SUGGESTIONS ON HOW TO IMPROVE IT

(By Patricia Krizmis and Angela Parker)

The cost of Chicago's health care crisis must be measured in the lives of its victims. And that price is great.

Last year, 1,089 black infants paid with their lives, condemning Chicago with one of the highest black infant mortality rates in the nation.

Chicago's total infant mortality rate in 1970 was 27.7 deaths for every 1,000 births. However, broken down by race, 34.8 black babies died for every 1,000 born, compared with the white infant mortality rate of 21.8 deaths for every 1,000 births.

But others who survive infancy also pay—the children who are both poor and black. They are forced to live in poverty and disease which take their toll slowly in pain, deformation and retardation.

DUAL SYSTEM BLAMED

Many medical experts blame the dual system of health care, with one system for the poor and another for those who can pay.

"Because the rich and the poor, the urban, rural and inner city persons, and the young and the old cannot receive equally adequate care, we have a health crisis," said Dr. James Haughton, director of Cook County Hospital. "The number of doctors and facilities do not coincide with the location and type of need for patient care."

"We cannot survive our medical problems," said Dr. Andrew Thomas, president of the Cook County Physicians Association, "if we continue this dual health care program. Our health program is an extension of the old royalty system. Anything we initiate in health care that is good for the rich should be good for the poor."

Involved in the dual health care system, doctors say, are the shortage of qualified physicians serving poor areas, the lack of available care, the failure of existing facilities and the red tape which envelops government-funded programs. Slow payment of medical bills and piecemeal regulations also have forced many doctors to turn their backs on welfare patients.

SOLO PRACTICE ASSAILED

Dr. Haughton defines the health crisis as the shortage and maldistribution of medical personnel.

"Their persistence in the use of the private solo practice, where a fee is paid each time for services, forces them to follow the dollar even when modern technology dictates that some other practice would be more sensible," he said.

Haughton suggested that a group medical practice in which each doctor receives a set salary would be a more efficient use of manpower.

"As a nation," Haughton said, "we have been giving money to medical schools for years but we have yet to tell them what kinds of doctors to train. We are turning out super specialists, but we need good doctors who will serve the sick, the old and the poor. Most of the young doctors coming out of medical schools are trained to cure special things, but people are dying of common illnesses."

WANTS FEDERAL DIRECTION

To combat the problem, Haughton suggested that the federal government and other agencies which give grants for students to continue medical school should require that they practice the kind of medicine which is most needed at the time.

"Right now, we need physicians in the inner city," Haughton said, "physicians to treat common, everyday ailments like the common cold."

In an attempt to combat health care crisis, Cook County Hospital is beginning a program for interns and residents. Each will have 40 families, said Dr. Julian Berman, attending physician in pediatrics, head of genetics and director of medical education.

"The intern or resident will follow the 40 families for three years and will provide entire family care."

MORE FACILITIES NEEDED

Dr. Berman believes there are not enough health care facilities available to the poor in Chicago.

"But even if there were," he said, "where would you get doctors to staff them? You'd have to pay good money to get good doctors."

County Hospital, he said, is attempting to change its image. Often the poor fear County Hospital, he believes, because they have no other choice in hospitals.

Dr. Berman believes education is a major solution for health crisis. County Hospital, he said, has begun a program where young mothers attend classes to learn how to care for their babies. The program is in effect in the hospital's premature baby section.

MOBILE PLAN BEGUN

The Cook County Physicians Association is beginning a new program called the Metropolitan Chicago Mobile Health Project to offer preventive care to the poor in the Kenwood-Oakland community. Two mobile units will travel thru the community offering comprehensive medical care to the poor, said Dr. Thomas.

"Every individual in the area will have an opportunity to be immunized and will be tested for various diseases," he said.

A bill introduced by Rep. Robert Mann (D., Chicago) to take the responsibility for administering health programs for the poor away from the Illinois Department of Public Aid and to permit the state to buy comprehensive health coverage for them thru private insurance companies will come up for vote this week before the state legislature.

DOCTORS ARE RELUCTANT

Delayed payment from the welfare department, because of heavy caseloads, makes many doctors reluctant to treat public aid patients, Mann said. Most of the poor end up in emergency rooms.

"Under prepaid care, we will tighten up eligibility," Mann said. "Once the person has an insurance company card, the medical vendor won't have to worry about not getting paid."

Mann believes that the prepaid plan will stimulate physicians to practice in the inner city.

"They will know their services will be financially rewarded," he said. "The quality of care will improve by doing away with the green card [the medical card provided by the welfare department] and substituting insurance cards for it."

WOULD NOT GRANT ACCESS

Dr. Haughton, however, believes that the Mann bill is not a complete answer. It would insure that the doctor would be paid, he said, but it offers no assurance that the patient would have any more access to doctors than he does now.

"We seem to assume that by making money available to pay for medical care, we ultimately will make medical care accessible to the poor," Haughton said. "That [the bill] will not guarantee that. The doctors make the care available to the poor. They should have learned this from Medicaid and Medicare programs."

Dr. Thomas said the Cook County Physicians Association supports the Mann bill as one means of offering adequate medical care to the poor.

CALLS MEDICAID INADEQUATE

However, he agreed with Dr. Haughton on the inadequacy of Medicaid, which he described as "hastily contrived and terribly inadequate with so many red tape restrictions."

Gov. Ogilvie, who has described the health care system in Illinois as "inefficient and fragmented," has called for state aid to develop health maintenance organizations as a means of offering a high level of care for a reasonable cost.

The organizations would be operated by a group of doctors who, for a fixed fee, would provide all necessary health care services from examinations to hospitalization.

Ogilvie also has suggested setting up comprehensive health planning on state and regional levels. The Illinois State Medical Society has authorized the creation of a nonprofit physicians' organization to reach the same end—better care at a reasonable cost.

REASONABLE FEES SOUGHT

The new organization, called the Illinois Foundation for Medical Care, will attempt to set reasonable fee schedule for its member physicians. It also will work with private insurance agencies and federal agencies to establish comprehensive health coverage programs.

To offer comprehensive care to the poor, a few private multispecialty groups are springing up in the city's poverty areas.

One such group is Comprehensive Medical Associates. In it, the general practitioner is surrounded by a complement of specialists in every area of medicine, said Dr. Robert Blumstein, an obstetrician and one of the founders of the group.

"The services of such a group must be available 24 hours a day, 7 days a week and no patient can be excluded for any reason," Blumstein said. "The patient must exercise free choice in choosing the group and the physician must have available a first rate hospital."

TWO CLINICS ORGANIZED

The multi-specialty group has organized two clinics, one on the city's West Side and another on the Near North Side.

Medical experts also see the health care crisis as more than a medical problem.

The mortality rate among Chicago's black children will not decrease, said Dr. Haughton, "as long as children in the ghetto live in housing where they are exposed to lead poisoning, bitten by rats and where their parents can't afford to feed them or see that they get the proper nutrition and clothing.

"As long as these social problems exist, even if we have the best health services in the world, we are not going to stop children from dying."

A TRIBUTE TO FRANK SINATRA

Mr. WILLIAMS. Mr. President, on Wednesday, June 30, the Senate paid tribute to one of the most famous, and talented, native sons of the State of New Jersey, Frank Sinatra.

Although I was presiding over the Senate at that time and was unable to deliver my remarks personally, I want to take this time now to join Senators in honoring this truly remarkable entertainer.

Throughout his career, Frank Sinatra touched the hearts of millions of people as few men ever do.

His songs brought a glow to the eyes of young lovers; a warmth to the memories of those not so young, and a real affection for life to all of us.

And he did it his way. But the Sinatra way was not limited to a voice heard on a record player or a face seen on a movie screen.

His way extended into the lives of the countless people he helped with his boundless generosity.

He gave freely of his time, talent, and money.

He did it without hesitation whether it was playing a charity benefit or extending a helping hand to a friend in need.

And for that he earned the gratitude of a legion of people, the mighty and the average.

Now he has decided to retire. We will miss his talents.

I might perhaps sum up the feeling of his army of admirers with one sentence.

How about an encore?

SENATOR THOMAS J. DODD

Mr. LONG. Mr. President, other Senators who have spoken before me have testified very eloquently to the distinguished record Tom Dodd compiled in the Senate. I will not recite these accomplishments again except to say that his record of public service will serve as a lasting testimony to his courage, his patriotism, and the intelligence and fortitude to champion the difficult and controversial causes which became a hallmark of Tom Dodd's career.

Passing time will not diminish nor will the adverse circumstances resulting in his censure by his colleagues overshadow the demonstrable fact that Tom Dodd was an American patriot of the first order who loved his country above all else and spent his life protecting its security and making of it a better place to live.

No man who has ever served in this body possessed a more sincere and dedicated commitment to the preservation of individual and national freedom. His effective and unyielding war against the forces of Communism, his relentless war against organized crime, drug addiction, juvenile delinquency and on behalf of effective gun control, bear out how effective a Senator Tom Dodd was.

As a friend and as a fellow human being, I best remember Tom Dodd as a loyal and compassionate man, sensitive and kind, with a determined faith in the essential goodness of his fellow man.

I was privileged to be very close to the most trying period of his life. Throughout his courageous efforts to defend his innocence of the charges which resulted in his censure by his fellow Senators, Tom Dodd showed remarkable composure and character.

During the years that have passed I have had occasion to reflect upon the matter and to see it with the advantage of detached perspective. What was involved was the fact that this man of modest means went into debt by approximately $150,000 during the course of two campaigns for a seat in the U.S. Senate. He incurred very heavy personal debts which he and his wife sought to carry and keep current. The debt structure was initially politi-

cally oriented, but, as the couple borrowed from Peter to pay Paul down through the years, what started out as a clearly political debt structure came to look more and more like a debt structure of private expenses. When, after many years, Tom Dodd undertook to retire his debts, the only way he could do it was by means of political fund-raising activities in view of the fact that his personal credit had become so deeply indentured to pay the expenses of political activities.

The Senator, in my judgment, had every right to retire this debt structure out of money donated for political purposes. As a matter of fact, it has always seemed to me that any court of competent jurisdiction would have permitted any of the Senator's creditors to attach and collect any political funds within the control of the Senator in order to obtain payment of his honest debt. Therefore, I have never been able to see the reason why any man should be censured for paying debts honestly owed with money over which he had exclusive control, particularly if he was doing that which a court of law would require him to do anyway. For these reasons, it seemed extremely unfair to me that a man was censured for doing what the law would require him to do.

I am aware of the fact that we have subsequently passed a Code of Ethics which prevents a person from using political funds to pay personal expenses. Had such a rule been in effect before the matter arose, it would have been easy enough for the Senator to have segregated his political debts and kept them apart in such a fashion that it would have been clear to anyone that the debts which he paid with political funds were debts which were political debts from the start.

Furthermore, Mr. President, I have not the slightest doubt that had I and others who defended Tom Dodd on the floor of the Senate been involved in his defense from the beginning, we would have prevailed. We would have presented to the Committee on Ethics the case which was presented on the floor of the Senate, and, had we done so, I hardly think that we would have been confronted with a unanimous recommendation of censure by the Select Committee on Standards and Conduct.

As one who has made some mistakes in his life and prayed for forgiveness, I say, with the deepest conviction within me, that standing beside Tom Dodd in his hour of trial was not a mistake. If my Maker should some day call upon me to list the good things I think I have done in life in order that they may be weighed on a scale against the mistakes which I know I have made, I would most assuredly place my defense of Tom Dodd among the best things that I believe I have done in life. It cost me dearly at the time in prestige and influence but if I had it to do over again the only things about it that I would do differently would be that I would start sooner and work harder!

I defended Tom Dodd before this body because I believed, and still hold him to be innocent of any misconduct as a Senator. The more serious allegations were ultimately defeated for the simple reason that they were in error. He should never have been censured, but censured he was, and when the decision of his colleagues was rendered against him, Tom Dodd took it like the real man that he was, and, his head bloody but unbowed, continued to represent the people of his State with dignity.

If grace under pressure, and courage in adversity, are the measures of a man's character, Tom Dodd passed the test.

I am proud to be known as a friend of Tom Dodd. His passing was a grievous loss to his country, his family, and to us all. A full and accurate history will be kind to his memory.

PRESIDENT NIXON'S REMARKS TO MIDWESTERN NEWSPAPER EXECUTIVES IN KANSAS CITY

Mr. DOLE. Mr. President, yesterday, President Nixon went to Kansas City, Mo., to address a group of 150 Midwestern newspaper executives. This appearance was a part of a continuing effort he is making to inform the press in various regions of the country on administration programs and proposals. The President's appearance before this group, representing newspapers in 13 States, was preceded by background briefings from a number of key administration figures from the White House staff and the Cabinet.

The highlight of the day's events, however, was the President's discussion of virtually the full range of foreign and domestic issues confronting our Nation today.

President Nixon's grasp of subject matter and his feeling for the issues were all the more impressive in that he spoke for some 40 minutes entirely without the benefit of a prepared text or notes of any kind.

Mr. President, I believe these comments were timely and pertinent to the work of the Senate, and I ask unanimous consent that a transcript which appeared in the Kansas City Times this morning, July 7, be printed in the RECORD.

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

NIXON COVERS SPECTRUM OF WORLD, U.S. PROBLEMS

Ladies and gentlemen: From reading the agenda, I think you have had a pretty full plate on the domestic issues. I gather from looking at the people here at the head table that you have been briefed.

I heard the answer to the last question on the economy. I understand there were other questions on that, and on the health program, also on our environment, on our revenue sharing, reorganization programs, on our crime programs, particularly with regard to the control of dangerous drugs, and also programs that may be in related fields that Mr. MacGregor may have covered.

I think perhaps for this kind of meeting, what I could best do is to put all of these domestic programs into a broader context, to indicate the relationship between these programs and the problems that America has in the world.

Sometimes that seems very, very hard to do. I realize that it is quite the approach these days to suggest that we either ought to look at our foreign policy and put that as Priority Number 1, in other words, the security of America must come first; or we must put our priority on domestic problems and turn away from the problems in the world.

The answer to that is that we must do both. It would not be any good to have clean air and water if we were not around to enjoy it. On the other side of the coin, we are not going to play an effective role in the world unless we have a healthy environment, economically and every other way.

REFORM PROGRAM

For a few moments, I would like to discuss the world position we find ourselves in today, and indicate why I believe these domestic programs, a program of reform which goes far beyond any program of reform which has been submitted to the American people in over 40 years; why that program is so essential at this particular time; why it is that America now cannot be satisfied domestically, we cannot rest on our laurels, why we have to make a critical examination of everything we are doing in this country to see whether we are doing it with the most efficiency possible.

Now, in terms of our world situation, the tendency is, and this has been the case for the last five to six years, for us to obscure our vision almost totally of the world because of Vietnam. That is understandable. We are always concerned about the war in which we are currently involved. That was true at the time of Korea. It is now true of Vietnam.

The difficulty is that as we obscure our vision with Vietnam, we do not see very significant changes that have occurred in the world over the past 25 years, the period since World War II, and changes that have occurred even more dramatically, perhaps, over the past 5 to 10 years, and ones that may be in the offing. So I would like to take Vietnam very briefly.

I have nothing new to say on Vietnam. It seems to me, however, that since so much has been written and said in recent weeks about how we got in, it might be well to reiterate what we are doing to get out.

On Vietnam, what we find is that 300,000 Americans have left Vietnam since this administration came in. A division a month are coming home each month at this time. As far as casualties are concerned, it is interesting to note that the casualties in the month of June were less on a monthly basis than the weekly casualties we were having a year ago. When we came into office, they were 15 times as great per month or week or day, take the index, whatever it is. One is too many, but that does indicate the winding down of the war.

As far as the ending of the war is concerned, as far as American involvement, we find that we are proceeding on two tracks. We are actively pursuing the negotiating channel. We also, regardless of what happens on the negotiating front, are pursuing our program of Vietnamization in which all Americans will be withdrawn from Vietnam consistent with two objectives: First, of course, the release of our prisoners of war; and secondly, in a way that will contribute to a permanent and lasting peace, we hope, in Southeast Asia and in the Pacific, rather than in a way that might increase the danger of another war.

HOPE ON VIETNAM

I will simply conclude this section by saying this: Vietnam is an issue which, of course, concerns us. It is an issue, however, to which we have an answer. The American involvement is being ended. It will be ended certainly. The question is only a matter of time and only a matter of how. So consequently, it seems to me that a group of editors, opinion makers like yourselves, should, and I think will, appreciate the opportunity to look beyond Vietnam.

For example, a year from now, what is the world going to look like as Vietnam moves from our vision, or at least recedes from it, and what will America's role in the world be at that time?

As I came into the room, I noticed Martin Hayden. I shook hands with him. I perhaps can put my remarks on the world scene in context by pointing out that he first came to see me when I was a freshman Congressman. It was 24 years ago. I was thinking how much had happened in those 24 years. Many of you, a few of you, are old enough to remember what America was 24 years ago.

We were Number 1 in the world militarily, with no one who even challenged us because we had a monopoly on atomic weapons. We also at that point were Number 1 economically by all odds. In fact, the United States of America was producing more than 50 per cent of all the world's goods.

That was just 25 years ago. Now, 25 years having passed, let's look at the situation today and what it may be five years from now or ten years from now. I will not try to limit myself to five or ten years except to say that in the next decade we are going to see changes that may be even greater than what have occurred in the last 25 years, and very great ones have occurred in that respect.

NEW FACTORS

First, instead of just America being Number 1 in the world from an economic standpoint, the pre-eminent world power, and instead of there being just two superpowers, when we think in economic terms and economic potentialities, there are five great power centers in the world today. Let's look at them very briefly.

There is, of course, the United States of America. There is, second, Western Europe, Western Europe with Britain in the Common Market. That means 300 million of the most advanced people in the world, with all the productivity and all the capacity that those people will have and, of course, with the clout that they will have when they act together, as they certainly will. That is a new factor in the world scene that will come, and come very soon, as we all know.

Then in the Pacific, looking also at free world countries, we have a resurgent Japan. I met with steel leaders of industry and unions this morning. I pointed out what happened to Japan in terms of their business. Twenty years ago Japan produced 5 million tons of steel; this year 100 million; two years from now Japan will produce more steel than the United States of America.

That is what has happened. It has happened in the case of Japan, in the case of Germany, our two major enemies in World War II, partly as a result of our help in getting them on their feet, and partly because of their own energy and ability.

POWER CENTERS EMERGE

Now we have three power centers—the United States, Western Europe and Japan, noting that both Western Europe and Japan are very potent competitors of the United States; friends, yes; allies, yes; but competing and competing very hard with us throughout the world for economic leadership.

Now we turn to the other two superpowers, economic superpowers I will say for the moment. The Soviet Union, of course, first comes to mind. Looking at the Soviet Union, we are entering a period which only time will tell may be successful in terms of creating a very new relationship or a very different relationship than we have had previously.

I referred to the need for an era of negotiation rather than confrontation when I made my inaugural speech. We have been negotiating. We have made some progress in the negotiations. The important thing is, we are negotiating rather than confronting in many areas of the world, where confrontation could lead to explosion. Whether it is on limitation of nuclear arms, the issue of Europe, or negotiations on the Mideast, the negotiations are going on.

I am not suggesting that these negotiations are going to lead to instant peace and instant relationships with the Soviet Union such as we presently have with our friends in Asia who may be allied with us, or who may have systems of government that are more closely aligned to ours. What we have to recognize is that even as we limit arms, if we do reach an agreement in that field, and even if we find ways to avoid confrontation in other areas, and perhaps work out a negotiated settlement for mutual force reductions in Europe, and the problem of Berlin and all the others that come to mind, we must recognize that the Soviet Union will continue to be a very potent, powerful, aggressive competitor of the United States of America. And, ironically—and this is also true of Mainland China, as I will point out in a moment—as we have more and more success on the negotiation front, as for example the Soviet Union, like the United States, may be able if we have a limitation in nuclear arms, if we are able to turn our eyes more toward our economic development and our economic problems—it simply means that the competition changes and becomes much more challenging in the economic area than it has been previously.

So what we find, in other words, is that the success, and we do want success, of a policy of negotiation rather than confrontation will lead to infinitely more economic competition from the Soviet Union.

CONSIDERS CHINA

Mainland China is, of course, a very different situation. First in terms of its economic capacity at the present time, a pretty good indication of where it is that Japan, with 100 million people, produces more than Mainland China with 800 million people. But that should not mislead us, and it gives us and should give none of the potential competitors in the world markets, Mainland China, any sense of satisfaction that it will always be that way, because when we see the Chinese as people—and I have seen them all over the world, and some of you have, too, whether in Hong Kong or Thailand or Singapore or Bangkok, any of the great cities, Manila, where Chinese are there—they are creative, they are productive, they are one of the most capable people in the world, and 800 million Chinese are going to be, inevitably, an enormously economic power, with all means in terms of what they could be in other areas if they move in that direction.

That is the reason why I felt that it was essential that this Administration take the first steps toward ending the isolation of Mainland China from the world community. We had to take those steps because the Soviet Union could not, because of differences that they have that at the present time seem to be irreconcilable. We were the only other power that could take those steps.

AN OPEN DOOR

Let me be very, shall I say, limited in what I would discuss on this particular issue, because we should not consider that more has happened than has happened. What we have done is simply open the door—open the door for travel; open the door for trade.

Now the question is whether there will be other doors opened on their part. But at least the doors must be opened and the goal of U.S. policy must be in the long term, ending the isolation of Mainland China, and a normalization of our relations with Mainland China because, looking down the road, and let's just look ahead 15 to 20 years, the United States could have a perfectly effective agreement with the Soviet Union for limitation of arms; the danger of any confrontation there might have been almost totally removed.

But Mainland China, outside the world community, completely isolated, with its leader not in communication with world leaders, would be a danger to the whole world that would be unacceptable, unacceptable to us and unacceptable to others, as well.

So, consequently, this step must be taken now. Others must be taken, very precisely, very deliberately, as there is reciprocation on the other side.

But now let's see how this all fits into the economic program I mentioned a moment ago, and the economic challenge. The very success of our policy of ending the isolation of Mainland China will mean an immense escalation of their economic challenge, not only to us, but to others in the world.

I again come back to the fundamental point: 800 million Chinese, open to the world, with all the communication and the interchange of ideas that inevitably will occur as a result of that opening, will become an economic force in the world of enormous potential.

ECONOMIC SHIFTS

So, in sum, what do we see? What we see as we look ahead, 5, 10, and perhaps 15 years, we see five great economic superpowers: The United States, Western Europe, the Soviet Union, Mainland China, and, of course, Japan.

Now, I do not suggest, in mentioning these five, that Latin America is not important, that Africa is not important, that South Asia is not important. All nations are important and all peoples in underdeveloped or less developed countries will play their role. But these are the five that will determine the economic future, and because economic power will be the key to other kinds of power, the future of the world in other ways in the last third of this century.

Now let's see what this means to the United States. It means that the United States, as compared with that position we found ourselves in immediately after World War II, has a challenge such as we did not even dream of. Then we were talking about the dollar gap; then we were talking about the necessity of, putting it in terms of a poker game, that the United States had all the chips and we had to spread a few of the chips around so that others could play.

We did it. $100 billion for Western Europe to rebuild them, and billions of others to other countries, and it was the correct policy as it turned out. Now as we see the world in which we are about to move, the United States is no longer in the position of complete pre-eminence or predominance. That is not a bad thing. As a matter of fact, it could be a constructive thing. The United States is still the strongest nation in the world, the richest nation in the world, but now we face a situation where four other potential economic powers have the capacity, have the kind of people—if not the kind of government, at least the kind of people—who can challenge us on every front.

That brings us back home, and it brings us back home for a hard look at what America needs to do if we are going to run this race economically and run it effectively and maintain the position of world leadership, a position that can only be maintained if the United States retains its pre-eminent position in the economic field.

AMERICA'S NEEDS

I could sum up briefly this way: First in personal terms we need a healthy people. Mr. Richardson has, of course, directed his comments to the need for programs that will make us a more healthy people in a very physical sense. We need a healthy environment and Mr. Ruckelshaus has directed his remarks to programs that will make the environment in this country more healthy.

We also need a healthy economy, and Mr. Stein has been talking about the economy. I think it is only relevant to mention that in terms of the economy that we have a situation here that at the moment, again, obscures

our vision because of temporary problems which will change once the problems move along. For example, when we consider the problem of unemployment, it must be noted that if the 1,200,000 who have been let out of defense plants and out of the Armed Forces since this Administration came in were still in the Armed Forces and Vietnam and defense plants, unemployment would be less than five per cent today. But the cost would be too high. What we want is high employment, full employment to the extent that we can get full employment, but without the cost of war. We can have it. That is what our policy is directed to achieve.

ACT ON INFLATION

When we speak of a healthy economy, we are also speaking, as Mr. Stein mentioned, I heard his answer to the last question, of an economy in which the fires of inflation have been cooled. We are moving on that. We have made some progress—not enough, but we have made some.

At this particular point, it is essential that whether it is in having to make the hard decision to veto a public works bill which would not speak to the problem of unemployment now, but would enormously escalate the problem of inflation a year or two or three or four years from now, or whether it is in speaking to the leaders of labor and management and calling upon them to be responsive and responsible in their wage-price decisions in seeing that they are not inflationary, the United States, of course, if it is going to have a healthy economy, must move in those particular areas, as well as in others.

Also, when we speak in terms of our health, we must speak in terms of how we accomplish some of these goals. Let me now speak quite directly about a problem that I know has been the subject of many editorials, editorials of newspapers, and, of course, on television and radio, to the extent that you are permitted to do so.

First, it has become rather common practice to berate the American system. Now, without being a bit jingoistic, and being totally objective, let's examine this system of ours, examine it in terms of the problems that I have just mentioned. Health: It would be very easy at the time that we are looking at the prob.ems of the distribution of health care to throw the baby out with the bath water and to fail to recognize that at the present time while we have enormous problems which need to be dealt with of distributing health care fairly so that everybody who needs medical care can get it, we must handle that problem without destroying what we also enjoy, the best medical care in the world in terms of quality. That is why our medical program and our health program is not one that throws out the present medical care system; it builds on it. It reforms it. It corrects it.

Let's look at the environment for a moment. Here one is tempted, as he goes into a place like Los Angeles, and I will be there in a few hours, and you see the smog, that yellow ugly smog-hanging over the city or when you go down the Potomac and see the filth in that river, one is tempted to say: Wouldn't it be great if we didn't have automobiles? Wouldn't it be great if we didn't have all these factories? Wouldn't it be great if we could go back to the way is was in the beginning?

The answer is: Not at all. I have been and you have been to countries who do not have the problems of the environment created by an industrial society. Those countries and those peoples, of course, would very much like to have those problems if that was the cost of raising their standard of living.

BALANCED ATTACK

That is why Mr. Ruckelshaus, and this Administration, has emphasized, and will continue to emphasize an attack on the problem of the environment, but recognizing that the genius that created the industrial might of the United States, that created the problems in the environment, can be put to the task of cleaning it up. This we will do, and this we believe we can accomplish, consistent with maintaining our system.

In terms of our economy, when we talk about how we can change it and how we can deal, for example, with problems like the wage-price escalation, it of course has not gone unnoticed that many at this time tend to throw up their hands and conclude that the only answer to the problem is to go to wage and price controls. Some nibble at it at the edges and say, Well, we ought to have a wage-price board, or others go all the way and say, Why not wage and price controls? When you talk to management, however, they want wage controls. When you talk to labor, they want price controls. When you talk to Government, they recognize, as we recognize that you cannot have wage controls without price controls and any of us, as I was—I was in the OPA for a few months in 1942 before I went in the service—you cannot have wage and price controls without rationing.

It would help us on the unemployment problem. I just checked and found we had 47,000 in the OPA in World War II enforcing all the regulations in wage and price controls over the country. It was not working because it will not and cannot in peace time.

WAGE CONTROLS?

So, despite the fact that a majority of the American people, when asked, do you believe there should be wage and price controls, they say yes, if they had them for a while, they would say no with a vengeance; one, because they do not work in peacetime in controlling the problem, and two, because the cost in terms of snuffing out and dynamism and strength of the American economy would be a cost much too high to pay.

When we are talking about the system we must take the necessary steps to correct the problems that are wrong about it, but recognize that it is a system that has nevertheless produced today more jobs, higher wages, and greater opportunity than any system in the world. Before lightly changing it or reforming it in a way that changes its character, let us also have this in mind.

I look, for example, at the Soviet Union and those of you who have traveled in the Soviet Union several times, as I have—my first trip in 1959, and my last in 1967—have noted the significant change that has occurred there. There we find that they have moved more and more to a systems of rewards rather than every man according to his ability, and receiving according to his needs, because the other will not work.

At a time when we find them moving—and may I say others who are trying the total socialistic approach—moving our way, we could make no greater mistake than to move their way.

What are the economic miracles in the world today? Japan: A different system from ours in terms of government, but relying very, very heavily on private enterprise and private incentives. Germany: A different system from ours in terms of government, but again, private enterprise oriented, private incentives.

Here is the United States of America. At this particular time, as we look around the world, we should not turn away from what is really the great source of our strength.

CUTTING EXCESS

Now, I have mentioned the personal health that is very important, the health of our environment, the health of our economy, and I should also touch upon the health of government. Government in this country needs some major surgery. It is too fat. It has in many cases too many useless limbs; some need to be chopped off. Certainly it needs to be reduced in size. Most of all, of course, it needs an infusion of leadership and responsibility at local and State levels which is going to be essential if you are going to have improvement of government in this country.

That is why revenue sharing and government reorganization are very high on our agenda. There is not much sex appeal in these programs unless you talk to mayors or governors or county officials who say, please give us the money or we cannot pay our payrolls.

But on the other hand, they are enormously important because the United States cannot go into this last third of a century with competition, when we are going to have to be at our best, with an unhealthy government structure. We have to thin it down and get it ready for the race. It is not ready for the race. That is why at the present time we are strongly advocating these changes.

There is one other kind of health that the nation needs. I don't want to sound here like a moralist or a preacher, although I have great respect for preachers and moralists. This nation needs moral health. By moral health, I use the term in a very broad sense.

Don Rumsfeld, I know, has addressed himself to the problem of drugs and I assume of law enforcement. I have stated categorically, and I state it again here today, that in this administration, the era of permissiveness in law enforcement has come to an end. We are going to continue to support strong laws, dealing with criminal elements, to support law enforcement officials up and down this land, and continue to have a program that will reduce the rising crime and eventually reverse it.

CRIME DOWN

One of our most substantial achievements has been that in cities over 100,000, that in 61 of them the crime rate went down in the last quarter, and in the city of Washington, it went down for the first time in almost 20 years. This kind of progress is, of course, significant, but more needs to be made.

Let me now address myself to the narrow, but in a sense, decisive issue of drug control. I will not elaborate on what Don Rumsfeld said, except to say that we are dealing very effectively with the problem at its source. Our arrangement with the government of Turkey: To the great credit of the Turkish prime minister, we have stopped that source to a great extent, and it will be totally stopped by next year. We are dealing with it in law enforcement and better education.

But the fundamental problem of drugs goes beyond that. You can stop the source of supply in one country and if there is enough demand they will go some place else. You can have the strongest laws possible, and if there is enough demand and use, you will have to add more officials.

What we really need is to get at the fundamental cause and the fundamental cause has to do, as all of you know, with basically a problem in our society. We must recognize that the problem is no longer a black problem, it is no longer a ghetto problem, it never was, as a matter of fact, although it was predominant. It has moved to the suburbs and the uppermiddle class and upper class. It is particularly a problem among younger people. It is not just limited to veterans. It goes far beyond that. All these things we know.

The real problem, fundamentally, gets down to why; why do people take them? There we find the fundamental challenge of our time, a challenge that opinion leaders have to meet. If individuals have something to live for, if individuals have something to believe in, then the tendency to throw up their hands, to retreat, to give up on life, is substantially reduced.

TURN TO DRUGS

But as a society comes to the point where there is negativism, defeatism, a sense of alienation, it is inevitable that younger people will give up. They will turn to drugs, to any other kind of activity that is, of course, disruptive of a society.

I address myself at this point to this particular question for a reason that I think is quite relevant in view of the announcement that I made on July 3. I said then that the United States was entering its bicentennial era, because five years from July 4th of this year we will celebrate the 200th anniversary of the United States of America.

We wonder what kind of a ntaion we are going to be then. Well, I will flatly predict that five years from now we will still be the richest nation in the world. If we want to be—and this will depend upon the American people—and need to be, we will still be the strongest nation in the world. But the critical question is whether the United States will be a healthy nation, a healthy nation not simply with a healthy government and a healthy economy and a healthy environment and a healthy physical system insofar as we personally are concerned, but healthy in terms of its moral strength.

On that, there is a question. That question is raised often in your editorial columns that I have noted, because I read many of them. It should be raised. But I would only suggest that part of the reason for raising it is that again we tend to allow the problems of the moment to obscure our vision of the future. We tend to allow our faults—and we have many—to obscure the many virtures of our society.

I will not list them. Let us simply say that world leadership—oh, I know all the criticisms: the United States can't be trusted with power; the United States should recede from the world scene and take care of its own problems and leave world leadership to somebody else, because we engage in immorality in the conduct of our foreign policy. Let's take a look.

FOUR WARS

We have been in four wars in this century, and four times young Americans have gone abroad. We have done so without any idea of conquest or domination. We have lost hundreds of thousands of lives and we have not gotten a thing out of any of it, and we have helped each of our enemies, after each of the Wars, get on his feet again.

We made our mistakes. We make them now, for example, as we made them in previous wars. Let me say this: Think for a moment. What other nation in the world would you like to have in the position of pre-eminent power? What other nation in the world that has what it takes would have the attitude that the United States has, as far as its foreign policy is concerned?

Here is a nation that did not seek the pre-eminent world position. It came to us because of what had happened in World War II. But here is a nation that has helped its former enemies, that is generous now to those who might be its opponents, a nation that, it seems to me, is one that the world is very fortunate, in a way, to have in a position of world leadership.

DOMESTIC PROBLEMS

In terms of our domestic policies. I think we can truly say we have some problems. They are quite significant, and we like to look at those problems; not only look at them, but we must work on them, and constantly see that America is revitalized and reinvigorated.

But as we look at those problems, the enormous strengths of this country can only be appreciated once you have seen other countries, great as they are and as much as they have to offer, and come back to see what we have in America. I am not speaking of wealth. I am speaking of freedom. I am speaking of opportunity. I am speaking of concern, concern that people have not only for people here, but for people in other places.

When we presented the program on July 3rd, some of you who may have heard it will note it was in the Archives Building. I am often asked, as I am sure many of you are who are in Washington, what is your favorite building? My usual answer is the Lincoln Memorial, particularly at night, with the light shining on the statute of Lincoln. But I would say that in terms of the most impressive building, impressive because it has the appearance of the ages there, it has to be the Archives, more impressive than the Capitol, the Lincoln Memorial or the Jefferson Memorial or the White House itself.

The great marble columns give you the feeling of the past and what the Nation stands for, and you know that the building is one that holds the Constitution, the Bill of Rights, the Declaration of Independence, the great documents that started the Nation at the beginning.

Sometimes when I see those pillars I think of seeing them on the Acropolis in Greece, I think of seeing them also in the Forum in Rome, great, stark pillars—and I have walked in both at night, as I have walked down by the Archives at night from time to time.

LOST MOTIVATION

I think of what happened to Greece and to Rome, and you see what is left—only the pillars. What has happened, of course, is that great civilizations of the past, as they have become wealthy, as they have lost their will to live, to improve, they then have become subject to the decadence that eventually destroys the civilization.

The United States is now reaching that period. I am convinced, however, that we have the vitality, I believe we have the courage, I believe we have the strength out through this heartland and across this Nation that will see to it that America not only is rich and strong, but that it is healthy in terms of moral and spiritual strength. I am convinced it is there. I am convinced, as I talk to crowds of people. I am convinced as I see a group of young people, 500 of them, going off to Europe, as I saw yesterday, from 50 states.

But I also know that people need to be reassured. The people who can reassure them are opinion leaders, editors, television, radio commentators, teachers, even perhaps Presidents and politicians. At the present time, I will simply say in raising these problems, I don't raise them in any sense of defeatism; I don't raise them in the usual sense of pointing out that the United States is a country torn by division, alienation, that this is truly an ugly country; because I don't believe that.

I honestly believe that the United States, in its pre-eminent position in world leadership, has in its hands the future of peace in the world this last third of a century. I honestly believe that the United States has the destiny to play a great role, but I also know we cannot play it unless this is a healthy land, with a healthy government, a healthy citizenry, a healthy economy, and above all, the moral and spiritual help that can only come from the hearts of people and their minds, and that will only come as people are reassured from time to time. As we discuss our faults and as we correct our faults, reassured. Keep them in balance.

Don't let the problems of the moment obscure the great and good things that are going on in this country. It is that I would suggest to the editors and other opinion makers here: that from time to time, maybe once a month, that message might come through.

THE CUSTER MYTH

Mr. McGOVERN. Mr. President, Life magazine of July 2 has performed a valuable public service with its special feature, "Our Indian Heritage." I am pleased to note that the articles and pictorial essays clearly show the wisdom of resolutions which I had the honor of introducing some years back and passed by this body calling for decisionmaking by the Indians themselves at the grassroots level. Only when this becomes a reality will the Indians of our Nation be able to preserve the valued and valuable cultural heritage which Life magazine presents so vividly.

The distinguished Indian historian, Alvin M. Josephy, Jr., chronicles the brutality and massacres which came hand in hand with our era of manifest destiny. He tells in very apt terms how the once friendly Indian was forced, out of love of his land and culture, into a posture of near constant warfare.

As a nation we have set a high standard for our treatment of the Indian people. Our founding documents provided that the utmost good faith was to be accorded to the Indian people and no war undertaken but for just causes. As Mr. Josephy points out, many unjust wars—if some of the butcherings can be called that—were undertaken. Our courts also treated Indian tribes as separate nations, and Congress frequently made treaties with the various tribes to ease our westward expansion. But as the pressure for land mounted, the treaties became scraps of paper. It is indeed ironic we find ourselves in a land and air war in Asia in defense of a dubious obligation when we have flaunted our sacred word at a less fortunate people at home.

In his article, Mr. Josephy traces how our old feeling of enmity toward the Indian still lingers on and presents a stumbling block to meaningful Indian programs. If we are ever to repay the Indians for our wrongdoings and honor the commitments the United States made to the Indians, we will have to be aware of the historical perspective of our past treatment of the Indians. Because Mr. Josephy tells the story so accurately and so succinctly, I ask unanimous consent that it be printed at this point in the RECORD.

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

THE CUSTER MYTH

(By Alvin M. Josephy, Jr.)

The last time I visited Custer Battlefield National Monument on the high, tawny plains of south central Montana, Dustin Hoffman and Arthur Penn were there, shooting *Little Big Man*, the movie which deals sympathetically with the Indians who fought in the Battle of the Little Bighorn. But inside the little museum just below the hill where Custer made his last stand, the National Park Service historians were giving their usual narrative lectures to the tourists grouped around the table model of the battlefield. I was in the museum with some Indian friends: a Cheyenne from Oklahoma, a Sioux family from the Rosebud Reservation in South Dakota, and two Yakima kids from the state of Washington. They were dressed in jeans and open-necked, snap-button shirts, and appeared very much part of the crowd listening to the lecture. But it was obvious they did not like what they were hearing. They kept glancing at each other as if they were not quite sure if it was all right for them to be there.

"Something's happening these days," one of the lecturers was saying. "We better all be

aware of it. Self-styled historians are deliberately tarnishing Custer—casting innuendos on him and on the men who fought here. It may be part of a scheme to undermine our traditions and our beliefs in the American army."

When the historian finally went into his account of the battle and remarked that "a horde of savages" under Crazy Horse had swept in from the north to surround Custer, one of the Yakima boys started knotting and unknotting his fists. The Cheyenne motioned for them all to leave, and they moved shyly through the rear of the crowd. Off by themselves, they pretended to examine the cases of Indian clothing, implements and weapons, the museum's gesture to "the enemy" at the battle. That is the way the whites were supposed to know the Indians: dead, dehumanized museum objects, not real people.

"Crazy Horse," muttered the Rosebud Sioux father in a low voice, "He was a great man. He fought for his people. He was no savage. He was patriotic to the Indian people. That's why they murdered him."

After their victory over Custer at the Little Bighorn on June 25, 1876, the Sioux and Cheyenne bands separated and tried to evade the punitive armies that poured onto the plains to round them up. One by one, the harried Indian groups surrendered or came voluntarily into the government agencies. The winter of 1876–77 was cold, and the holdouts starved. In February, Sitting Bull and Gall crossed their band into Canada, where they stayed in exile until 1881. But Crazy Horse's Oglalas struggled to stay free, striking back again and again in snow and fog at troops that followed closely on their trail. Chiefs who had surrendered sent emissaries to Crazy Horse, urging him to give up and bring his people into the safety of a reservation. He refused, and the longer he held out and fought back, the higher his prestige rose among the Indians who had already surrendered. Finally, he could no longer face the suffering of his people. Proud that he had not been defeated in battle, he marched his band, the last of the Sioux "hostiles," into the Red Cloud Agency on May 5, 1877. But his defiance of the whites continued, and the officials at the agency began to fear that he was planning an uprising. Four months after his surrender, he was lured to a guardhouse at Fort Robinsor near the agency and, in a sudden scuffle, was bayoneted to death by a soldier. Crazy Horse was 37 years old. Because of his many war exploits, his able leadership in battle and—most of all—his long, uncompromising resistance to the whites, he became the Sioux's greatest hero, and his legend still grows among American Indians today. Mari Sandoz, a white author, has written a sympathetic biography of him but, like her other books on Indians, including one of the finest accounts of the Battle of the Little Bighorn ever written, her biography of Crazy Horse was not on sale at the battlefield museum. Dozens of other books by lesser authors were displayed, but nothing by Mari Sandoz. "Her stuff is no good on the battle," one of the historians told me.

That was two years ago, 93 years after the ambitious, glory-chasing—maybe crazed—Civil War hero Lt. Col. George Armstrong Custer led five troops of his Indian-fighting Seventh Cavalry to death and legend. It was not the U.S. Army's worst defeat at the hands of Indians. In 1791, Little Turtle and the chiefs of confederated Ohio Valley tribes almost annihilated Gen. Arthur St. Clair's army and killed more than 600 of his men on the headwaters of the Wabash River. But the Little Bighorn was bad enough. No one knows how many Indians were in the nine circles of tepee villages strung along the Montana stream that day—estimates have ranged as high as 15,000, including warriors—but Custer lost almost 250 men in his foolishness.

The movie people making *Little Big Man* caricatured Custer, took their cue from the worst that has been said about him and played full blast upon his arrogance and madness. It made the National Park Service officials who administer the battlefield quite angry, and they refused to cooperate with the film company. It did not matter. The government owns only two patches of the battlefield, the high ridge where Custer made his last stand and the hilltop several miles away, where Maj. Marcus Reno and other troops of Custer's divided command withstood successfully a 24-hour siege by the Indians. In between, where Custer is thought by many to have launched his attack down the Medicine Tail Coulee from the high ground to the river, the land is owned by Crow Indians, whose large reservation surrounds the battlefield, and they were delighted to lease the coulee to the film company. The Crow are a jolly people who get a kick—sometimes a perverse one—out of playing with history. They used to be enemies of the Sioux, and some of their ancestors served as scouts for Custer—until they caught a glimpse of the size of the Sioux and Cheyenne villages and rode hurriedly away before the fighting started. But now every June the Crow pretend to be Sioux and reenact the battle for tourists, which disgusts the real Sioux over in South Dakota. And because the Crow were handy to the movie site and could turn out several hundreds horsemen who would look like Sioux warriors, they played the role of the Sioux again in *Little Big Man*.

The making of *Little Big Man*, which deals understandingly with the Indians' culture as well as their fate, is a hopeful sign of a new trend, reappraising the Indian and the white man's caricaturization of him as a savage. As with any stereotype the caricature had a basis in fact. Indian cultures often permitted codes of war that were accepted by the tribes but were ferocious to the whites, and Indians who fought desperately against the whites for their lives, lands and freedom enraged their enemies with atrocities, tortures and massacres like those at Deerfield and Cherry Valley (The Indian is equated with scalping, but no one really knows who started it. The Dutch at New Amsterdam and the Spaniards in the Southwest paid bounties at an early date for Indian scalps, and it is known that whites spread the practice of scalp-taking to tribes that had never indulged in it.) In truth, there was ample barbarism on both sides. But the whites were the winners, and they wrote the books, and until now they have carefully ignored their own treatment of the Indians, and especially what the white man looked like in the eyes of the Indian. Today, the Indians themselves are forcing these things to our attention. In the mid-1960s, cars owned by Indians in Montana and the Dakotas began bearing bumper plates that read: "Custer Died for Your Sins."

Why Custer?

A Nez Percé Indian in Idaho, the grandson of a man who had fought for freedom against American armies with the great Chief Joseph, once explained accurately: "The white man's knowledge of Indians is based on stereotypes and false, prejudiced history. Custer is the best-known hero of that myth to the whites. Therefore, to every Indian in the country he is the biggest and most important symbol of all the lies that have been told about us. Destroy the Custer myth, the biggest one of all, and you'll start getting an understanding of everything that happened and an end to the bias against the Indian people."

To the Indians, the Custer battlefield is a place that keeps alive a jaundiced, ethnocentric and therefore false view of the long struggle between themselves and the white invaders of their lands. If Indian historians were among the interpreters and lecturers at the museum, it might be different. But as the National Park Service presently administers it, the battlefield is a sore from America's past that has not healed.

There are similar sores across the map of America, from the Pequot country in Connecticut and the Powhatan country of Virginia to the Nisqually River at Puget Sound and the former acorn-gathering grounds of Indians who were shot down for sport by forty-niners in California. Custer's attack against the Indian villages at Little Bighorn is best known because of the drama of his defeat and the dark mystery of what he was doing and what, precisely, happened to him.

But there were many other assaults on Indians—often surprise attacks on peaceful villages—that worked. A few of those "battles," which present-day Indians regard as true massacres, are known to the whites. Most of them are forgotten.

One has perhaps heard of the Big Hole in western Montana, where troopers in 1877 swept into a sleeping village of Chief Joseph's hounded Nez Percé, shooting and bayoneting every Indian in sight. But scarcely anyone knows of the home village of Chief Looking Glass, also a Nez Percé, that was similarly attacked on a Sunday morning by federal troops in Idaho. The maddened massacre by Col. J. M. Chivington and his Colorado volunteers of a Cheyenne village at Sand Creek in 1864 is well known. But few know of the Sioux families who were roused from their sleep by troopers under Gen. W. S. Harney and shot and clubbed to death at the "battle" of Blue Water Creek in Nebraska in 1855.

There are many others. The battle of the Washita brought Custer and his Seventh Cavalry their first glory as Indian fighters in 1868. The women and children who died there, and at Lancaster, Pa. in 1763, at the Grande Ronde in Oregon in 1856, at Bad Axe in Wisconsin in 1832, at scores of villages and settlements in California, and at hundreds of other places they called home were, like the trees, being cleared away. They were no-people. They had no names. They had no right to life.

Why not?

On July 4, 1779, Maj. Gen. John Sullivan's officers, who were about to invade the Iroquois country of western New York State, drank a toast: "Civilization or death to all American savages." His words bluntly state the policy which the white man has directed from the first against the Indian—which Custer, Harney, Chivington and the other military men, as instruments of that national mandate, carried out for the non-Indian American people, and which some whites continue to regard, though with different words, as the only way to deal with the Indian people on reservations even today.

In the 16th and 17th centuries, the first colonists along the Atlantic coast looked upon the Indians, found them different and judged them therefore as inferior. It is a fact that everywhere the Indians greeted the first settlers with friendship. The Indians, reported Capt. Christopher Newport, commander of the colonists' ships at Jamestown in 1607, were supposed to be treacherous, "howbeit we could not finde it in o'r travell up the river, but rather a most kind and loving people." In New York the Manhattes brought food and other gifts to the Dutch in 1609, and even in Massachusetts, where earlier traders had kidnapped, enslaved and spread disease among the Indians, the Pilgrims were welcomed and instructed in how to survive in the harsh new world by Samoset, Squanto and the Wampanoag chief, Massasoit.

The Christian newcomers viewed Indian societies from their own European-based point of view, failing, with rare exceptions, to understand or appreciate their complex customs and traits and the richness and self-sufficiency of their cultures. What they saw they condemned as "satanic" and uncivilized because it was strange. But they were weak and the Indians were strong, and for a while the settlers found it necessary

to live peaceably side by side with the natives.

Not for long. The Indians had what the white man wanted—land—and the greed for the Indians' property, which was never to end, exploded finally in Virginia, Connecticut and Massachusetts in the first of the frontier wars. The Powhatans, Pequots and Wampanoags went down under fire and sword, ghting for their homelands, and the desperation of their resistance created the enduring image of the "savage" Indian. From then on, there could be no coexistence. As the whites pressed westward, justifying their hunger for Indian land with the belief that the laws of God and nature directed them to take the earth from those who "wasted" it, they saw only what they wanted to see in the Indian.

The Indian had one escape route; to become a white man. Cut his hair, adopt Christianity, wear white men's clothes and settle down as a farmer or mechanic. If he gave up his "inferior" values, adopted those of the white man and melted into the general population so that he was indistinguishable from everybody else and no further trouble to anyone, he could live. On every frontier, missionaries worked on the "wild" Indians to save them before a landgrabber shot them. It was a fearful choice for an Indian, who was told to stop being what h was and be someone else. Thousands of Indians survived by shedding their cultures, their loyalties and often their identities. Many more Indians resisted: even if they could drop their Indian-ness, they were too proud of what they already were and not at all convinced of the superiority of the white man's values.

Nevertheless, the two strains——civilization and extermination—marched through American history from King Philip's War in 17th-century New England to the massacre at Wounded Knee, S. Dak. on Dec. 29, 1890. Behind the frontier, where the Indians' power no longer existed, the national aim could be stated more benignly, as it was by Jefferson and other leaders of the federal government: "The Indians must assimilate or they will die out." No tribe fought harder to live its own way, unmolested on its own lands, than the Sioux—the many independent but often allied bands that called themselves Dakotas or Lakotas, depending on their dialect, and roamed the plains after buffalo in Montana, Wyoming, Nebraska and the Dakotas. The white man knew that he faced a day of reckoning with these proud people, but for generations he moved warily past them on the Oregon and California trails and left them alone. Finally the Civil War was over, the Pacific Coast was settled, and the Great Plains were left to take. Civil War officers, seeking more exhilaration and glory after the letdown that followed Appomattox, came charging onto the plains.

It was inevitable, perhaps, that the confrontation would be dramatic. The plains tribes were warrier societies whose men lived for the joy and honor of killing an enemy, stealing a horse or, best of all, counting coup (touching a live enemy and getting away unharmed). One by one, fighting as long as they could, they were forced into smaller and smaller areas, but the Great Sioux Nation—the bands of Hunkpapa, Miniconjou, Brule and Ogala—were the biggest and the strongest, and they fought back hardest under the best leaders. In 1868 they heaped the greatest possible insult on the army, forcing it out of their hunting grounds in Wyoming and making Gen. William Tecumseh Sherman agree to a treaty acknowledging the sanctity "forever" of the lands they claimed as their own.

Forever lasted six years. In 1874 Custer violated the treaty, invaded and explored the Black Hills, the holiest of lands to the Sioux, and announced to the world that he had discovered gold there. When gold miners poured into the area, responding to Custer's invitation to "come and take it," the government was obliged to forget the treaty and try to buy the land from the Sioux. The Indians refused to accept the $6 million the government offered them for it.

Rumors spread that the plains were teeming with "hostile" Sioux, bloodthirsty, wild Indians who menaced civilization. The "massacre" of Custer, who was leading one of the forces trying to round up the "hostiles," proved the point. Thus the myth of Custer was born (pictured graphically on saloon walls throughout the country). The story of brave, surrounded troopers fighting to the last on a lonely Montana hilltop was told. But nothing of a broken treaty; nothing of a power-crazed officer who lured miners into the Sioux country; nothing of Custer's slaughter of women and children at the Washita.

The Sioux eventually lost the Black Hills. The army had to crush the perpetrators of the outrage on Custer, and no mercy was shown. The soldiers who chased the Sioux all over the plains during the winter after Little Bighorn may have wondered why the government had got in such a mess over some greedy gold-seekers, but they also knew that national honor demanded that Custer be avenged and that the Indians be taught who was the master. The buffalo, on which the Indians depended for their food, was all but exterminated, and the members of the harried Sioux bands starved and died on the trail. Gradually the holdouts were rounded up and put on reservations. The troops secured the Black Hills—for which the Sioux have never been justly paid—and opened the plains to the cowboys and nesters.

But the hatred for the Indian who frustrated and embarrassed the white man went on. The reservations were prisons, and the Indians lived in misery and semistarvation, lacking every freedom and suffering punishment for every offense, real or imagined, from practicing their own religion to "sauciness." The Indians made desperate attempts to escape from their persecutors. The climax came in 1890, when Big Foot's band of Miniconjou Sioux, fearful of punishment for practicing their so-called "Ghost Dance" religion, stole away from their reservation in the middle of the winter and tried to travel to another one, where they hoped for better treatment. The great Sitting Bull, suspected of having planned an uprising by the Ghost Dancers, had just been murdered.

Troops of the reconstituted Seventh Cavalry intercepted the fleeing Miniconjou at Wounded Knee, S. Dak., herded them in a knot and surrounded them. The Indians were cold, hungry and in rags and had no thought of resistance. But after most of them were disarmed, a gun went off accidentally. The troops opened fire on them, and from a hilltop above the wild melee, Hotchkiss machine guns raked the swirling mass of people. Some 60 soldiers were killed or wounded—most, if not all, by their own men. Almost 300 Indian men, women and children perished, and their bodies several days later were thrown in a single grave.

The long, rectangular common grave, edged with a concrete curb and tended by the Sioux of the Pine Ridge Reservation, is still there. But the flat where the Indians huddled is all but covered by the macadam of a road intersection. There is, of course, no national memorial to Wounded Knee.

It was the last serious armed confrontation between Indians and whites in the United States. But today, 81 years after Wounded Knee, the national Indian policy still discriminates harshly against them. Voice has often been given, most recently by President Nixon in July 1970, to the Indians' right to manage and control their own affairs and to be Indians if they wish to be. But non-Indian public opinion still believes that an Indian cannot be happy unless he is like most other Americans. Since the final defeat of the tribes, every act of Congress and every program of each administration that dealt with general Indian policy has been designed to speed the Indians' assimilation. The guns have long since ceased but, say the Indians, cultural genocide has not stopped.

THEY ARE STILL THE POOREST OF THE POOR

On most reservations, the agents of the Bureau of Indian Affairs still manage and control the Indians' most important affairs, depriving them of initiative and the right to do what they think is best. The Department of the Interior still maintains veto power over most Indian decisions, as well as over tribal finances, use of lands, selection of lawyers, and even the drafting of individual wills. The Indians are the poorest of the poor, with the highest unemployment, the lowest standard of living, and the worst health and housing of any Americans.

In Nevada there is hatred today for Paiute Indians who are trying to regain water, diverted from them by a white man's irrigation project, so that they can save their Pyramid Lake and its fish. At Pugent Sound there is hatred for the Nisqually and Puyallup Indians who are fighting, sometimes with guns, for their treaty-guaranteed fishing rights. In the Southwest there is hatred for the Hopi and Navajo traditionalists who want to stop the strip-mining of coal on their reservations, a step that would halt the fuel supply for white man's power plants. In the town of Gregory on the Rosebud Reservation in South Dakota, Indian children who attend school with whites are constantly warned that they must learn to get along with the whites or "get out." This June, the guidance counselor at the high school quit his job and moved away because of disgust with his superiors' acquiescence in the bigotry practiced against the Sioux students. "I couldn't beat the system," he said.

The nearby city of Winner, also on Rosebud, is worse. One block off the main street is Indian Town, where 72 Sioux families live in hovels that lack sanitation facilities, running water, electricity and heat, and yet cost them up to $50 a month in rent. Some of the buildings are old railroad shacks, one-room, 8'x10' in size, and Indian families have been paying rent on them for more than 20 years. The rest of Winner's streets are paved, but not those in Indian Town. Most of the descendants of the warriors who live there are afraid of the white fathers of the town, who on several occasions have turned aside their requests for joint action with the Rosebud Tribe to erect new housing for them in a healthier location. John Fire, an elderly Uwipi medicine man, recently brought suit against the city government for discrimination against the Indians, but few people expect anything to come of it.

"Indian-hating," wrote Herman Melville in 1857, "still exists; and, no doubt, will continue to exist, so long as Indians do."

NATURAL GAS SHORTAGES

Mr. TOWER. Mr. President, The June 30, 1971, issue of the Wall Street Journal contained an editorial entitled "Out of Gas." In my opinion, this editorial summarizes fairly the natural gas shortages now facing the Nation.

The article attributed the present short supplies of producing reserves of natural gas primarily to the 17 years of inept Federal Power Commission regulation of the prices of natural gas. The conclusion reached in the article is that possibly the free market mechanism could do a better job than the FPC of setting the well-head prices of natural gas being sold into interstate commerce.

I agree that this onerous regulation is one of the primary reasons that we are running out of producing reserves of this ideal, clean-burning fuel. We possess vast undiscovered quantities of natural gas. Needed are adequate incentives to stimulate exploration for these undiscovered reserves. The best incentive is to grant the producer a fair price for his gas. This price can be determined best by the free market mechanism.

On February 4, 1971, I introduced S. 637, a bill designed to remove the Federal Power Commission from the regulation of the well-head prices of new reserves of natural gas which are being sold into interstate commerce.

I urge prompt consideration of the bill.

I ask unanimous consent that the Wall Street Journal article be printed in the RECORD.

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

OUT OF GAS

Given the sad state of the nation's railroads and airlines, federal regulation doesn't have a very shiny image these days and the shine isn't improved much as we hear more of the plight of another regulated industry, natural gas.

It became evident last summer that gas pipeline companies had expanded facilities close to the point of offering customers more gas than was in fact available. The industry scraped through last winter but there are other winters, and new possibilities of shortages in some markets, on the way. The Federal Power Commission regulates the industry under the Natural Gas Act of 1938; regulation deserves some of the blame for the present state of affairs.

Regulation has tended to keep the price of natural gas cheaper in many markets than coal or oil, even though these are in many ways less desirable fuels. The result has been that demand for natural gas and expansion of the pipeline network to supply the demand has outpaced the development of gas reserves.

Most of the trouble goes back into the controversial history of natural-gas regulation. The 1938 act was initially interpreted as allowing the FPC to regulate only gas transmission and resale. But in the late 1940s the FPC, with backing from Harry Truman, broadened its interpretation of the act to include setting "wellhead" prices paid to producers. The Supreme Court upheld this expansion of the FPC power in the landmark Phillips decision of 1953.

However, the FPC of that era had not reckoned sufficiently with the complexities that would be involved in setting fair producer prices. Natural-gas price regulation has been a battleground since. The commission usually has leaned towards holding prices down in the face of pressures from consumers and consuming-state politicians.

Now, however, with a shortage impending, the FPC is faced with the task of trying to crank some belated price increases into the cumbersome regulatory system, with the hope of stimulating a higher rate of exploration and development of natural gas and damping some of the demand. The adjustment will take time and it won't be popular with consumers suddenly faced with some surprisingly large price increases.

In reviewing the whole affair the other day in a speech to an industry group, FPC Commissioner Lawrence J. O'Connor Jr. said the FPC doesn't deserve all the blame. That is no doubt true. He faulted pipeline companies for not being more careful in seeing to it that their customer commitments were adequately backed with gas reserves. He blamed the Department of Interior for being too restrictive in granting offshore exploration leases. He blamed the federal General Services Administration and state power commissions for constantly intervening in rate cases to demand lower prices.

Mr. O'Connor said the FPC should establish a new "pricing mechanism" to restore market stability. There is an alternative, though. The nation could reexamine the whole concept of federal regulation, which is in trouble on so many fronts. It might find that market forces could do a better job in most areas and that the idea of regulation ran out of gas even before the gas industry itself did.

CARGO THEFT—TIME FOR CONGRESSIONAL ACTION

Mr. WILLIAMS. Mr. President, yesterday and today, July 6 and 7, the Department of Transportation has been holding conferences designed to further examine the problem of cargo theft in the transport industries. This illicit activity is conservatively estimated to have exceeded $1.4 billion dollars nationally in 1970, an increase of at least 17 percent over 1969 figures. I naturally welcome any new initiatives designed to reduce the proportions of this crime, a type of larceny which has proven so lucrative to organized criminal elements in particular. However, I wish to remind my colleagues of the fact that there are some opportunities for immediate action on this problem which have been pending for quite some time, and which have already received the benefit of a great deal of discussion and legislative consideration. I am referring to two pieces of legislation, both of which have received congressional hearings, and which represent varying, but none-the-less compatible approaches to the cargo theft issue, S. 942, Senator BIBLE's proposal to establish a Commission of Safety and Security of Cargo, and Senate Joint Resolution 54, a resolution sponsored by the four Senators from New Jersey and New York to grant the consent of Congress to a bi-State compact aimed at combatting cargo theft.

Senator BIBLE's bill, which I have joined in cosponsoring both in the 91st Congress and in the present Congress, received hearings before the Senate Commerce Committee last year. It represents a broad based attack upon the overall problem of cargo theft through an analysis of the cause and prevention of cargo losses, and the establishment of a centralized loss reporting system so that the scope and extent of this activity can be gaged. Senate Joint Resolution 54, on the other hand, represents a direct effort to deal with the cargo theft at the airports in the New Jersey-New York metropolitan area through an extension of the authority of the existing waterfront commission to the air freight industry. It would provide for actual airport regulations concerning the security of air freight, the licensing of persons involved in air freight handling and the designation of certain air freight security areas of restricted access. In short, Senator BIBLE's bill is a more comprehensive, nationwide attack upon cargo thievery, while the bill sponsored by myself and Senators CASE, JAVITS, and BUCKLEY is a specific attempt to curtail the particularly acute losses which have occurred at the major metropolitan airports, Kennedy, Newark, and LaGuardia.

I support both approaches to this extremely difficult problem. Although there has been a tendency on the part of those who oppose extending the jurisdiction of the waterfront commission to the air freight industry to support S. 942 as a preferable alternative to Senate Joint Resolution 54, it should be emphasized that neither piece of legislation is exclusive of the other. In fact, they are complementary. Senator BIBLE's bill specifically stipulates the responsibility of State and local governments for stimulating measures to provide greater cargo security. Senate Joint Resolution 54, on the other hand, would provide sufficient flexibility so that it could conform to any subsequent Federal initiatives in the cargo theft area. It is however, an emergency measure, needed now to combat the heavy involvement of organized crime in the metropolitan area airports, an involvement graphically illustrated by the recent testimony, before Senator JOHN MCCLELLAN'S Subcommittee on Permanent Investigations, of Robert Cudak, a convicted felon who stole nearly $100 million in cargo while employed as a ramp man for a major airline. Mr. Cudak's testimony, as well as the findings of committee staff and law enforcement officials, point unquestionably to the heavy and systematic involvement of some major figures in organized crime in this highly lucrative racket.

Estimates as to the extent of the theft vary widely, due to the fact that many thefts go unreported or are not recorded due to uncertainty as to where the thefts took place. The value of cargo stolen at John Fitzgerald Kennedy Airport alone rose from $45,000 in 1963 to over $3.3 million in 1969. It has been claimed by industry spokesmen, in defense of their proposals for self-regulation and in opposition to Senate Joint Resolution 54, that the total value of goods stolen declined to $1.5 million in 1970. However, grave doubts as to the accuracy of the figures exist, and certain discrepancies have been brought out during the course of recent testimony before Senator MCCLELLAN'S subcommittee.

In any event, the number of thefts at Newark airport in New Jersey rose still further in 1970 and the extent of cargo loss remains clearly unacceptable. It is a loss which is almost certainly passed on to the consumer in the form of higher rates of tariff, soaring insurance costs, and in many cases, the immeasurable loss of valuables that are not insured or are of sentimental value.

The State Legislatures of New Jersey and New York have both given their approval to this legislation by substantial margins in the past, and both Governor Cahill, of my State, and Governor Rockefeller, of New York, have enthusiastically endorsed this legislation. It is a measure which has received wide support from both political parties in the State legislatures. The same legislation was introduced simultaneously in the House of Representatives by all 15 New Jersey Representatives and 25 Representatives from New York. With such overwhelming

support from the duly elected representatives of both States, Congress should not stand in the way. Only congressional consent is required. The expenses involved will initially be appropriated by the States and will eventually be furnished by those licensed by the new commission, to be known as the Waterfront and Airport Commission of New York and New Jersey. This resolution is now pending before the Senate Judiciary Committee. Last year, it was reported favorably from the Senate Commerce Committee.

It is my earnest hope that there will be favorable action soon within both Houses on this urgently needed legislation. We must countenance no further delay in correcting the present situation whereby huge losses due to cargo theft are substantially passed on to the airline user and consumer, and the stranglehold obtained by organized crime over certain parts of the air freight industry begins to jeopardize the job security of the rank-and-file airport worker.

ANALYSIS OF THE VIETCONG PROPOSAL

Mr. DOLE. Mr. President, the editorial page of the Saturday, July 3, Washington Star contained a thoughtful analysis of the most recent proposal put forth at the Paris negotiations by the Vietcong. This editorial concisely separated the wheat and chaff of this latest ploy by the North Vietnamese and the NLF, and it also suggested some realistic and responsible ways in which the administration and concerned Americans might react in the context of current domestic and international realities.

This commentary merits wide consideration. I ask unanimous consent that it be printed in the RECORD.

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

[From the Evening Star, July 3, 1971]

THE VIETCONG'S INITIATIVE

The seven-point "peace plan" presented at the Paris talks on Thursday by the chief negotiator of the Viet Cong amounts in its totality to an American capitulation in Southeast Asia and is, therefore, unacceptable as a package. It does, however, afford the basis for negotiations and President Nixon should not dismiss it out of hand.

The unacceptable aspects of the proposal call for the hasty withdrawal of all American and allied troops without any concomitant withdrawal of North Vietnamese forces, the ouster of the Thieu-Ky regime in favor of a "peace" government in which the Communists would participate, the termination of American support to Saigon, the release of all political prisoners held by the South Vietnamese and the acceptance by the United States of "full responsibility" for all war damage to both North and South Vietnam.

What is new and positive is that, for the first time, the Communists have stated that, if the United States agrees to withdraw all its forces by the end of the year, the American prisoners of war held in North and South Vietnam (but not in Laos or Cambodia) will be released on a timetable tied to the return home of U.S. troops, and that both processes will be completed on the same date.

Thus there are grounds for optimism but such optimism must be extremely guarded. The real question is to what extent the Communists are willing to separate the related issues of American troops and prisoners from that of South Vietnam's political future.

Mr. Nixon rightly has pledged himself not to make any deal which would result in automatically condemning 17 million South Vietnamese to Communist tyranny, and the Viet Cong "peace plan," if accepted as a whole, would do just that. Nor can it be known at this point if the proposal has goals other than to further divide U.S. public opinion and to worsen relations between Washington and Saigon prior to next month's South Vietnamese legislative elections.

There is reason to believe that the Communist initiative is the fruit of tortuous probing by Mr. Nixon and that it was not unexpected. Which is precisely why we urged in these columns last Sunday that the Mansfield Amendment, which would have tied the President's hands in regard to a timetable (and which since has been rejected by the House), should be defeated. By the same token, the threat on the part of Senators McGovern and Hatfield to reintroduce legislation forcing an American withdrawal by the end of the year if the President does not accept the Viet Cong initiative is mischievous and unhelpful.

There are unlikely to be any dramatic announcements within the next day or so, nor should there be. Ambassador Bruce will have ample opportunity to probe the Communist offer at next Thursday's session of the Paris talks. And the presence in Paris very shortly of presidential adviser Henry Kissinger will afford the chance for secret discussions between him and Le Duc Tho, the powerful North Vietnamese politburo member who recently returned to that city.

Talk now of "having the boys home by Christmas" is premature and dangerous. But there is room for hope that the President's negotiators may be able to reach a reasonably just compromise with their Communist counterparts. And that is a task that can better be accomplished with less advice from the sidelines.

U.S. RELATIONS WITH CHINA

Mr. FULBRIGHT. Mr. President, the Committee on Foreign Relations recently concluded 4 days of hearings on pending legislation proposals dealing with U.S. relations with China.

These hearings were televised live and in their entirety by the eastern educational network. Each of the four evenings a 1-hour summary with special commentary was televised in most of the country via 90 public television stations.

I think these stations particularly WETA in Washington, which originated the telecasts, are to be commended for this public service. We were privileged to have a number of excellent witnesses at the hearings and through public television people across the Nation had an opportunity to see firsthand the discussion of this vital foreign policy question.

With very limited resources, public television is making an effort to bring to the American people quality programing and coverage of significant events. I believe public television can make a real contribution to education, in its broadest sense, and I hope that it will receive the support it deserves.

NEW RIGHTS, RESPONSIBILITIES FOR TENNESSEE 18-YEAR-OLDS

Mr. BAKER. Mr. President, the Supreme Court of the United States, the Federal Congress and the Tennessee General Assembly have, within recent months, each taken actions that extend major new rights to Tennesseans who are 18 or more years of age. Because of the significance of these rights—and especially because of the importance of concurrent new responsibilities which younger Tennesseans also now have for the first time—I am making available a summary of the recent changes in the law so that they may be better understood.

I ask unanimous consent that my summary be printed in the RECORD.

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

TODAY IN TENNESSEE

[A Special Edition of "What's Happening in Washington, D.C.," June 1971]

AS A HIGH SCHOOL SENIOR

You either have, or soon will reach the magic age of 18—you will soon be acquiring your Age of Majority, for on May 11, 1971, Tennesse became the third state in the union to grant full legal rights to all persons over the age of 18.

I am proud of Tennessee for taking this action, and I am pleased that you will soon be sharing with me the full legal rights and responsibilities of a citizen of our state. I believe you and your generation are ready to assume full citizenship at the age of 18, and I am anxious to do everything I can to help each of you fully appreciate and exercise your new-found rights and responsibilities.

There are several things which the magic age of 18 will mean to you:

I. VOTING

You can now vote for the President of the United States, the Vice-President, and members of Congress. Your participation in state and county elections has not yet been fully resolved, but in all likelihood this right will be added in the not-too-distant future.

In order to exercise this right, however, you must go by your county's Election Commission Office, generally in the county Court House, and register to vote at least 30 days prior to an election. I suggest that you go by as soon as you reach the age of 18, so that you will not miss any elections. It only takes a few moments to register.

As soon as you register, you should decide how you can best participate in the democratic process of government. If you are a Democrat or a Republican, go by the office of your choice and ask them what you can do to help the party. If you are an Independent, pick a candidate who you can support, and then go by his office and volunteer to help in his campaign. And by all means do not underestimate the influence you can have on an election by your personal, determined efforts.

II. LEGAL CONTRACTS

Upon reaching the age of 18, you will be able to enter into any legal arrangement which is recognized in our legal system. However, this can be a two-edged sword, because you can now be sued if you break a contract. Therefore, you must now stand fully responsible for any contracts which you sign. This is a great right, but also a serious danger if you enter contractual arrangements carelessly.

III. MARRIAGE

Anyone in Tennessee over the age of 18 now has the right to marry without parental consent. This is certainly an important right, but with it comes an extremely important responsibility to yourself and to your prospective partner.

IV. ITEMS RESTRICTED FROM SALE TO MINORS

After you reach the age of 18, you will have the right to purchase anything which is legal for anyone to purchase in Tennessee. This right may be important to some, but it can be a burden if not handled with maturity.

You will also have the right to own property and the right to visit establishments that are not open to minors. On the other hand, you will have the responsibilities of paying taxes and of being tried as an adult for any violations of the law.

The above rights and responsibilities of an adult make one thing clear, the age of majority has not been 21 all these years as a punishment to young people. This age was set to protect anyone below that age from having to assume complete responsibility for himself. Now our state has decided, and rightly, that anyone over the age of 18 can assume complete responsibility for himself, and is therefore capable of assuming a role of full citizenship in our state and in our nation. This is the highest compliment our government can pay to you—to say "assume complete responsibility for yourself, and join us in directing the affairs of our nation."

We do not render this honor lightly—I must confess that we yield it with some concern—but we step forward because we truly believe that you are anxious to help carry the load. And we hold the firm conviction that you will be able to make a significant contribution to the tasks at hand. We do not relegate total responsibility, but we invite you to lend your youth, your energy, your creativity to the problems with which we wrestle, and which will so dramatically affect the world in which you will live.

I write to you as high school seniors because you are just at the point of assuming your new rights, and I wanted you to know of my interest and of my desire to be of help in any way that I can. If I or my staff can be of help to you by answering questions, providing information, or just by talking with you, please do call on us. My offices in Tennessee are:

Memphis, Room 390 Federal Building, Telephone 534–3861

Nashville, Room 716 U.S. Courthouse, Telephone 749–5129

Knoxville, Room 313 Post Office Building, Telephone 546–5486

Chattanooga, Room 204 Federal Building, Telephone 266–3151

Tri-Cities, Airport in Blountville, Telephone 323–6243

I woud also like to especially you to visit me if you are ever in Washington. (Room 2107 New Senate Office Building, Telephone 202—225–4944)

Congratulations on your high school graduation, and best wishes in your soon-to-be undertaken adventure into full citizenship.

Sincerely,

HOWARD H. BAKER, JR.,
U.S. Senator from Tennessee.

DEATH OF LOUIS ARMSTRONG

Mr. CRANSTON. Mr. President, I rise today to salute the memory of a man whose talent truly had a world following. I refer in a time of sadness, to the great jazz artist Louis Armstrong, who died yesterday.

Whether he was performing in night clubs, theaters, on television, or in films Louis Armstrong exuded that special blend of talent, charisma, and charm that ascends a person to stardom. As a roving ambassador of good will, Louis Armstrong made appearances all over the world, delivering a message of friendship from his nation to the people abroad.

Satchmo was one of a kind and he will be missed by all.

REVENUE SHARING

Mr. BAKER. Mr. President, the Subcommittee on Intergovernmental Relations is at present holding a series of hearings on the subject of general revenue sharing. Although I am no longer a member of that subcommittee, through the generous invitation of its chairman, Senator MUSKIE, I have been privileged to sit with the subcommittee during these hearings. I have been significantly encouraged by the spirit of constructive compromise that has characterized the sessions to date.

The Governors of several States have been among the witnesses to testify in support of the concept of revenue sharing. Although the Governor of my State of Tennessee, the Honorable Winfield Dunn, has not been able to appear personally, he has submitted a very thoughtful and concise statement that dramatizes the need for such legislation. I ask unanimous consent that the text of Governor Dunn's statement be printed in the RECORD.

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

STATEMENT OF WINFIELD DUNN, GOVERNOR OF TENNESSEE

I appreciate the opportunity to submit this statement for the record in support of H.R. 4187, the General Revenue Sharing Act of 1971.

The federal system as we know it consists of an effective partnership of governing authority between the federal government on the one hand and state and local units on the other. It is because of my sincere belief that the future of our Country interrelates to a large degree with our ability to preserve this partnership system that I welcome the opportunity to submit this statement.

As members of the Senate are well aware, federal assistance to state and local governments has increased at a rapidly accelerated rate during the last 20 years. In spite of this increase, as well as a dramatic growth in state and local tax collections, there has been no let-up in the intense fiscal pressure on states and their local entities, and every indication is that state and local expenditure demands will continue to rise sharply.

Because of progressive tax policies, federal revenues tend to increase at a rate faster than the growth of the nation's economy, and it is apparent that some form of additional federal assistance must be made available to state and local governments.

This leaves open the decision as to what should be the form of future federal aid. The problem which confronts the Congress is the establishment of the most efficient delivery system for this rapidly proliferating assistance. In my judgment, we should move away from almost total reliance on federal grant in aid instruments and establish a delivery system with a greater degree of flexibility.

The State of Tennessee has, during the current fiscal year, been allocated $419 Million of federal funds which must be matched with $160 Million of state money. This total figure of $579 Million represents 53% of the operating budget for the State of Tennessee during the current fiscal year. In other words, the federal government is determining the priorities and establishing the guidelines for more than half of the operating budget of Tennessee. It is my firm opinion that unless some flexibility is developed in the delivery system of federal assistance, the federal system as we know it will be destroyed.

I recognize that in the history of our Country there were times when state government was not responding adequately to the needs of the people. But I respectfully submit that this situation no longer avails. The State of Tennessee, as demonstrated by our record, is meeting her obligations to the people of the state. I am convinced that other states and localities are fulfilling their responsibilities to the very best of their ability. But there is a limit to our resources.

When I assumed the office of Governor on January 16, 1971, I examined with care the fiscal situation of our state and after carefully reviewing Tennessee's resources and its level of services, I estimated that in order to continue ongoing programs at their present level, we would need approximately $31 million in new revenue in addition to that obtained as a result of economic growth. In other words, if the Administration did not propose a single new or expanded program to the Tennessee General Assembly, we would still need $31 Million in additional taxes just to continue existing programming.

In addition, there were many services that the state was not providing that in my opinion were essential to the well being of the people of Tennessee. For this reason, I determined that Tennessee would need $95 Million in new revenue during fiscal year 1972, and the legislature responded by enacting $68 Million in additional taxes. This will permit us to continue existing programs and will also enable Tennessee to provide some new and expanded essential services.

The $68 Million tax inorease was the largest single tax increase in the history of our state, but the fiscal pressure confronting Tennessee state government continues unrelenting.

If state and local governments are to continue to perform the bulk of essential civilian services for our citizens, then we must have additional assistance from the federal government. And if the federal system as we know it is to survive, then this assistance must come in the form of general federal revenue sharing.

General federal revenue sharing is the only program that has been advanced that will provide fiscal relief to the states and their local entities and that will at the same time reinvigorate and revitalize our federal system.

I have heard it said that revenue sharing is in reality "debt sharing." The people of Tennessee have invested heavily in every financial obligation of the United States Government. It is inconsistent, in my opinion, to isolate revenue sharing as "debt sharing" while considering other heavy investments in a different light. Tennesseans share in the investments or debts for moon exploration, highway construction, welfare assistance, Viet Nam, and many other programs. We are now ready to share in the return of our tax dollars to Tennessee.

For these reasons, I urge the enactment of the General Revenue Sharing Act of 1971.

NEW WHITE HOUSE OFFICE FOR DRUG ABUSE PREVENTION

Mr. PERCY. Mr. President, an announcement of major significance was made during the course of the hearings this morning before a joint session of the Subcommittee on Executive Reorganization and the Subcommittee on Intergovernmental Relations convened to consider S. 2097 which I have introduced on behalf of the administration and S. 1945 which Senator MUSKIE has introduced. Both bills would create a new White House Office for Drug Abuse Prevention.

48-059 O - 72 - pt. 18 - 35

Deputy Secretary of Defense, David Packard, appearing as part of a panel along with Attorney General John Mitchell and HEW Secretary Elliot Richardson, announced the issuance of a new memorandum, effective today, related to the rehabilitation of drug users in the military. Emphasizing the need to encourage GI's to submit themselves voluntarily for treatment of drug abuse problems, the memorandum stated in part:

A military member may not be subject to disciplinary action under the Uniform Code of Military Justice or to administrative action leading to a discharge under other than honorable conditions for drug use solely because he has volunteered for treatment under the Drug Identification and Treatment Program of the Department of Defense.

Of equal importance and consistent with President Nixon's comprehensive drug message to the Congress of 3 weeks ago which stressed the importance of regarding addicts as persons who should be rehabilitated rather than punished, Mr. Packard informed the joint session that this policy would be implemented retroactively. This is to say, consent with principles of equity and justice, the records of former servicemen who were discharged from the military under less than honorable circumstances due to drug related problems will be reviewed in accordance with the principles of the above-stated policy. Discharges that were less than honorable will be made honorable if the sole reason for the less than honorable discharge was the fact that the serviceman was drug dependent.

Mr. President, I do not think it is necessary to detail the hardship that can be caused by a serviceman's discharge having been anything less than honorable. That stigma remains with him for life, and can grievously affect his vocational opportunities and his personal and family life.

While years of suffering can not be undone, hopefully, this new policy pronouncement will relieve literally thousands of ex-servicemen from future anxiety and frustration occasioned by a former affliction that was wrongly treated as a crime.

I commend the Department of Defense on the enlightened policy of amnesty and I ask unanimous consent that the full text of Deputy Secretary Packard's memorandum be printed in the RECORD. I also ask that excerpts from the highly informative and valuable testimony of Mr. Packard, Attorney General Mitchell, and HEW Secretary Richardson be printed.

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

WASHINGTON, D.C., *July 7, 1971.*

Memorandum for Secretaries of the Military Departments, Chairman, Joint Chiefs of Staff.

Subject: Rehabilitation of Drug Abusers.

Consistent with guidance from the President of the United States, it is the policy of the Department of Defense to encourage military members to submit themselves voluntarily for treatment and rehabilitation under the Drug Identification and Treatment Program of the Department of Defense.

Accordingly, evidence developed by, or as a direct or indirect result of urinalyses administered for the purpose of identifying drug users may not be used in any disciplinary action under the Uniform Code of Military Justice or as a basis for supporting, in whole or part, an administrative discharge under other than honorable conditions. Similarly, a military member may not be subject to disciplinary action under the Uniform Code of Military Justice or to administrative action leading to a discharge under other than honorable conditions for drug use solely because he has volunteered for treatment under the Drug Identification and Treatment Program of the Department of Defense.

This policy does not exempt military members from disciplinary or other legal consequences resulting from violations of other applicable laws and regulations, including those laws and regulations relating to the sale of drugs or the possession of significant quantities of drugs for sale to others, if the disciplinary action is supported by evidence not attributed to a urinalysis administered for identification of drug abusers and not attributable solely to their volunteering for treatment under the Drug Identification and Treatment Program of the Department of Defense.

This policy is effective immediately and steps should be taken to insure its complete understanding and immediate compliance within the Armed Forces.

DAVID PACKARD,
Deputy Secretary of Defense.

STATEMENT OF HON. DAVID PACKARD, DEPUTY SECRETARY OF DEFENSE

The Department of Defense welcomes the opportunity to participate in this new Presidential initiative to solve this very serious national problem. The Department of Defense has been concerned with the problem of drug abuse for some time, and has taken a number of actions in the past designed to cope with this problem.

During 1970 and 1971 the Department has increased its attention to this problem and a number of steps have been taken to deal with drug abuse in the Military Services. As we have addressed this problem over the past two years, it has become abundantly clear that this is not a problem of the military alone; it is not a problem in Viet Nam alone. Drug abuse is a problem of our entire society, particularly of the young in our society. While there are serious symptoms of this drug problem in the military in Viet Nam, there are also serious symptoms among the young people outside the military in the United States.

We consider it our responsibility in the Department of Defense to identify, to the extent we are able, every user of hard drugs in the Military Services. We propose to do what we can by way of treatment for those users we can identify while they are in the Service. We are eager to cooperate with all interested agencies to help provide for the care and treatment of users when they are identified as they leave the Service and go back to the civilian society.

More than four years ago the Department of Defense convened a task force to investigate drug abuse among members of the military departments. The findings and recommendations of that task force resulted in a definitive defense policy on the illegal or improper use of drugs in the Armed Forces. That policy emphasized preventive drug abuse education and enforcement procedures. Accordingly, mandatory drug abuse education programs for all military members have been required in the Department of Defense since February 1968.

In addition, special drug orientations are required for our members prior to their departure for overseas areas.

In March 1969 the 4th Infantry Division in Vietnam initiated one of the first voluntary treatment program in the military services. The U.S. Army, Vietnam, adopted the concept in October 1969.

In July 1970 the Secretary of Defense again convened a high-level task force to reexamine drug policy and programs to recommend appropriate policy revisions. That task force's recommendations resulted in a new Department of Defense policy on drug abuse which was issued in October 1970. Voluntary treatment programs and rehabilitation were encouraged throughout the military departments.

Despite these initiatives and expanded actions to combat the drug problem, the use of drugs in the Armed Forces has continued to increase. The use of hard narcotics increased from .67 individuals per 1,000 investigated in 1969 to 1.29 in 1970. In Vietnam the increase was from .59 in 1969 tc 2.06 per 1,000 investigated in 1970. The number of hard drug users identfiied in 1971 indicated a continuing increase over 1970 not only in Vietnam but world-wide. I am certain that our statistics are not yet sufficiently reliable to accurately measure the problem but they do show some very troublesome trends. We know we have a very large and serious problem to deal with and we have not been dealing with it in a satisfactory manner. As part of the Presidential initiative we are mounting an additional all-out effort to attack the problem.

The first additional action we are taking is to test every service member departing Vietnam to determine whether he has been using heroin. The second is to increase the inspection of mail and package delivery both into and out of Vietnam and to identify and eliminate the channels through which the hard drugs are obtained. The third action is to establish expanded programs for detoxification and follow-on treatment for every user we identify. While the initial emphasis of these programs is Vietnam, they are already being expanded world-wide.

Testing for identification of service members departing Vietnam who are using heroin has commenced. When so identified they are referred for immediate detoxification in-country before returning to the United States. Thereafter they are given follow-on treatment in the United States. Such programs will be broadened by the military departments to ultimately identify and treat all members world-wide who are dependent on drugs.

I am distributing today a new memorandum related to Rehabilitation of Drug Users, which stresses the need to encourage military members to submit themselves voluntarily for treatment.

It has become increasingly apparent that the problem of drug abuse is national in scope. It is not simply a problem of the military, or of the civilian sector, or of a particular locality. It has staggering proportions and its solutions are complex. It requires overall planning and direction as well as marshalling of the resources of the Federal Government if we are to effectively meet the problem.

We believe that the Special Action Office for Drug Abuse Prevention will provide an excellent means to coordinate activities on a government-wide basis and to assure that Federal resources are actively marshalled in an all-out attack on this troublesome problem. I strongly urge the Congress to act favorably and promptly on the President's proposal.

STATEMENT OF ATTORNEY GENERAL JOHN N. MITCHELL

Dependence on drugs for a person of any age is a personal tragedy. But with thousands of Americans under the age of twenty-one addicted to drugs, and with the number increasing at an alarming rate, that dependence evidences much more than a series of

personal tragedies—it evidences, in the President's words, a national emergency.

The individual addicts and their families are not the only ones who suffer from the traffic in illicit drugs. The debilitating effect on society occasioned by the loss of the constructive contributions of so many of the next generation of our nation's leadership is not the end of the problem. Addicts feed their destructive habit with acts of destruction. There is no doubt that the increase in the number of drug addicts is reflected in the increase of street crimes and of burglaries and of prostitution.

As you know, the President has recently asked the Congress to enact legislation to implement his plan to provide a coordinated Federal response to this grave situation, and that legislation, S. 2097, is before you today. We are here to discuss what is presently being done within the government and what we hope to achieve through this new effort.

In 1968, the Federal drug abuse control activities were unified within the Department of Justice. By Reorganization Plan No. 1 of 1968, the Bureau of Narcotics of the Department of the Treasury and the Bureau of Drug Abuse Control of the Department of Health, Education and Welfare were transferred to the Department of Justice.

The Plan created, as the primary drug law enforcement agency, the Bureau of Narcotics and Dangerous Drugs. This Bureau was given enforcement authority for control and regulation of narcotics and dangerous drugs. And, at the same time the Narcotic and Dangerous Drug Section was formed in the Department's Criminal Division to provide a more effective prosecutive effort in narcotics and dangerous drug cases.

Our law enforcement efforts were greatly enhanced by the passage last year of the Drug Abuse Prevention and Control Act.

To complement this legislation the Department of Justice assisted in the drafting of a model State drug control law to provide a comprehensive national approach to drug abuse prevention. Nineteen States have enacted this law already and we expect action by another 12 in the next year. Also, we are—through BNDD—cooperating with State and local law enforcement agencies.

As the President pointed out in his recent drug message, the "laws of supply and demand function in the illegal drug business as in any other." Since the great majority of the drugs which lead to addiction are imported into this country, the "supply" must be attacked on an international as well as a national scale. The Department of Justice is primarily concerned, of course, with the "supply" side of the drug problem.

We are hopeful that our efforts to reduce illegal importation of drugs will soon show a real impact on the American drug problem. In 1970 we entered into an agreement with Mexico and early this year with France to assist in the eradication of the international drug traffic. Just last week Prime Minister Erim of Turkey issued a decree to ban production of opium in that country. We anticipate that others will also join in our struggle to combat widespread addiction.

As to the overall efforts of the Federal government on this "supply" side of the drug effort, I am satisfied that it is effective and well coordinated. The Department's units, including the Immigration and Naturalization Service, work closely with the Bureau of Customs and other agencies involved in the investigation of offenses which may involve drugs, such as the Postal Inspection Service. As Attorney General, and pursuant to Presidential directive, I am working with the Secretary of State in our efforts with other countries.

The Department's involvement in the "demand" side of the drug problem is through our responsibilities related to the operation of the Narcotic Addict Rehabilitation Act of 1966, commonly referred to as NARA. Under the terms of that Act, certain persons who are charged with Federal crimes, and who are addicted to drugs, may be committed for treatment in lieu of being prosecuted. Also, some addicts may be eligible for Federal commitment on a voluntary basis if there are no State or local facilities available to provide them with treatment.

The Narcotic and Dangerous Drug Section of our Criminal Division maintains a close working relationship with the Narcotic Addict Rehabilitation Branch of the National Institute of Mental Health with respect to the day to day operations of NARA.

Under the Act, government prosecutors are involved only to the extent that they receive petitions for voluntary commitments and certify the lack of available State or local facilities, and, in cases of commitments in lieu of prosecution, they participate by preparing the various forms and court orders required and by maintaining close contact with the National Institute of Mental Health regarding the addict's progress and prospects for rehabilitation.

Pursuant to Title II of NARA, more than 800 addicts who have been convicted of Federal offenses were committed for treatment in institutions rather than being sentenced to conventional prison terms.

Some offenders are not eligible for the NARA program because of the nature of their offenses. Therefore, a sizeable number of our prison population with a history of narcotic addiction or drug abuse is not treated in that program. Of the 21,000 inmates in Federal prisons over 4000 have reported drug use. Most of these are under thirty years, of age.

In response to this problem, a Drug Abuse Program similar to the NARA effort has been established at two United States penitentiaries and three other units are planned.

While the rehabilitation of drug abusers is primarily a State and local responsibility, the Federal government should provide financial assistance to their efforts. To this end, we are supporting drug programs through the Law Enforcement Assistance Administration.

While the bulk of LEAA funding is done through block grants to States, some funds are available for distribution by LEAA as discretionary grants. Last year, LEAA designated a portion of these funds for narcotics control programs and 13.3 million dollars were granted for this purpose. This is in addition to the block grant funds being channeled into this area by the States. A review of the State plans for the use of their block grants indicates that 16.8 million dollars were expended on drug projects.

I feel we are making progress. I know that the Special Action Office of Drug Abuse Prevention, which the President has proposed can strengthen our efforts and accelerate our progress.

STATEMENT OF THE HONORABLE ELLIOT L. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

As the President noted, the drug problem "has assumed the dimensions of a national emergency." Awareness of this emergency has now become national as well. An increasing number of people in many parts of the country are becoming addicted to narcotics. Abuse of amphetamines, barbituates, and hallucinogens gives us additional cause for very serious concern.

Many parts of our Department have been at work to reduce the distress and waste visited upon anguished individuals, their families and their society by dependence on drugs. There is urgent need for coordinating our activities at HEW with those of other federal agencies.

To provide this coordination, the President has recommended the establishment of a Special Action Office for Drug Abuse Prevention. He has proposed that the Director of that Office shall provide overall planning and policy guidance and shall establish objectives and priorities for all Federal drug abuse training, education, rehabilitation, research, prevention, and treatment programs. I believe that favorable action on the President's request will substantially improve the effectiveness of national efforts to combat drug abuse.

DRUG ABUSE ACTIVITIES OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

I would like now to summarize for you the major activities of my Department which relate to drug abuse. Four components are responsible for them: the Health Services and Mental Health Administration—particularly through the National Institute of Health, the Office of Education, the Social and Rehabilitation Service, and the Food and Drug Administration.

NATIONAL INSTITUTE OF MENTAL HEALTH

In addition to its role as the Department's "lead agency" for drug abuse activities—(a function which I shall describe later)—The National Institute of Mental Health provides support for a wide variety of treatment and rehabilitation programs in all parts of the country. Where community mental health centers are already in operation—at present, they cover areas with 30% of the population—comprehensive drug addiction treatment programs can be most effective if they are built into these mental health centers. In all cases, the narcotic addiction programs are closely inter-related with other health, mental health, vocational rehabilitation and social service programs. In the just-concluded fiscal year NIMH spent slightly more than $26 million on grant and contracts for such purposes.

Another major—and critical—activity of NIMH is the search for new knowledge relating to the causes, prevention and treatment of narcotic addiction and other forms of drug abuse. In recent years a vigorous program of marihuana research has been mounted to clarify many of the uncertainties surrounding this substance. Major studies also are underway evaluating the effectiveness of various treatment modalities—including methadone and other narcotic antagonists. In FY 1971 close to $18 million was awarded in grants and contracts to scientists in universities and research centers throughout the country. Moreover, significant studies are being conducted by the NIMH staff in its own research facilities here in Washington and at the Addiction Research Center in Kentucky.

In addition to supporting treatment and rehabilitation programs and funding research activities, NIMH also carries on drug abuse education and information activities, as well as major efforts to train professional and nonprofessional personnel for work in the drug abuse field.

OFFICE OF EDUCATION

Our schools clearly are ideally suited for the development of broadly-based and effective programs on drug abuse. However, the development of such programs cannot occur unless a variety of teaching materials and curricula are made available and—most importantly—unless teachers receive special training to enable them to be effective in the drug abuse education field.

The Office of Education is responsible for the National Drug Education Training Program, funded in the amount of $6 million in FY 71. This Program trains school personnel, particularly teachers, in the fundamentals of drug education, and aims at reaching every school district in the Nation during the coming school year. In February of last year, the Office of Education, in cooperation with NIMH, The Bureau of Narcotics and Dangerous Drugs, and The Office of Economic Opportunity, conducted a curriculum review from a nationwide survey of drug education

curricula. Outside experts and young people assisted in that review. From it, ten curricula were selected for placement and distribution as samples in the National Clearinghouse for Drug Abuse Information, eight of which are now being disseminated by the Clearinghouse. The review of promising new drug education curricula will be an ongoing concern of the Office of Education.

SOCIAL AND REHABILITATION SERVICE

Vocational rehabilitation—particularly in the form of job training—is an essential component of treatment programs for narcotic addicts. Many narcotic addicts have not been gainfully employed during their addiction. Unless they can be assisted to obtain jobs, there is little likelihood that they can be successfully rehabilitated. Rehabilitation counselors in state and local rehabilitation agencies can play a key role in community-based treatment programs for narcotic addicts. Emphasis needs to be placed on group collaboration between these counselors and the staff of narcotic addiction treatment centers. In the absence of such collaboration, the likelihood of successful treatment is greatly reduced.

As the Federal partner in the State-Federal program of vocational rehabilitation, the Rehabilitation Services Administration provides fiscal support and technical assistance to State rehabilitation agencies. The State agencies in turn provide rehabilitation services to physically and mentally disabled people, including the drug abuser, to assist them in becoming gainfully employed. In 1969, there were 564 rehabilitants from this disability category, 800 in 1970 and over 1,000 in 1971.

The Federal expenditure by the Rehabilitation Services Administration in FY 1971 for rehabilitating drug abusers was $1,834,000. Of this amount, approximately $1.5 million was channeled to State rehabilitation agencies under the basic support grant program mentioned above. The remaining monies were used for innovation, expansion, and New Careers projects in drug abuse.

FOOD AND DRUG ADMINISTRATION

In his recent address to the American Medical Association, the President called attention to the "link which exists between the inappropriate use of drugs within the medical context and the abuse of drugs outside that context." He further emphasized that within the last four years the production and distribution of tranquilizers has doubled. During the last year close to one-third of all adult Americans used either a tranquilizer, amphetamine or barbituate. Because of this widespread use—and the considerable misuse—of prescription drugs the activities of the Food and Drug Administration are of special importance.

The FDA is responsible for assuring that prescription drug labeling and advertising for tranquilizers, analgesics, sedatives and stimulants accurately reflect the drug dependence characteristics of these drugs.

The FDA is also responsible for determining the safety and efficacy of methadone and other drugs used for investigational programs.

In developing treatment and preventive programs, the Department has emphasized four basic principles:

1. promoting community-based treatment and rehabilitation rather than relying on large institutions distant from the drug abusers home community;

2. providing in the community multimodality rather than single-modality treatment programs to meet the varied needs of different types of drug abusers;

3. wherever possible, building treatment and preventive services into existing health, mental health, social service and educational systems—in all cases ensuring appropriate linkage between service units so that continuity of care and maximal utilization of scarce resources are promoted; and

4. including evaluation of treatment and preventive activities as part of activities all supported by the Department's programs.

These same four principles were emphasized by the President in his June 17th message to Congress. They also, I believe, express the philosophy of Dr. Jerome Jaffe whom the President has chosen to provide leadership for the national crusade against drug abuse.

ROLE OF THE DEPARTMENT "LEAD AGENCY"

Because narcotic addiction and other types of drug abuse often are deeply intertwined with medical, psychological, social, economic and vocational problems, a wide range of services must be involved in treatment and preventive programs. This requires planned and coordinated action by many different components of the Department. To ensure that this occurs we are utilizing a Departmental "lead agency." I have designated the National Institute of Mental Health—a component of the Health Services and Mental Health Administration—as the lead agency for all of the Department's drug abuse activities.

In its role as the lead agency NIMH assists each relevant unit of the Department to: (1) identify its appropriate role in the drug abuse area and (2) coordinate and plan its activities with those of other components of the Department. NIMH is a central source of information on all Departmental programs for the Secretary, it advises the Secretary concerning the classification of controlled drugs, and it acts as a clearinghouse for all legislative developments in the drug abuse field.

Other NIMH responsibilities relate to organizations outside the Department. Particularly important to the states and communities is the assignment to NIMH of responsibility for coordinating the provision of technical assistance and consultation. This will ensure that there is one place within this very large Department which can rapidly—and accurately—supply information regarding the numerous sources of support for drug abuse programs that are available from HEW. The Comprehensive Drug Abuse Prevention and Control Act of 1970, P.L. 91-513, assigned to NIMH the coordination of all Federal programs in drug abuse education and prevention. NIMH also has the responsibility to ensure that the Department is represented in its collaboration with other Federal agencies such as the Department of Justice, the Department of Defense and the Veterans Administration.

NEED FOR IMPROVED FEDERAL COORDINATION

In sum, we believe that using the lead agency mechanism enables us to make excellent progress in planning and coordinating the various Departmental activities to which I have briefly alluded. But that same progress cannot be said to typify the coordination of our plans and programs with those of other Federal agencies.

The presence of the Attorney General, Deputy Secretary Packard, and myself this morning not only emphasizes the President's concern with the grave and vexing national problem of drug abuse, it also demonstrates our desire to assure that the drug abuse activities for which we are individually responsible complement each other in the most effective way.

While our departments are the ones most deeply involved in drug programs, there are, altogether, nine Federal agencies involved in one way or another with the problems of drug addiction. In such a situation, overall Federal efforts are fragmented and Federal resources dispersed. This in turn means that our profound national concern with drug abuse has no corresponding institutional focus.

It is this deficiency that the President seeks to remedy with his proposal for a Special Action Office for Drug Abuse Prevention.

The Office will have overall Federal responsibility "for all major Federal drug abuse prevention, education, treatment, rehabilitation, training, and research programs in all Federal agencies." It would establish priorities for Federal programs and evaluate program performance. Consequently, the Special Action Office will provide the mechanism with which the programs of my department and of all Federal agencies can contribute their fullest measure to solving this urgent national problem. I join the Attorney General and Deputy Secretary Packard in urging prompt and favorable consideration of the President's proposal.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

A $4 BILLION F-14 OVERRUN SEEN

Mr. PROXMIRE. Mr. President, it has been an interesting year for the F-14.

Early this year there were press reports of a $700 million to $2 billion overrun for a 710 aircraft program. Then Grumman Aircraft Corp., manufacturer of the F-14, indicated in a letter to the Navy that it would probably be unable to perform under the terms of the existing contract. Teams of Government auditors descended on the Grumman plant, and a short time later the House Armed Services Committee cut all F-14 production funds from the fiscal 1972 budget. Now Secretary Packard has asked the Senate to restore those funds, admitting that he himself does not know at this point how they would ultimately be spent.

SECRETARY PACKARD'S REQUEST

The issue for the Senate to decide is whether it should honor Secretary Packard's request.

On the surface, the request has some attraction to it. Surely it is important, if there are to be bailout negotiations and ultimately a restructured contract, to put the Government in the strongest possible bargaining position. If Grumman is let off easy, other contractors will not be deterred from getting in the same position. And unless the Navy is provided with funds with which to purchase 48 production aircraft in fiscal 1972, the Navy rather than Grumman will default on the existing contract.

But whether there should be a bailout under any terms—whether it makes any sense at all to continue with the F-14 program—is an entirely different question.

The F-14 has long been regarded by many defense experts as a very marginal system, the main function of which is to provide defense for aircraft carriers under conditions where their survivability—with or without the F-14—is seriously open to question. None of these experts have ever questioned the need for some aircraft carriers and capable

aircraft to go with them. But they have felt all along that other alternative aircraft offered far better value for the dollar.

Before we proceed further with this marginal system, we should certainly find out what we are in for if we do. What are the ultimate long-term costs really likely to be if we continue? And what portion of those costs can Grumman rather than the Government reasonably be expected to bear?

Precise answers to such questions are not possible. But reasonable approximations are. Surely defense analysts who can estimate accurately the expenditures of the Soviet Union on all its development programs can do the same for one of ours.

CONCLUSIONS CITED

The purpose of my remarks today is to set forth the results of my own investigation into the cost status of the F–14 program.

I have attempted to be realistic in judging the problems which lie ahead, but my conclusions are sure to be attacked. I have therefore written to the General Accounting Office for an evaluation of my conclusions and the reasoning on which they are based.

It is my belief that it would cost the Navy from $18 to $20 million per copy to purchase the 301 production F–14's which it presently plans to buy through fiscal 1975. Contrasted to the $11.5 million cost per copy long touted by the Navy, this means a cost overrun of roughly $6 to $8 million per copy and $2 to $2.6 billion in total to purchase these planes alone. Given these huge increases, a larger total buy is most unlikely. If such a buy were made, unit costs would no doubt decrease but the total overrun would steadily rise. It could approach $4 billion for a 710 aircraft buy. That would be double the overrun on Lockheed's C–5A.

If these figures are accurate, we would only be deluding ourselves to suggest that Grumman and not the Government would have to foot the bill. Many of these increases, as I shall explain later, are not the responsibility of Grumman in the first place. Even to the extent they are, however, Grumman is a small company, at least compared to Lockheed and other aerospace giants. Its net worth is only $180 million. If Lockheed could absorb without bankruptcy only a $200 million fixed loss in a tough settlement on the C–5A, a tough settlement with Grumman would probably yield no more than a $100 million loss at best. And the rest of the tab would be taxpayer responsibility.

If these figures are accurate, they mean also that the relative merits of alternative fighter options have been drastically revised. If the F–14 was a marginal system at $11.5 million each, at $17 to $20 million it is a lemon, pure and simple. We would do much better to meet our interim needs for carrier-based fighter aircraft with an improved version of the F–4 and to begin work anew on an F–4 successor. Secretary Packard's proposal to give several contractors prototype development funds, which they could use subject to minimally necessary restrictions, might be a good way to find one.

THE PROBLEM IN DEPTH

It is time, however, to go behind these final figures and to look at the manner in they were derived.

The F–14 contract was awarded to Grumman in February 1969. Under the terms of the contract, Grumman and subcontractors of its choosing were responsible for the airframe of the new plane, accounting for approximately 50 percent of the total costs involved. The other major subsystems of the plane were to be contracted for by the Government and made available to Grumman as Government-furnished equipment. The most important of these subsystems are the engines for both the A and B versions of the plane, contracted to Pratt & Whitney, and the AWG–9 fire control system, a Hughes Aircraft development project.

As will be seen, the troubles now plaguing the F–14 program are not confined to any single portion of it. They run the gamut—from the airframe to the engine to the avionics.

THE PROBLEM AT GRUMMAN

The most heavily publicized problem facing the F–14 has been the problem at Grumman itself. According to the company, the effects of inflation and a declining business base have combined to raise its costs to such an extent that it would lose vast sums under the terms of the existing contract. This argument is worth exploring for a moment.

Grumman has indicated, with respect to inflation, that its original cost estimates were predicated on an assumption that labor costs would increase at 3 percent and materials costs at 2 percent annually, for a composite inflation factor of 2.5 percent. Yet actual experience to date, the company maintains, shows a 5-percent composite inflation factor. The cumulative dollar costs of inflation for the next four production lots—lots IV–VII, funded in the fiscal year 1972–75 budgets—are now estimated by Grumman at $103 million, according to Navy testimony to the House Armed Services Committee.

But the bulk of its problems are attributed by Grumman to a "decline in the business base." This decline is not documented in any detail. The inference, however, is that Grumman is experiencing a phenomenon allegedly widespread throughout the aerospace industry today. As its total business has declined, its overhead has not decreased proportionately, with the result that the F–14, as the company's major program, will have to pick up an increasing percentage of the total overhead costs.

It is Grumman's position that the Government should respond by rewriting the F–14 contract. According to company president L. J. Evans, as quoted in the June 12 edition of Business Week:

> I refuse to get into this idiocy of trying to forecast what will happen in 1978. [The result is] absurd contracts in which you deceive not only yourself but the public as well.
>
> Our position is a very simple one. No plane can meet the Russian fighter threat in the 1970's and beyond as well as the F–14. If it proves to be a good quality product, then we will insist on a fair price that will continue to return us a fair profit. If the plane does not live up to expectation, then it should be terminated.

GRUMMAN STORY DECEPTIVE

My own investigation leads me to the conclusion that the public has indeed been deceived with respect to the F–14 problem. The cause of the deception lies less with the viability of the original F–14 contract, however, than with Grumman's explanation of its problems.

The following tables illustrate those problems rather clearly. They are comprised of unclassified data furnished by Grumman in recent months to the Pentagon and other sources. The purchases cover the 12 development and 301 production aircraft now scheduled by the Navy through fiscal 1975. The amounts shown cover airframe costs only. The first table presents a comparison of Grumman's cost estimates at the time the existing contract was signed and the costs estimated by the company today. The second table breaks down into constituent elements the cost data shown in table 1. I ask unanimous consent to have these tables printed in the RECORD at this point.

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

TABLE I.—F–14A, CONTRACT VERSUS CURRENT ESTIMATES, COSTS AND CEILINGS

[Dollars in millions]

		February 1969 contract				Current estimate			
			Margin [1]				Margin		
	Quantity	Estimated cost	Percent	Dollars	Ceiling	Estimated cost	Percent	Dollars	Ceiling
I	6	$396.5	25	$99.1	$495.6	[2] $511.4	0.4	$2.1	$513.5
II	6	63.4	25	15.9	79.3	[2] 89.3	(7.5)	(6.7)	[2] 86.6
III	26	163.0	25	40.7	203.7	210.8	(3.4)	(7.1)	203.7
IV	48	190.6	25	47.6	238.2	292.9	(18.7)	(54.7)	238.2
V	48	163.8	20	32.8	196.6	277.9	(29.3)	(81.3)	196.6
VI	88	266.3	20	53.3	[3] 319.6	500.3	(21.6)	(108.7)	[4] 391.6
VII	91	258.7	20	51.7	[3] 310.4	500.5	(22.1)	(111.0)	[4] 389.5
Total	313	1,502.3	22.7	341.1	1,843.4	[5] 2,383.1	(15.4)	(367.4)	2,015.7

[1] Margin represents difference between ceiling price per contract and estimated cost as proposed. Final proposal reflected target profit rate on estimated costs of 10 percent for lots I and II, and 12 percent for all subsequent lots.

[2] Includes authorized changes.

[3] Excludes estimated increase for abnormal escalation clause.

[4] Includes estimated increase for abnormal escalation clause.

[5] Increased costs are principally the direct result of abnormal inflation and the declining business base.

TABLE II.—F-14A, FYDP SCHEDULE, ESTIMATED COST BREAKDOWN, FEBRUARY 1969 CONTRACT VERSUS CURRENT ESTIMATE

[Dollars in millions]

	February 1969						Current estimate				
	Quantity	Direct labor	Material	Overhead	Other direct costs	Total	Direct labor	Material	Overhead	Other direct costs	Total
Lot—											
I	6	111.1	129.1	148.5	7.2	396.5	129.1	192.6	179.6	10.1	511.4
II	6	18.1	20.7	23.5	1.1	63.4	20.6	33.0	34.8	.9	89.3
III	26	39.1	64.0	57.9	2.0	163.0	32.4	102.2	74.0	2.2	210.8
IV	48	39.0	85.3	64.2	2.1	190.6	36.5	156.0	98.0	2.4	292.9
V	48	30.5	81.0	50.6	1.7	163.8	33.3	148.4	93.8	2.4	277.9
VI	88	41.7	144.4	77.8	2.4	266.3	48.5	286.9	161.7	3.2	500.3
VII	91	37.9	146.4	72.2	2.2	258.7	44.1	293.9	159.4	3.1	500.5
Total	313	318.0	670.9	494.7	18.7	1,502.3	344.5	1,213.0	801.3	24.3	2,383.1

Mr. PROXMIRE. Mr. President, there are a number of interesting conclusions which can be drawn from these tables:

First. Grumman's estimated costs for the 313 development and production airframes purchased according to the schedule shown have increased from $1.5023 billion to $2.3831 billion, an increase of almost $900 million, in the little more than 2 years since February 1969.

Second. Less than half of this increase can be attributed to inflation and a declining business base as evidenced in increased overhead costs. As indicated earlier, Navy testimony to the House Armed Services Committee has cited a Grumman projection of $103 million in increased costs attributable to inflation over lots IV–VII. As indicated in table II, Grumman presently projects an increase in overhead costs for the 313 airframe program from $494.7 to $801.3 million, an increase of $306.6 million. These inflation and overhead factors together account for little more than $400 million of the almost $900 million total projected increase.

Third. As indicated in table I, the ceiling in the existing Grumman contract, adjusted according to the contract's abnormal escalation provisions for lots VI and VII, is $2.0157 billion. It provides a margin of $513.4 million over and above Grumman's original $1.5023 billion cost projections. If the projected cost increases now faced by Grumman were limited to the inflation and overhead factors alone—$409.6 million—this margin would enable Grumman to earn a profit of $103.8 million on the contract, notwithstanding those increases.

The facts of the matter are quite straightforward. Whatever else may be said about it, the existing F–14 contract made considerable allowance for factors of the kind Grumman has cited as the cause of its problems. Grumman's real difficulties have been of a more simple and time-honored nature. Due to the totally unrealistic nature of its original estimates, it is experiencing huge cost overruns in its production of the F–14.

OTHER CAUSES NOTED

A deeper insight into the causes of Grumman's problems can be gained by a consideration of matters not totally reflected in the above tables.

To begin with, the main constituent element of Grumman's projected cost increases is higher materials costs. As table II itself indicates, the company projects a materials cost increase from $670.9 million to $1,213.0 million, a rise of $542.1 million, or well over half the total increase. The main cause of this increase, I have learned, is sharply increased costs to Grumman for the airframe materials furnished to it by its major subcontractors. The problem is due to sloppy contracting procedures on the part of Grumman itself, which never negotiated firm option prices with its subcontractors until several months after the F–14 contract was first awarded to it in February 1969. When these firm option prices were finally negotiated, Gumman did not get as good a deal as it originally expected. And it hopes now to pass the added costs on to the Government.

Another cause of Grumman's problems has its origins in the final negotiations preceding the award of the existing contract. During the last several months of competitive negotiations in late 1968, Grumman reduced its ceiling prices by about $400 million, a reduction resulting not from a change in its cost estimates, but solely from a reassessment by the company of the risks which development entailed. It is a smiple fact that if this ceiling reduction had not occurred, Grumman would not now be faced with the $367.4 million F–14 loss which it projects under the existing contract for a 313 aircraft buy. While Grumman's reduced ceiling price was still approximately $100 million higher than that of its competitor, McDonnell Douglas, competitive pressures simply cannot be used to justify buy-ins on major defense contracts. The inevitable result would be to remove what little integrity still remains in the weapons procurement process and to insure vast overruns and restructured contracts on each and every weapons system procured.

F–14 UNIT COST IMPACT

But whatever the precise reasons for Grumman's present problems, what are the likely implications in terms of F–14 unit costs? Assuming, that the data above are accurate, the answer can be calculated easily.

Absent any problems at Grumman and elsewhere, the estimated unit cost of the 301 production aircraft in question would be $12.3 million. This figure differs, of course, from the $11.5 million figure long touted by the Navy as the F–14's unit cost. That estimate is a reasonable production unit cost projection, however, only for a buy of 400 aircraft or more. For a buy of only 301 production planes, the cost could be expected to rise. The figure of $12.3 million per copy is consistent with the costing methodology the Navy has used in its own F–14 cost projections. I have provided a more detailed explanation of previous Navy estimates at the conclusion of my remarks.

That $12.3 million estimate assumes airframe costs at contract ceiling without provision for abnormal escalation. To determine the cost impact of Grumman's present difficulties, all one needs to do is to calculate its projected overceiling costs and then spread these costs over the total number of planes involved. For the four production lots in question, Gumman is projecting costs $513.9 million over ceiling. Spread over 301 production aircraft, this amounts to $1.7 million per copy.

Added to the $12.3 million basic per copy cost, this gives a $14 million unit cost thus far.

Before moving on to consider other sources of unit cost growth, a word on the accuracy of the Grumman data might be in order. Pentagon spokesmen have suggested in recent days that Grumman might be "puffing" in order to support its case that a new contract is really needed. There may indeed be something to the point. It would be wrong to conclude, however, that eventual airframe costs are therefore likely to be less than the costs just calculated relying on the Grumman data.

The F–14 is still in the early stages of its potential program life, with further unanticipated cost problems a very real possibility. Grumman itself appreciates the problem. What it seeks is a new contract with provisions for ceiling and profit above its new cost data. Accordingly, the use of that data without any ceiling or profit assumes that "puffing" may well be taking place.

"B" ENGINE RELATED PROBLEMS

Despite the vast amount of attention focused to date on Grumman's problems in producing the basic F–14 airframe, there are equally serious problems elsewhere in the program. And in most of these areas the Government does not have even the limited protection which firm contract prices could give it. Problems related to the engines which will power the F–14 provide one illustration.

The engine long counted on by the Navy to power the F–14 has been the Pratt & Whitney N–401–PW400 advanced technology turbofan engine, which will also be used on the Air Force's F–15. The Navy, however, in order to get a jump on the F–15 and the earliest possible F–14

deployment date, so arranged the F–14 program that earlier models would use a version of the older Pratt & Whitney TF30–P–12 engines, developed originally for the F–111B. Navy planning has long called for a switch from the "A" to "B" engine models beginning with the 68th production version of the F–14 brought off the assembly line.

A series of unfortunate problems now threaten to arise from this two-step engine program.

AIRFRAME MODIFICATION COSTS

The simple fact of the matter is that all estimates of airframe costs to date—the Navy's original cost data and the revised Grumman data in tables 1 and 2—are predicated on an airframe designed to accommodate "A" engines. These airframes are designed and costed with room allowed to accommodate the "B" engines, but before they can be accommodated, basic modifications to the airframe will be needed.

These modifications will entail, first, a non-recurring R. & D. charge, to determine the precise changes necessary. The existing contract with Grumman contains a ceiling of approximately $15 million to cover the design work in question. I have learned, however, that this ceiling is no longer applicable, because the design of the "B" engine has been changed since the contract was written to provide considerably greater thrust. As a result, the cost of the design changes will have to be negotiated with Grumman, and they can be expected to cost considerably more.

Of greater significance than these nonrecurring research and development costs would be the recurring costs resulting from introduction of the design changes in question into each and every F–14 airframe. The cost of this work also will have to be negotiated with Grumman, which in turn will have to negotiate new agreements covering that portion of the work which its subcontractors will perform.

The actual cost of this work would obviously depend on the significance of the "B" engine/inlet interface problem encountered when the work was performed; $200,000 per copy is a reasonable minimum projection. Adding this amount to my $14 million unit cost running total yields $14.2 million thus far.

Less significant than the actual cost of the work, however, is the Grumman/Government bargaining significance of the fact that prices for the work still have to be negotiated. There is no conceivable way in which Grumman could be forced to take more than perhaps a $100-million loss on the F–14 program. But is any loss at all a possibility? Holding Grumman's feet to the fire on the F–14 "A" contract may be something of a charade since it is the "B" version the Navy has always wanted and in pricing which Grumman could get well.

Then there is the cost of the engines themselves. The "A" engines, priced thus far at less than $800,000 per copy, apparently have presented little problem. The "B" engines are another matter.

"B" ENGINE OVERRUNS

These engines are designed to provide almost 40 percent more thrust than the "A" engines, and problems have already been encountered in their Air Force-run development program. This program, I have learned, is already as much as 6 months behind schedule, and Pratt & Whitney has demanded $117 million extra in development funds to do the additional work and conduct the additional testing needed to guarantee the performance specifications sought for the "B" engines. This is an overrun of roughly 25 percent for the development program, and a substantial portion of this extra cost will have to be borne by the Navy.

But the important point once again is the production cost of the new engines. All Navy estimates of F–14 costs to date have been predicated on the use of engines costing approximately $800,000 per copy. This is a price which the new engines will not be able to meet.

The production contract for the new engines is a fixed price contract with a ceiling of about 150 percent. In other words, the ceiling costs of the new engines are about 50 percent greater than the target costs, and any cost increases over target up to the ceiling will be picked up by the Government under the contract's terms.

An examination of the standard lot options under the contract shows an average target price for the first several buys of just over $800,000 per copy, little different from the figure used to date in Navy estimates and actually met by the "A" engine. The ceiling price, however, is about $1.2 million per copy. In light of the huge increases already experienced on the development contract, the only really "live" question is not whether this ceiling will be reached, but whether it in fact will be exceeded. Pratt & Whitney's experience on the "A" engines themselves—the present $800,000 cost is more than double the initial estimate for the F–111B version of the engine—does not presage a happy answer.

Even without a breach of the existing contract, eventual engine costs can, therefore, be expected to grow $400,000 per engine over the figures now in use. Since there are two engines per plane, this means at least an $800,000 growth in F–14 unit costs, even forgetting the cost of spares. Adding this increase to my $14.2 million unit cost running total yields a $15 million total thus far.

"A" ENGINE REPLACEMENTS

And there is one final engine cost still to be considered. The Navy has always planned to re-engine its "A" models with the "B" engines once available. This means that the first 67 production aircraft would actually have two sets of engines. The cost of the first set—134 "A" engines at approximately $800,000 each—is additive to the costs already shown. The total cost for these engines will exceed $100 million. In terms of F–14 unit costs for a 301 aircraft buy, this amounts to more than $300,000 per copy, which brings my running total to the $15.3 million mark.

F–14 AVIONICS COSTS

Turning from the engines to the avionics, the same sad story continues. The key avionics component is the AWG–9 fire control system.

Navy estimates of F–14 unit cost have long been predicated on a less than $1.4 million cost per copy for the AWG–9. This cost is nowhere reflected, however, in a firm and binding contract of any kind. The Navy contract with Hughes Aircraft Co., manufacturer of the AWG–9, is a fixed-price incentive contract with successive reset provisions, which means that the fixed prices for successive lots are subject to negotiation with the Navy. Since negotiations for upcoming lots have not been completed, the price of the AWG–9 has not yet been definitized. I have learned, however, that internal Navy projections of AWG–9 costs are presently running at a minimum of $2.5 million per copy, with additional increases in sight.

Moreover, the prices of other avionics subsystems are also undefinitized at this time, and internal Navy cost projections for the total avionics package have jumped from $2.6 to $4.3 million per plane during the past year.

To be conservative, only this virtually assured $1.7 million of added avionics costs will be factored into my unit cost running total, which has now reached the $17.0 million level.

THE PROSPECT OF SCHEDULE SLIPPAGE

My analysis thus far has been predicated on the purchase of 301 production F–14's according to the schedule presently planned by the Navy through fiscal 1975. But the purchase of 301 production F–14's according to that schedule is no longer realistic. That schedule assumes the purchase of 48 production aircraft in fiscal 1971, using $806 million in production funds appropriated by the Congress. But in light of the problems at Grumman alone, there is no way in which 48 planes could be produced for that amount of money. Once the money was appropriated, Grumman would have no choice but to declare itself in default on the existing contract, and negotiations for a new schedule and contract would have to follow.

This new schedule would necessitate upward revisions of all the cost data contained in my analysis thus far.

At Grumman itself, it would first be necessary to stretch lot III—the 26 production aircraft purchased last year—to provide for an orderly phase of effort. Lot IV would then have to be reduced, with some of the purchases scheduled there being dropped into subsequent lots. And there would be similar slippage throughout the present program.

This slippage would have repercussions on all the other subsystems. It would necessitate reduced buys of both engines and avionics. Such reduced buys would cost more per copy, if permitted at all under existing contract terms.

COST OF SLIPPAGE

The precise impact of such slippage on F–14 unit costs is virtually impossible to calculate. An indication of its potential magnitude can be ascertained, however, by considering only the short-term implications of one alternative being considered. That is the possibility of a 12-month lot III stretch and a zero aircraft lot IV buy. Under this alternative, there would be no further procurement of production F–14's until fiscal 1973. This alternative, I have learned, would

require the expenditure of more than $300 million simply to stretch lot III, with further extra costs down the road.

This alternative, however, is an extreme case, and less severe slippage would be more likely. But whatever slippage were ultimately chosen, I see no way in which it could possibly have a cost impact of less than $300 million over the whole life of the restructured program. Such an impact, over a 301 aircraft program, would be $1 million per copy.

If this $1 million is added to my $17 million running total, I have a final projected F–14 unit cost for 301 aircraft of $18 million per copy.

ADDITIONAL COSTS DOWN THE ROAD?

In reaching this $18 million total, I have attempted to be quite conservative. I have not included any of the increased development costs for either the "B" airframe or the "B" engines, despite the fact that these are real economic costs if the F–14 program continues. Except for the Grumman airframe contract, I have stayed within the costs allowable under existing contract provisions. And I have limited my remarks to only presently ascertainable problems in the main subsystems of the plane.

All I propose to do now is to cite four additional problems which, together with the conservatism in my estimates thus far and the possibility of problems yet unforeseen, might raise total costs to the $20 million level.

MUCH CONCURRENCY

One such problem is the incredible amount of concurrency inherent in the F–14 schedule. Consider just two examples of the extreme concurrency involved. As far as the basic "A" aircraft is concerned, the original schedule envisaged no testing of the aircraft with the AWG–9 fire control system and basic armament items aboard until 86 production aircraft had already been ordered and funded. And qualification testing on the "B" engine was not envisaged until well over 100 airplanes expected to accommodate this engine had already been committed to production.

The F–14 prototype crash last December and the delays encountered in the "B" engine development program have only increased this concurrency. The F–14 has been and still remains a totally untested airplane, despite the production commitment made. And it is almost a foregone conclusion that this concurrency if continued will take its toll in extensive modification costs later in the life of the program.

The prospect of such costs could be mitigated, of course, by stretching lot III and going to a zero aircraft lot IV buy. But in light of the $300 million short-term cost growth which would automatically be entailed, the Navy would be more likely to take its chances on the modification costs further down the road.

ENGINE CONTRACT DEFAULT

A second problem worth noting is the possibility of a Government default on the "B" engine production contract. The options in the contract are tied to calendar dates, rather than development milestones, and the first option comes due this year. It should present an interesting choice for the Navy. Should it buy engines which are as yet untested and which would not be needed even in the event of a small further reduction in the lot IV aircraft buy? Or should it open the way for a restructured contract at higher prices in the future?

A third problem arises from the nature of the Government's responsibility for the engines, avionics, and other subsystems under the terms of the Navy's contract with Grumman. As I mentioned earlier, the Government is furnishing these subsystems to Grumman as Government furnished equipment—GFE. It is the Government's responsibility, under this arrangement, to provide these items to Grumman consistent with the schedule and specifications contained in the existing Grumman contract. Any failure by Pratt & Whitney, Hughes Aircraft Co., and other subcontractors to themselves meet these schedules and specifications would reopen some contract terms, forcing higher Navy prices at Grumman.

Finally, there is the prospect of troubles by Grumman with its own subcontractors. Grumman's contracts with its suppliers simply do not provide, in some instances, for deliveries in the small lot quantities anticipated in the immediate future, which means that these contracts will have to be renegotiated. And some of Grumman's subcontractors, in the infectious climate now prevailing in the aerospace industry, have already followed Grumman's own lead and written letters to the company indicating that further performance under their existing contracts is "commercially impractical" at the present time.

F–14 SHOULD BE CANCELED

Mr. President, if we continued with the F–14 it would cost us $18 to $20 million per copy for the first 300 aircraft alone. The F–14 is simply not worth this kind of money. Even on paper, it offers only marginal improvements over the F–4 in terms of air-to-air combat performance.

All over the world austere new fighters are being developed for only a few million dollars per copy. The Mirage 5 used by the Israelis is being sold by the French Government in the world market for less than $1.5 million each. Yet, it, like the F–4, is more than a match for the Mig–21, which itself is a $1 million airplane.

American companies could themselves produce an austere new fighter with combat performance superior to the F–14 for only a fraction of its cost. About the only thing the F–14 would have which these planes would not is the Phoenix missile and its AWG–9 fire control system. But the Phoenix and the AWG–9 probably cannot perform their intended mission yet to reduce actual air-to-air combat performance that the F–14 might not be able to stand up to the Soviets' new Mig–23.

A COMMENT ON NAVY COST ESTIMATES

Until recent problems developed, F–14 unit costs had long been estimated by the Navy at $11.5 million. A few words of explanation are needed to put this figure in perspective.

This $11.5 million figure has been regarded publicly as the Navy's production unit cost estimate for a 710-plane program. In fact, unclassified portions of recent selected acquisition reports on the F–14 show that it was actually a program unit cost projection. That is, it included not only projected production costs but development costs as well. The corresponding Navy production unit cost estimate is shown as $9.8 million in these SAR's.

It follows that in contrasting my own $18 to $20 million production unit cost estimate with an $11.5 million Navy figure, I am in a sense understanding the cost growth which has occurred.

For several reasons, however, I have decided to ignore the Navy's $9.8 million estimate and go with the $11.5 million figure instead.

First, the $9.8 million figure has been a fictional number all along. We have never had more than 463 production model F–14's under contract in standard lot options at any time. And for this number of planes $11.5 million was a reasonable production unit cost approximation under the assumptions being used.

Second, there is a reverse bias already present in my own figures, because they are based on an even smaller 301 aircraft buy.

Third, it would now be difficult, in light of the general acceptance accorded the $11.5 million figure as the production unit cost base to be used, to correct misunderstandings about the figure.

I have also decided not to factor F–14 development costs into my own estimate, which would have raised it to the $21 to $23 million level or higher for a 301-plane buy. Obviously this would have been more dramatic. But for the most part, development costs are now behind us, and the real issue is how much we should be willing to pay for production aircraft. Moreover, the factoring in of these sunk development costs would make it appear that there was considerable advantage in terms of unit costs to expanding the ultimate buy.

Actually, in terms of largely unsunk production costs, it would probably cost us $18 to $20 million each, or as much as $6 billion in total, for a 300-aircraft buy. For a 700-aircraft buy, that figure might well fall to the $16 to $18 million level on a unit cost basis, but inflation in the out years could prevent even this. And for this $2 million per copy savings, we would have invested over $6 billion more.

Mr. President, I intend to speak further about the actual mission deficiencies of the F–14 in the near future. For I want no mistake about them to be made. Even at $11.5 million each, the F–14 was a marginal system. At $18 to $20 million, it is simply a lemon all the way.

ORDER FOR RECOGNITION OF SENATORS BOGGS AND ROTH

Mr. BYRD of West Virginia. Mr. President, normally the leadership prefers not to program 15-minute orders for the recognition of Senators beyond that period which immediately precedes the transaction of routine morning business. However, a matter came to the attention of the leadership too late to schedule the two Senators from Delaware prior to the

transaction of routine morning business for today.

Circumstances are such as to justify, and I ask unanimous consent, Mr. President, that immediately following the period for the transaction of routine morning business today, the distinguished senior Senator from Delaware (Mr. BOGGS) be recognized for not to exceed 15 minutes and that at the close of his remarks the distinguished junior Senator from Delaware (Mr. ROTH) be recognized for not to exceed 15 minutes.

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

ORDER FOR UNFINISHED BUSINESS TO BE LAID BEFORE THE SENATE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, upon the conclusion of the orders for the recognition of the two Senators from Delaware, the Chair lay before the Senate the unfinished business.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask that morning business be closed.

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the Chair recognizes the senior Senator from Delaware.

Mr. BOGGS. I thank the Presiding Officer and I wish to thank the distinguished Senator from West Virginia, the acting majority leader, for his kindness in making the arrangements.

Mr. BYRD of West Virginia. The Senator is welcome.

The PRESIDING OFFICER. The Senator may proceed.

DEATH OF MRS. DOROTHY ANDREWS KABIS, TREASURER OF THE UNITED STATES

Mr. BOGGS. Mr. President, a great lady and a great American has passed from our midst. Death has taken from us Mrs. Dorothy Andrews Kabis, and we all are grieved by her passing.

Mrs. Kabis, the Treasurer of the United States, died last Saturday while visiting her father's gravesite in Sheffield, Mass. She is to be interred beside him today.

We in Delaware have known and loved Dottie Kabis for many years. She chose to live among us on a farm near Middletown, Del.; and we all were better for having her with us.

Her energy and vitality, her quick wit and charming personality, and her willingness to work hard for any worthwhile cause made her a leader in our State. And it was not long before the Nation recognized her talents and sought her services.

Mrs. Dorothy Andrews Kabis was born 54 years ago in Wilkes-Barre, Pa. She came to Delaware at an early age and became active in her church, in farm organizations, and in politics.

Through the years she received many national honors and attained many national offices, but she never relaxed her efforts in Delaware. She remained active in her church, St. Paul's Methodist Church in Odessa, Del. Despite her obligations in Washington and throughout the country, she continued to serve as financial secretary of the church, as well as a steward and trustee.

She was active in the Grange, serving as legislative chairman and chaplain of Central Grange 61 in St. Georges, Del. She once served as a trustee of Kruse School, a Delaware State correctional institution for young women, and later as State adviser for the Farmers Home Administration. Last year she was honorary chairman of the Delaware multiple sclerosis campaign. Mrs. Kabis also was active in the General Federation of Women's Clubs and the Daughters of the American Revolution.

In another area, Mrs. Kabis rose through the ranks of the Republican Party in Delaware to become one of the most prominent ladies in the national party. She served 5 years as president of the National Federation of Republican Women, longer than any other president. She was a member of that organization's board of directors since 1954, when she was elected president of the Delaware Federation.

In 1964 the League of Women Voters of the United States honored Mrs. Kabis as one of the 12 outstanding political women in the country. Four years later, the National Federation of Republican Women named her "The Republican Woman of the Year."

On March 28, 1969, President Nixon recognized her abilities by appointing her the 33d Treasurer of the United States. She had many friends and acquaintances in the Senate, whom she held in high esteem. This body approved her nomination unanimously on April 25, 1969.

That undoubtedly was a happy moment in Dottie Kabis' life, but an even happier one occurred last year when she married Mr. Walter L. Kabis of Odessa, Del. The Kabises were a happy couple and they enlivened any gathering they attended in Washington or in Delaware.

Mrs. Boggs and I extend our condolences to Mr. Kabis and other members of her family.

We in Delaware and throughout the Nation mourn the passing of Mrs. Dorothy Andrews Kabis. She has been a most pleasant and important part of our lives for many years, and we all will miss her.

Mr. President, Mrs. Kabis is being buried today in Massachusetts. Tomorrow, Thursday, a memorial service will be held in her memory in Odessa, Del., and at 2 p.m., tomorrow, at the National Presbyterian Center in Washington there will be a memorial service at which former Senator John J. Williams of Delaware will be the principal speaker.

Mr. President, at this time I yield to my colleague from Delaware.

The PRESIDING OFFICER. Under the previous order, the Chair recognizes the junior Senator from Delaware.

Mr. ROTH. Mr. President, I join my distinguished colleague, the senior Senator from Delaware, in honoring the memory of a dear friend who died over the past weekend, Mrs. Dorothy Andrews Kabis, the 33d Treasurer of the United States.

The news of Dottie's sudden death came as a great shock to me, for she was a close friend, a fine person, and a great American.

Born in Wilkes-Barre, Pa., Dottie came to Delaware shortly after leaving Marysville, Tenn., College. Following a brief period during which she worked in the legal department of the Du Pont company in Wilmington, she began to operate a 183-acre nursery farm near Middletown, Del.

But Dottie Kabis' interest in public life was strong, and she soon became active in Republican Party work in Delaware. Her fight for clean elections, first in her hometown of Odessa, Del., and later throughout the State, made her one of the best known and most respected women in public life in our State.

She was a tireless worker for the causes in which she believed so strongly. From her early days in Delaware when she became active in the State Grange—where she was legislative chairman, chaplain, lecturer, and public relations chairman of Central Grange 61 at St. Georges, Del.—to her most recent position as Treasurer of the United States, Dottie Kabis could be counted on to devote her seemingly boundless energy to whatever task she would undertake.

In the years when she was active in Delaware Republican politics, Dottie Kabis served as charter member and cofounder of the Delaware Federation of Republican Women and was president of the State Federation in 1954. She was a delegate to the Republican National Conventions in 1956 and 1960, and was a speaker at the 1964 convention. In 1968 she served as an alternate delegate to the national convention.

During the years between 1963 and 1968, Dottie's political attention shifted from the State to the national scene, as she admirably filled the position of President of the National Federation of Republican Women, a position which she held longer than anyone else. During those years, Dottie maintained a pace and speaking schedule that would have exhausted the hardiest of individuals.

But that was the nature of Dottie Kabis. She was not one to shirk a job or a duty; she was constantly active, al-

ways on the go, ever ready to accept new responsibilities that would challenge her immense abilities.

On March 28, 1969, President Nixon appointed Mrs. Kabis 33d Treasurer of the United States, a position to which, Secretary Connally said earlier this week, she brought an extra dimension. The deep respect which she earned during her active career in Delaware and Washington cut across party lines; Delaware's State Treasurer, Mrs. Emily H. Womach, a member of the Democratic Party, demonstrated the universal affection in which Mrs. Kabis was held when she remarked earlier this week that Dottie Kabis, as Treasurer of the United States, brought great honor to Delaware and yet retained her personal sincerity and human warmth.

The flags on all State buildings in Delaware are at half-mast today, by order of Gov. Russell W. Peterson. They will remain that way in quiet tribute to a magnificent woman until services are completed. It is a most fitting gesture that a grateful people can offer to a woman who gave so much of herself for her State and her Nation.

From time to time individuals in public life are asked, "What can I as an individual do to change things?" and a simple answer is not always forthcoming. But I would suggest that the life of Dottie Kabis would serve as an outstanding example. When she came to Delaware, she apparently had no particular desire to become involved in politics. A few years ago, looking back over a remarkable career, Dottie described her initial interest in politics in this way:

I was shocked by the misuse of the ballot. Young as I was, I realized what was going on. You would have to be pretty stupid not to see it. Votes were being bought and this upset me.

She was then a member of the State Grange and she effectively used that position to plead for cleaner elections in Delaware, particularly for the use of voting machines. That she was effective in stirring up interest in this most vital aspect of our elective process is attested to by the fact that within a few years the paper ballot became a thing of the past in Delaware as voting machines were installed throughout the State.

From that point her rise in the ranks of the Republican Party continued, spurred always by the energy and dedication to a cause that were characteristic of this talented woman. Her tragic passing leaves a void that will not quickly be filled.

The news of her death last weekend in Massachusetts left me shocked and saddened. I extend my deepest sympathy to her mother and her husband, Walter Kabis, to whom she was married less than 10 short months ago.

Delaware has lost one of her finest citizens and the United States has lost a dedicated public servant. And I have lost a very dear friend.

Mr. BOGGS. Mr. President, I want to thank my distinguished colleague for his kind remarks.

I would like to yield at this time, if I may, to the distinguished Senator from Nebraska (Mr. CURTIS).

Mr. BYRD of West Virginia. Mr. President, I believe the junior Senator from Delaware has some time left. I am sure he will be glad to yield to the Senator from Nebraska.

Mr. CURTIS. Mr. President, will the Senator yield me about 2 minutes?

Mr. ROTH. I yield to the Senator from Nebraska.

Mr. CURTIS. Mr. President, it was not my privilege to know, in a personal way, the distinguished lady about whom we are speaking at this time, but I did know of her public career, and I want to join with the many friends of Dorothy Andrews Kabis in paying tribute to her public service.

She was an inspiration to many people. This was true when she came to Washington to serve. It was true of those who served with her in a political capacity. It was true of many of those who served with her officially.

She came to Washington after a very distinguished career in her own State. She was a businesswoman. She had been active in a number of worthwhile organizations, and was an effective and eloquent speaker.

It is indeed a loss to our country, and I am sure to her native State and her State by adoption, that she should leave us at such an early age. I wish to have the RECORD show my admiration and respect for her, and I send to her mother and brother and her other relatives my most sincere sympathy.

Mr. SCOTT. Mr. President, I wish to join with the distinguished Senators from Delaware, Mr. BOGGS and Mr. ROTH, in paying tribute to Mrs. Dorothy Elston Kabis, Treasurer of the United States, whose untimely passing has grieved us all.

It has been my pleasure to have known Dotty for many years, and I have been privileged to work with her during the years she was president of the National Federation of Republican Women. Her activities as president of the Federation contributed greatly to increasing the participation of women throughout the United States in Republican Party activities.

As Treasurer of the United States she discharged her responsibilities to the credit of her position and to the Government of the United States.

Marion and I extend to Mr. Kabis our heartfelt sympathy in this hour of his bereavement.

RESUMPTION OF TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the period for the transaction of routine morning business, with statements therein limited to 3 minutes, be now resumed.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The 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.

LOUIS "SATCHMO" ARMSTRONG

Mr. MANSFIELD. Mr. President, it is with a sense of sadness that I note in the press the passing of the great Louis "Satchmo" Armstrong.

I may be what is called a "square," but I must admit that, like tens of millions of other Americans, I achieved a great deal of satisfaction and comfort from the music of this outstanding American. He was an ambassador of good will in the best meaning of the term, and he represented us and this country with humor, with dignity, with understanding, and, as far as his fellow citizens were concerned, we appreciated the representation which he gave to all of us.

In New Orleans, he came up from practically nothing. He learned his trade the hard way, but he developed a keen sense of musicology. He traveled the world. He spread the spirit of a real part of this Nation, and with that spreading there went a lot of good will.

I think I can say on behalf of all the Members of this body that the passing of Louis "Satchmo" Armstrong is a real loss. We extend to his wife, his relatives, and to all his friends, our deepest sympathy in their hour of sorrow, and we extend our condolences to all the rest of our fellow citizens on the passing of a great American.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the period for the transaction of routine morning business now be closed and that the unfinished business be laid before the Senate.

The PRESIDING OFFICER. Without objection, morning business is closed.

CONQUEST OF CANCER ACT

The PRESIDING OFFICER. Without objection, the Chair lays before the Senate the unfinished business, which will be stated by title.

The legislative clerk read the bill by title as follows:

A bill (S. 1828) to amend the Public Health Service Act so as to promote the public health by strengthening the national effort to conquer cancer.

RECESS

Mr. BYRD of West Virginia. Mr. President, I move that the Senate now stand in recess until 3 o'clock p.m. today.

The motion was agreed to, and at 1:39 p.m. the Senate took a recess.

The Senate reassembled at 3 p.m., when called to order by the Presiding Officer (Mr. BUCKLEY).

CONQUEST OF CANCER ACT

The PRESIDING OFFICER (Mr. BUCKLEY). Pursuant to the previous order, the Senate will proceed to the consideration of S. 1828 to amend the Public Health Service Act on which there will be 3 hours of debate.

The Senate proceeded to consider the bill S. 1828, to amend the Public Health Service Act so as to promote the public health by strengthening the national effort to conquer cancer which has been reported from the Committee on Labor and Public Welfare with an amendment, to strike out all after the enacting clause and insert:

That this Act may be cited as the "Conquest of Cancer Act".

SEC. 2. The Public Health Service Act is amended by adding following section 406 the following:

"FINDINGS AND DECLARATION OF PURPOSE

"SEC. 407A. (a) The Congress hereby finds and declares—

"(1) that the incidence of cancer is increasing and is the major health concern of the American people;

"(2) that the attainment of better methods of prevention, diagnosis, and treatment of cancer deserve the highest priority; and

"(3) that a great opportunity is offered as a result of recent advances in the knowledge of this dread disease to conduct energetically a national program for the conquest of cancer.

"(b) In order to carry out the policy set forth in this part it is the purpose of this part to establish a Conquest of Cancer Agency as an independent agency within the National Institutes of Health.

"CONQUEST OF CANCER AGENCY

"SEC. 407B. There is hereby established a Conquest of Cancer Agency as an independent agency within the National Institutes of Health.

"SEC. 407C. (a) The Conquest of Cancer Agency shall be administered by a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall serve under the direction of the President. There shall be in the Agency a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director may prescribe and shall be the Acting Director during the absence or disability of the Director or in the event of a vacancy in the position of Director.

"(b) The Director is authorized to appoint within the Agency not to exceed five Assistant Directors.

"FUNCTIONS OF THE AGENCY

"SEC. 407D. In order to carry out the purpose of this part, the Director shall—

"(1) carry out all research activities previously conducted by the National Cancer Institute, together with an expanded, intensified, and coordinated cancer research program, and shall administer the authority of the Secretary under this Act with respect to cancer;

"(2) make such grants or contracts as are desirable to accomplish the purposes of this part;

"(3) expeditiously utilize existing research facilities and personnel for accelerated exploration of the opportunities for the conquest of cancer in areas of special promise;

"(4) encourage and coordinate cancer research by industrial concerns where such concerns evidence a particular capability for such research;

"(5) strengthen existing cancer centers, and establish new cancer centers as needed in order to carry out a multidisciplinary effort for clinical research and teaching, and for the development and demonstration of the best methods of treatment in cancer cases;

"(6) collect, analyze, and disseminate all data useful in the prevention, diagnosis, and treatment of cancer, including the establishment of an international cancer research data bank to collect, catalog, store, and disseminate insofar as feasible the results of cancer research undertaken in any country for the use of any person involved in cancer research in any country;

"(7) establish or support the large-scale production or distribution of specialized biological materials and other therapeutic substances for research, including viruses, cell cultures, and animals, and set standards of safety and care for persous using such materials;

"(8) support research in the cancer field outside the United States by highly qualified foreign nationals, collaborative research involving American and foreign participants, and the training of American scientists abroad and foreign scientists in the United States;

"(9) support appropriate manpower programs of training in fundamental sciences and clinical disciplines to provide an expanded and continuing manpower base from which to select investigators and physicians for participation in the programs, including where appropriate the use of training stipends, fellowships, and career awards; and

"(10) prepare and submit an annual budget estimate for the program directly to the President for review and transmittal to Congress and receive from the President and the Office of Management and Budget directly the funds appropriated by Congress for obligation and expenditure by the Agency.

"ADMINISTRATIVE PROVISIONS

"SEC. 407E. (a) The Director is authorized, in carrying out his functions under this part, to—

"(1) appoint and fix the compensation of personnel of the Agency in accordance with the provisions of title 5, United States Code, except that (A) to the extent the Director deems such action necessary to the discharge of his functions under this part, he may appoint not more than fifty of the scientific, professional, and administrative personnel of the Agency without regard to provisions of such title relating to appointments in the competitive service, and may fix the compensation of such personnel, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to pay rates not in excess of the highest rate paid for GS–18 of the General Schedule under section 5332 of title 5 of such Code; (B) to the extent that the Director deems necessary to recruit specially qualified scientific or other professional personnel without previous competitive service he may establish the entrance grade therefore at not to exceed two grades above the grade otherwise established for such personnel under such provisions;

"(2) make, promulgate, issue, rescind, and amend rules and regulations as may be necessary to carry out the functions vested in him or in the Agency and delegate any of his functions to any officer or employee under his direction or his supervision;

"(3) acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain cancer centers, laboratories, research and other necessary facilities and equipment, and related accommodations as may be necessary, and such other real or personal property (including patents) as the Director deems necessary; to acquire by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Agency for a period not to exceed ten years without regard to the Act of March 3, 1877 (40 U.S.C. 34);

"(4) employ experts and consultants in accordance with section 3109 of title 5, United States Code;

"(5) appoint one or more advisory committees composed of such private citizens and officials of Federal, State, and local governments as he deems desirable to advise him with respect to his functions under this Act;

"(6) utilize, with their consent, the services, equipment personnel, information, and facilities of other Federal, State, or local public agencies with or without reimbursement therefor;

"(7) accept voluntary and uncompensated services;

"(8) accept unconditional gifts, or donations of services, money, or property, real, personal, or mixed, tangible or intangible;

"(9) enter into such contracts, leases, cooperative agreements, or other transactions without regard to section 529 of title 31, United States Code, as may be necessary in the conduct of his functions with any public agency, or with any person, firm, association, corporation, or educational institution, an make grants to any public or nonprofit private agency, organization or institution;

"(10) allocate and expend, or transfer to other Federal agencies for expenditure, including the National Institutes of Health, for cancer-related programs, such funds made available under this part as he deems necessary, including funds appropriated for construction, repairs, or capital improvements;

"(11) take necessary action together with the Director of the National Institutes of Health so that all channels for the dissemination and cross-fertilization of scientific knowledge and information existing prior to the effective date of this Act between the National Cancer Institute and the other Institutes of Health shall be maintained between the Agency and the Institutes of Health to insure free communications between cancer and the other scientific, medical, and biomedical disciplines; and

"(12) take such other actions as may be required for the accomplishment of the objectives of the Agency.

"(b) Upon request made by the Director, each Federal agency is authorized and directed to make its services, equipment, personnel, facilities, and information (including suggestions, estimates, and statistics) available, to the greatest practicable extent consistent with other laws to the Agency in the performance of its functions with or without reimbursement.

"(c) Each member of a committee appointed pursuant to paragraph (5) of subsection (a) of this section who is not an officer or employee of the Federal Government shall receive an amount equal to the daily rate prescribed for GS–18 undr section 5332 of title 5, United States Ccde, for each day he is engaged in the actual performance of his duties (including traveltime) as a member of a committee. All members shall be reimbursed for travel, subsistence, and necessary expenses incurred in the performance of their duties.

"(d) The Director shall, by regulation, provide for proper scientific review of all research grants and programs over which he has authority (A) by utilizing, to the maximum extent possible, appropriate peer review groups within the National Institutes of Health, and (B) when appropriate, by establishing, with the approval of the National Cancer Advisory Board, other formal peer review groups as may be required.

"REPORTS

"SEC. 407F. The Director shall, as soon as practicable after the end of each calendar year, prepare and submit to the President for transmittal to the Congress a report on the activities of the Agency during the preceding calendar year.

"NATIONAL CANCER ADVISORY BOARD

"SEC. 407G. (a) There is hereby established in the Agency a National Cancer Advisory Board to be composed of the Director of the National Institutes of Health and eighteen members appointed by the President, by and with the advice and consent of the Senate. Not more than twelve of the appointed members of the Board shall be scientists or physicians and not more than eight of the appointed members shall be representative of the general public. Appointed members shall be appointed from among persons, who by virtue of their training, experience, and background are exceptionally qualified to appraise the programs of the Agency. The Secretary, the Director of the Office of Science and Technology, and the Director shall be ex officio members of the Board.

"(b)(1) Appointed members shall be appointed for six-year terms, except that of the members first appointed six shall be appointed for a term of two years, and six shall be appointed for a term of four years as designated by the President at the time of appointment.

"(2) Any member appointed to fill a vacancy occurring prior to expiration of the term for which his predecessor was appointed shall serve only for the remainder of such term. Appointed members shall be eligible for reappointment and may serve after the expiration of their terms until their successors have taken office.

"(3) A vacancy in the Board shall not affect its activities and eleven members thereof shall constitute a quorum.

"(c) The President shall designate one of the appointed members to serve as Chairman for a term of two years.

"(d) The Board shall meet at the call of the Chairman but not less often than four times a year and shall advise and assist the Conquest of Cancer Agency in the development and execution of the program.

"(e) The Director of the Conquest of Cancer Agency shall designate a member of the staff of the Conquest of Cancer Agency to act as Executive Secretary of the Board.

"(f) The Board may hold such hearings, take such testimony, and sit and act at such times and places as the Board deems advisable to investigate programs and activities of the Conquest of Cancer Agency.

"(g) The Director shall submit to the Board for its evaluation, comments, and recommendations each year's program plan and budget prior to the formal submission of the budget request to the President.

"(h) The Board shall submit a report to the President for transmittal to the Congress not later than January 31 of each year on the progress of the Conquest of Cancer Agency toward the accomplishment of its objectives.

"(i) The Board shall supersede the existing National Advisory Cancer Council, and the members of the Council serving on the effective date of this section shall serve as additional members of the Board for the duration of their terms then existing, or for such shorter time as the President may prescribe.

"(j) Members of the Board who are not officers or employees of the United States shall receive compensation at rates not to exceed the daily rate prescribed for GS-18 under section 5332, title 5, United States Code, for each day they are engaged in the performance of their duties, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703, title 5, United States Code, for person in the Government service employed intermittently.

"(k) The Director shall make available to the Board such staff, information, and other assistance as it may require to carry out its activities.

"(l) The board shall insure that the Director, by regulations, maintains scientific peer review of research grants and programs.

"DEFINITIONS

"SEC. 407H. For the purpose of this Act the term—

"(1) 'Director' means the Director of the Conquest of Cancer Agency;

"(2) 'Agency' means the Conquest of Cancer Agency;

"(3) 'Board' means National Cancer Advisory Board;

"(4) 'cancer center' means such cancer research facilities as the Director determines are appropriate to carry out the purposes of this part, including laboratory and research facilities and such patient care facilities as are necessary for the development and demonstration of the best methods of treatment of patients with cancer, but does not include extensive patient care facilities not connected with the development of and demonstration of such methods;

"(5) 'construction' includes purchase or lease of property; design, erection, and equipping of new buildings; alteration, major repair (to the extent permitted by regulations), remodeling and renovation of existing buildings (including initial equipment thereof); and replacement of obsolete, built-in (as determined in accordance with regulations) equipment of existing buildings;

"(6) 'function' includes power and duty; and

"(7) 'Federal agency' means any department, agency, or independent establishment of the executive branch of the Government including any wholly owned Government corporation.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 408. For the purpose of carrying out any of the programs, functions, or activities authorized by this part, there are authorized to be appropriated for each fiscal year such sums as may be necessary."

COMPENSATION OF THE DIRECTOR AND THE DEPUTY DIRECTOR

SEC. 3. (a) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(94) Director, Conquest of Cancer Agency."

(b) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(131) Deputy Director, Conquest of Cancer Agency."

SEC. 4. (a) The heading of title IV of the Public Health Service Act is amended to read "TITLE IV—CONQUEST OF CANCER AGENCY; NATIONAL RESEARCH INSTITUTES".

(b) The heading to part A of title IV of such Act is amended to read "Part A.—CONQUEST OF CANCER AGENCY AND NATIONAL CANCER INSTITUTE."

NATIONAL CANCER INSTITUTE MADE PART OF CONQUEST OF CANCER AGENCY

SEC. 5. (a) Section 401 of the Public Health Service Act, including the heading thereto, is amended to read as follows:

"NATIONAL CANCER INSTITUTE

"SEC. 401. The National Cancer Institute shall be a part of the Conquest of Cancer Agency.".

(b) Section 402 of the Public Health Service Act is amended by striking out all that precedes clause (a) of such section, except the heading thereof, and inserting the following in lieu of such stricken matter:

"SEC. 402. In carrying out the purposes of section 301 with respect to cancer, the Conquest of Cancer Agency, in consultation with the National Cancer Advisory Board, shall—".

(c) Section 403 of the Public Health Service Act is amended (1)(A) by striking out "Surgeon General" wherever it appears in such section and inserting "Conquest of Cancer Agency" in lieu thereof; (B) by striking out "he" and "him" wherever either appears in such section and inserting "the agency" in lieu thereof; and (C) by striking out "section 402" wherever it appears and inserting "section 402 and section 407D" in lieu thereof; and (2) by striking out "Institute" in subsection (b) thereof and inserting in lieu thereof "Agency or Institute".

MERGER OF FUNCTIONS OF NATIONAL ADVISORY CANCER COUNCIL

SEC. 6. (a)(1) Sections 301(d), 301(l), 403(b), and 403(c) of the Public Health Service Act are amended by striking out "National Advisory Cancer Council" and "National Cancer Advisory Council" as it may variously appear therein, and inserting in lieu thereof "National Cancer Advisory Board". The word "Council" as used in any such section to describe the National Advisory Cancer Council or the National Cancer Advisory Council, is amended to read "Board".

(2) Section 217 of such Act is amended by striking out "the National Advisory Cancer Council" wherever it may appear.

(b)(1) Section 404 of the Public Health Service Act is amended by striking out "The council is authorized" preceding clause (a), and inserting in lieu thereof "The National Cancer Advisory Board is authorized".

(2) Such section is further amended (A) by striking out "Surgeon General" wherever it may appear and inserting in lieu thereof "Conquest of Cancer Agency"; (B) in clause (a) thereof by striking out "section 402" and inserting "section 402 or section 407D" in lieu thereof.

EFFECTIVE DATE

SEC. 7. (a) The amendments made by the preceding provisions of this Act shall take effect sixty days after the date of enactment of this Act or on such prior date after the enactment of this Act as the President shall prescribe and publish in the Federal Register.

(b) Notwithstanding the provisions of subsection (a), members of the National Cancer Advisory Board (as authorized under section 407G of the Public Health Service Act, as amended by this Act) may be appointed in the manner provided for in such section, at any time after the date of enactment of this Act. Such officers shall be compensated from the date they first take office, at the rates provided for in section 407G of the Public Health Service Act, as amended by this Act. Such compensation and related expenses of their offices shall be paid from funds available for the functions to be transferred to the Conquest of Cancer Agency pursuant to this Act.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD of West Virginia. Mr. President, in view of the fact that, under the agreement, time will be under the con-

trol of the distinguished Senator from Massachusetts (Mr. KENNEDY) and the distinguished Senator form Colorado (Mr. DOMINICK), both of whom are on the same side of this question, I ask unanimous consent that the time be equally divided between and controlled by the distinguished Senator from Wisconsin (Mr. NELSON) and the distinguished Senator from Colorado (Mr. DOMINICK).

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

Who yields time?

Mr. DOMINICK. Mr. President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 15 minutes.

Mr. DOMINICK. Mr. President, I ask unanimous consent that, in addition to the cosponsors I have just submitted at the desk, the name of the Senator from Kentucky (Mr. COOK) be added as a cosponsor.

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

Mr. DOMINICK. Mr. President, I do not think the importance of S. 1828, the Conquest of Cancer Act, can be overstated. It will set up the machinery for a greatly expanded national effort against cancer, the disease most feared by Americans. It has some 66 cosponsors, and is the result of a bipartisan, cooperative effort. Senator KENNEDY as chairman of the Health Subcommittee, and Senator WILLIAMS, chairman of the full committee, have presided over the deliberations with admirable impartiality and selflessness.

There was never any argument about the need for this legislation. Cancer strikes one out of four Americans. At current rates, 34 million of those now living will die of it. I do not think there is a Senator in this Chamber who has not had a close friend or relative affected by it. I have just returned from the funeral of a close friend in Colorado who was stricken by it. The only issues have been with respect to how to develop the most effective national program to find cures for it. S. 1828 represents the best thinking of the committee, the administration, the Panel of Consultants on the Conquest of Cancer, and members of the scientific community on this.

A quick summary of the background of this legislation will facilitate our discussion of it. On March 25, 1970, Senator Yarborough introduced Senate Resolution 376, which authorized the appointment of a Panel of Consultants on the Conquest of Cancer to conduct a study of the status of cancer research and to recommend a program designed to find cures for cancer within "the earliest possible time." He suggested that the Panel should direct "particular attention—toward the creation of a new administrative agency which would guarantee that the conquest of cancer becomes a highly visible national goal."

The resolution was passed on April 27, 1970, and about 7 months later, on November 25, 1970, the Panel submitted a report which recommended a national cancer program to be carried out by a new independent agency, the National Cancer Authority. The National Cancer Authority would assume the functions of the National Cancer Institute, and would administer the new cancer program outside of, and separate from the National Institutes of Health. On December 4, 1970, Senator Yarborough introduced legislation, S. 4564, to implement the Panel's recommendations. That bill was reintroduced in slightly different form as S. 34 by Senator KENNEDY and Senator JAVITS early this year.

Mr. President, let me interpolate here that every American should be grateful to the panel of consultants on the Conquest of Cancer, chaired by Mr. Benno C. Schmidt. They did an enormous amount of work in a relatively short period of time and did it with facility, with imagination, and at practically no cost. It is unique in our history to find a panel which will devote as much expertise and talent as they did to this particular report and do it at practically no expense to the taxpayers.

During hearings on S. 34, representatives of the Department of Health, Education, and Welfare—Dr. Egeberg, Assistant Secretary for Health and Scientific Affairs; Dr. Marston, Director of the National Institutes of Health; and Dr. Baker, Director of the National Cancer Institute—and members of the research community testified that establishment of an independent agency to administer the new cancer program separately from the National Institutes of Health would be a mistake. They voiced concern that such action would result in fragmentation of our overall biomedical research effort. They emphasized the importance of keeping the new cancer program within the framework of the National Institutes of Health in order to preserve the relationship between cancer research and other types of research conducted within and supported by the National Institutes of Health. Their views reflected the assessment of the research community generally that cancer research is not yet far enough advanced to enable us to isolate it from other types of biomedical research and adapt it to a strictly programmatic approach. The testimony of Dr. Phillip R. Lee, a chancellor of the University of California, and former Assistant Secretary for Health and Scientific Affairs, was representative. He said:

> Cancer is not simply an island waiting in isolation for a crash program to wipe it out. It is in no way comparable to a moon shot, which required mainly the mobilization of money, men and facilities to put together in one imposing package the scientific knowledge we already possessed.
>
> Instead, the problem of cancer—or rather the problem of the various cancers—represents a complex, multi-faceted challenge at least as preplexing as the problem of the various infectious diseases.
>
> We do not yet have the single cancer cure. We have barely begun to perceive the fantastic array of causative factors involved in cancer, the methods by which they work and the agencies by which they can be controlled.
>
> We are not yet ready to start a countdown for an anticancer blastoff, no matter what emotional appeal such an approach may have to the public.

On May 11, this year, I introduced with Senator GRIFFIN an administration bill, S. 1828, which proposed a comprehensive national cancer program to be administered within the National Institutes of Health. It recommended establishment of a cancer conquest program within the National Institutes of Health, headed by an administrator reporting directly to the President. This approach reflected the thinking of the administration that in mounting an accelerated cancer effort, it was extremely important to maintain the relationship between cancer research and other biomedical research, and that this could most effectively be done within the framework of the National Institutes of Health. The President's Science Adviser, Dr. Edward E. David, Jr., had earlier said:

> In structuring the [cancer] effort we must take account of the differences between this effort and the Apollo and Manhattan projects. When we embarked on those, Lisa Meitner's demonstration of fission and the launching of Sputnik had already been achieved. In cancer, we do not know whether the critical experiment has yet been done. . . .
>
> It is the President's belief that having honed and sharpened our biomedical research mechanism, the National Institutes of Health, we should now use it and call upon it as we embark on this new adventure. To isolate the cancer effort would prejudice the very outcome we seek. The problem of cancer straddles virtually all the life sciences—molecular biology, biochemistry, virology, pharmacology, toxicology, genetics—any one of these, or all of them, will contribute to the final solutions. No one is wise enough to pick and choose just those components of the total biomedical spectrum that will be vital. Who knows what new discovery will become vital even next year? This aspect presents a stark contrast with Apollo and nuclear energy. Indeed, we do not believe in an AEC or NASA for cancer.

With that background, then, it can be seen that the only real issue presented to the committee was whether the new accelerated cancer program could most effectively be carried out within, or separate from, the National Institutes of Health. S. 1828, as reported, resolves that issue in favor of keeping the program within the National Institutes of Health. It will establish a "Conquest of Cancer Agency" as an independent agency within the National Institutes of Health. The National Cancer Institute will be the nucleus of the new agency. The Director of the Cancer Agency will be directly responsible to the President, and will submit the Agency's annual budget directly to the President, without intervening review by anyone.

The Cancer Conquest Agency would be assisted in carrying out its program by a National Cancer Advisory Board, which would replace the existing National Advisory Cancer Council. The Board would consist of 19 regular members—the Director of the National Institutes of Health, not more than 12 scientists and physicians, and not more than eight laymen. In addition, there would be three ex officio members—the Secretary of Health, Education, and Welfare, the Director of the Cancer Conquest Agency, and the Director of the Office of Science and Technology.

I feel, and I think most members of the committee agree, that S. 1828 is an excellent compromise. It will give the new

cancer program the kind of independence and high visibility it will need to carry out its mission. And, it will do this within the framework of the National Institutes of Health, rather than through a completely separate agency, thus avoiding the isolation of cancer research from other types of biomedical research.

It has been argued that S. 1828 gives the Cancer Agency too much independence, and will lead to fragmentation of the overall biomedical research effort. In this context, it has been suggested that it might be preferable to establish the National Institutes of Health as an independent agency separate from the Department of Health, Education, and Welfare. First, I think it is important to keep in mind that the President, in proposing this legislation, intended not only to give the new cancer program the kind of management and budget independence needed in order to quickly exploit new research opportunities and to mobilize a "total national commitment" against cancer, but also to maintain the integrity of the total biomedical research effort. The President has publicly committed himself to both objectives. I ask unanimous consent that the text of his statement upon introduction of S. 1828 be inserted in the RECORD at this point.

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

STATEMENT BY THE PRESIDENT

Cancer has become one of mankind's deadliest and most elusive enemies. The conquest of cancer is one of the most important efforts of our time.

Success will test the very limits of our imagination and our resourcefulness. It will require a high sense of purpose and a strong sense of discipline.

In my message to the Congress on the State of the Union on January 22, 1971, and again in my special message to the Congress concerning a National Health Strategy on February 18, 1971, I expressed my determination to wage a successful campaign against this dread disease. I called upon the Congress to appropriate an additional $100 million to support such an effort. I am pleased that in recent days the Appropriations' Committees in both the Senate and the House of Representatives have favorably viewed this request and I am hopeful that the House—which votes today—and the Senate will both follow the Committee recommendations.

FEARS AND HOPES ABOUT CANCER

Across the Nation, there is a growing consensus that our vast scientific and technological resources should promptly be marshaled in an unprecedented attack on this devastating disease.

This consensus springs both from fear and from hope.

Cancer is second only to heart disease in the number of lives it takes in this country. And the nature of its ravages makes it our most feared disease. If the present incidence of cancer were to continue some 52 million Americans who are alive today would contract this disease someday. This means that cancer would strike one out of every four individuals in this country—and two out of every three American families. It would mean that in the next ten years alone, three and a half million Americans would die from cancer. For many of its victims, death is a slow and painful process. And for many of their families, the personal tragedy is compounded by the financial implications of a prolonged disease.

At the same time, however, there is much reason for hope.

New vistas are now opening for further research into the treatment and prevention of cancer, the result of some remarkable advances which have been made during the past ten years as we have multiplied many times over our fundamental knowledge in this area. Virus research, for example, has demonstrated that cancer can be produced in animals by over 110 of the nearly 1000 viruses that science has identified. We have learned that animal cancers can be induced by over 1,000 chemical substances. Effective measures for preventing cancer have been developed in animals, and scientists have even demonstrated that human cancers can be prevented by avoiding exposure to certain chemicals. Other advances include new surgical procedures, more effective radiation therapy, and techniques for treating cancer with improved combinations of known drugs.

All of these developments have fueled our hopes and provided a broad frontier of possibilities for researchers in the months and years ahead. This is why I was able to suggest in my special health message to the Congress in February that "of all our research endeavors, cancer research may now be in the best position to benefit from a great infusion of resources."

MORE MONEY AND BETTER ORGANIZATION

The time has now come for us to put our money where our hopes are. In the first full budget developed by this administration last year, an increase of $20 million was provided for cancer programs. For Fiscal Year 1972, the administration request for cancer programs is slightly over $332 million—an increase of $100 million from the 1971 Fiscal Year. If these resources are provided by the Congress, we should be able to finance a new and massive assault on cancer. If it should turn out that we need more money, however, I will not hesitate to ask the Congress to provide whatever funds can be effectively utilized. But I would also emphasize this important point: More money alone will not be enough. Money can help set the stage for faster progress, but in the end it is brainpower alone which can lead us to our goals. This means, of course, that we need to mobilize the intelligence and imagination of our doctors and scientists. And it also means that we must do a better job of tapping the Nation's administrative and organizational skills, which can help remove many roadblocks to success. Our capacities for efficient management were instrumental in our efforts to split the atom and travel to the moon. Now we need to apply those same capacities to the conquest of cancer.

This means, for one thing, that a wide variety of research activities in all parts of the country, in many areas of society and in a great number of disciplines must be carefully coordinated. There must be as much cross-fertilization as possible between various scientific pursuits.

In the past, the National Institutes of Health have had considerable success in fostering such coordination and cooperation and, in the process, they have earned both the respect of the scientific community and the gratitude of thousands who live happier and healthier lives because of NIH successes. It is for this reason that I have asked the Congress to establish a Cancer-Cure Program within the National Institutes of Health, where it can take the fullest advantage of other wide ranging research.

At the same time, it is important that this program be identified as one of our highest priorities, and that its potential for relieving human suffering not be compromised by the familiar dangers of bureaucracy and red tape. For this reason, I am asking the Congress to give the Cancer-Cure Program independent budgetary status and to make its Director responsible directly to the President. This effort needs the full weight and support of the Presidency to see to it that it moves toward its goals as expeditiously as possible. I am further recommending that this Director be supported by a strong management group which has as its one goal: the cure of cancer—and which can pursue that goal with single-minded tenacity.

In addition, I am recommending that a new Cancer-Cure Advisory Committee be set up to provide a broad range of advice and assistance for the President and for others who lead the Cancer-Cure Program, particularly as they work to set intelligent priorities for the Nation's efforts in this area.

I am pleased to report that the detailed management and administrative mechanisms for carrying out these plans have been discussed in considerable detail within the National Institutes of Health, with experts in the field outside of Government, and in the Office of the Secretary of the Department of Health, Education and Welfare. As these plans are translated into action, I hope that the Congress will comment on them and suggest additional ways in which we can work toward these significant goals.

I would not want to discuss the subject of cancer research, however, without offering a word of caution. Many of the experts that we consulted with told us that biomedical research is a notoriously unpredictable enterprise. Instant breakthroughs are few and the path of progress is stewn with unexpected obstacles. As we undertake this crusade, we must put on the armor of patience, ready to persist in our efforts through a waiting period of unknown and possibly anguishing duration.

Yet I feel confident that with such funding as I have proposed, with such organizations as we are developing, with the dedicated efforts of thousands of men and women from many disciplines, and with the cooperation of the Congress and the people of the United States, we can make great strides against this terrible enemy, bringing new hope for all Americans—and indeed new hope for all the world.

Mr. DOMINICK. Mr. President, his emphasis on coordinating the accelerated cancer effort with other types of research, and on keeping the new program within the National Institutes of Health clearly indicates that he does not intend to permit this legislation to result in fragmentation of biomedical research. Admittedly, an "independent agency within the National Institutes of Health" is an unusual concept. But, the President's personal responsibility for the program, and his commitment to maintaining the coordination between cancer research and other types of research conducted within and supported by the National Institutes of Health, insure that fragmentation of the biomedical research effort will not result. In short, the President has ample power to see that the new cancer program is carried out consistently with his announced objectives.

Moreover, there are several provisions in S. 1828 which will insure continuation of the cross-fertilization and communication between cancer research and other types of biomedical research so highly valued by the scientific community. The Director of the Cancer Conquest Agency is specifically authorized to—

Take necessary action together with the Director of the National Institutes of Health so that all channels for the dissemination and cross-fertilization of scientific knowledge and information [are continued in order] to insure free communication between cancer and the other scientific, medical, and biomedical disciplines.

The bill requires the Director to utilize existing research facilities at the National Institutes of Health. This will mean that central services and facilities on the NIH campus will continue to be shared with other institutes. The Director will also be required to utilize "to the maximum extent possible" the existing peer review mechanisms of the National Institutes of Health. These peer review mechanisms have been key ingredients in the cross-fertilization of knowledge between cancer and other research areas. This provision will insure their continuance.

The fact that the Secretary of Health, Education and Welfare, the Director of the National Institutes of Health, and the Director of the Cancer Conquest Agency will all serve on the National Cancer Advisory Board, will facilitate coordination of the cancer effort with other health programs within the Department of Health, Education and Welfare and the National Institutes of Health. The board will review the cancer agency's annual program plan and budget, and will submit an annual progress report to the President. Although the Director of the National Institutes of Health will not have the authority to veto or change the agency's annual budget, the committee report suggests that he be given the opportunity to evaluate and comment on it to the President. He will also have that opportunity as a full member of the advisory board.

In summary, I believe these provisions of the bill, coupled with the President's commitment to maintain the integrity of the biomedical research effort, will insure that the cancer program will not become isolated.

With regard to the suggestion that the National Institutes of Health be separated from the Department of Health, Education and Welfare, and established as an independent agency, I have only two brief comments. First, I just don't think it makes good sense to completely isolate health research functions from other health functions. Secretary Richardson made this point when he testified before the committee and said:

> The idea of establishing the National Institute of Health as an independent agency goes far beyond a proposal to establish a cancer agency reporting directly to the President but within the existing general health framework which includes research, delivery and regulations. It is our position that we must maintain a close organizational relationship between research, which can lead to improved methods for disease prevention, diagnosis and treatment, and health services and regulations. Therefore, we would find it impossible to support a bill which would separate the National Institutes of Health from the Health Services and Mental Health Administration and the Department of Health, Education and Welfare.

Second, since this suggestion was never offered as an amendment in committee, it was not fully explored and developed, as the legislation before us was.

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

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

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

Mr. DOMINICK. Mr. President, in conclusion, while I believe S. 1828 offers our best hope for solving cancer, it is extremely important that it not create unrealistic expectations of quick success. Cancer is in reality many complex diseases, none of which is yet well understood. There have been several important breakthroughs recently, but more are necessary, and they cannot be forced. There is simply no basis for predicting with any certainty when they will come. It can be stated with certainty, however, that substantially increased effort and resources will shorten the time necessary to achieve those breakthroughs, and this legislation rests on that proposition. I hope it can be enacted quickly.

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

Mr. DOMINICK. Mr. President, I would be happy to yield to the Senator from New York, who has done an enormous job on the bill.

Mr. JAVITS. Mr. President, the Senator from Colorado is very kind. I thank the Senator for his very fine words in respect to his advovacy of the pending bill. I shall have my own time to speak, which I am sure the Senator will arrange for me.

Mr. President, I rise to point out that the maturation of this bill and the bringing of it to the floor represents one of the finest acts of statesmanship and cooperation I have seen in this or the other body, and I have served in both for almost a quarter of a century.

I pick this out as a single example. The Senator from Colorado (Mr. DOMINICK) introduced the administration bill. The Senator from Massachusetts and I introduced a bill which implemented the work of a commission which had been provided for by Senate Resolution 376, aided by a distinguished New Yorker, Benno C. Schmidt, who with Dr. Farber, served as cochairmen of the national panel of consultants on the conquest of cancer.

The administration was very firm in its approach through NIH. The Senator from Massachusetts and I were equally convinced that the commission was right. Through the statesmanship of Mr. Schmidt, the Senator from Massachusetts (Mr. KENNEDY), the Senator from Colorado (Mr. DOMINICK), and the administration, we concluded the arrangement and the plan which is incorporated in this bill.

Many people always think that we are very strong-minded and that we want to have our imprimatur on everything and will never yield a single prerogative or permit the name of anyone else to get on a bill except our own names, but in this instance we had to finally prevail on the Senator from Colorado (Mr. DOMINICK) who felt he wanted the Senator from Massachusetts (Mr. KENNEDY) to bring the bill to the floor. It is an extraordinary legislative achievement and I want the Senate and the country to know of it.

Mr. DOMINICK. I thank the Senator. The Senator from New York was one of the moving forces behind this cancer legislation. His contributious have been tremendous. I owe a deep debt of gratitude to him for his flexibility and for his work in trying to solve the difficult administrative problems we had in the bill on which he has already commented.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

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

Mr. KENNEDY. I yield.

Mr. BYRD of West Virginia. Mr. President, once again modifying the previous request, I ask unanimous consent that the time on the bill be equally divided and controlled by the Senator from Colorado (Mr. DOMINICK) and the Senator from Massachusetts (Mr. KENNEDY) on the one side and the Senator from Wisconsin (Mr. NELSON) on the other side.

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

Mr. NELSON. Mr. President, will the Senator from Massachusetts yield for a unanimous consent request?

Mr. KENNEDY. I yield.

Mr. NELSON. Mr. President, I ask unanimous consent that Mr. John Steinberg of the Committee on Labor and Public Welfare be allowed on the floor during the course of this debate.

Mr. BYRD of West Virginia. Mr. President, reserving the right to object, and I shall not object. I understand that this is the fifth member of the committee staff and unanimous consent would, therefore, be necessary.

I do not object.

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

Mr. KENNEDY. Mr. President, at the outset I wish to express my own deep personal appreciation to the distinguished Senator from Colorado (Mr. DOMINICK), who was a principal sponsor of this legislation. As the Senator from New York (Mr. JAVITS) pointed out, he and I introduced S. 34 earlier this year. That bill was based upon the efforts in the last Congress which were led by the then distinguished chairman of the Health Subcommittee Senator Ralph Yarborough.

Although there was much in both pieces of legislation that was similar, there were rather dramatic and fundamental differences.

I would like to pay tribute to the Senator from Colorado (Mr. DOMINICK) for the work he has done on this legislation and for the interest he has provided in connection with the hearings on the bills. It is because of his active participation that we are where we are today.

In any consideration of legislation of this dimension it is only appropriate that we mention the wonderful leadership that was provided by former Senator Yarborough in this area of the conquest of cancer It was through his initial efforts that the distinguished panel of cancer consultants was appointed. He took great personal interest in the work and the deliberations of the committee and the panel of consultants.

I have worked extremely closely with the Senator from New York (Mr. JAVITS)

in connection with S. 34. He was extraordinarily attentive in our hearings and to the matters that arose throughout the development of S. 34 and S. 1828. And he was extremely active in working out adjustments and accommodations which led to the bill before us now. His brilliance as a lawyer is reflected in more than one of the sections of the legislation. I think the form of the legislation we are considering today is a great tribute to him and I want to express my warm sense of appreciation to him for his efforts.

Mr. President, the Senator from Colorado (Mr. DOMINICK) has outlined in considerable detail where we are this afternoon in considering this piece of legislation. I think the report that has been made available to the Membership is one of the most comprehensive reports that has ever come out of the Subcommittee on Health. It goes into the various recommendations made by the panel of consultants, and it goes into them in considerable detail. I am hopeful that the report will reflect the interest of those who share in the support of S. 1828 as well as allay the concerns of those who raised questions about the bill. The separate and individual views speak for themselves.

I know Senator NELSON will discuss certain matters about which he is concerned and I hope to be able to respond to those points

We have a special piece of legislation before us in the Senate this afternoon. It is a special piece of legislation because the conquest of cancer is a special problem of such enormous concern to all Americans. We can quote statistics, but I think every one of us in this body, and most families across the country have been touched by this disease one way or another. There are 200 million Americans today, 50 million of those people alive today will contract cancer, and 35 million of them will die from it unless progress is made. This number is twice the size of the population of the New England States. If we had a natural disaster of those dimensions, we consider it to be intolerable.

While we may be able to refer to the fact that other health diseases might strike down more Americans, I do not think there is any disease Americans genuinely fear more or are more concerned about than cancer. We have to recognize that fact.

I think one of the most interesting revelations of the cancer panel was that we are medically advanced to the point where an individual organization with special funding, special managerial technique, and special programing, may well have rather dramatic impact in combating this dreaded scourge. I think the way this panel went about justifying that position has been reaffirmed in the last week or 10 days with the recent discoveries in the cancer field regarding the isolation of a virus which may cause certain cancers in human beings.

The most distinguished laymen and scientific personnel feel that with the kind of significant advances made to date, more significant advances are ahead if we are willing to take the steps outlined in S. 1828.

Next, the panel of experts, chaired by Mr. Benno Schmidt and Dr. Sidney Farber, as well as laymen, scientists, and others concerned with cancer, have recommended the procedure of establishing an independent agency with separate programing, separate managerial skills, separate budgeting and direct line authority to the President and the Congress, but within the NIH.

We had a series of hearings in March and June of this year. We listened to the panel of consultants. We listened to the AAMC, the spokesmen for the medical schools. We listened to those who would be most affected by this program in NIH. And we listened to the most eloquent testimony of the Secretary of HEW.

One of the reasons why we are where we are today is the great interest of the President of the United States in cancer. In several Presidential messages he has stated that cancer was the one area on which he would focus attention with great specificity. He has stated he will request of the Congress whatever funds are necessary in order to conquer cancer. And the President of the United States has indicated his support for an independent type of agency with direct line authority to him. This was, of course, very heartening.

So, with the interest of the President, and with the inclusion in the report of the endorsement of the Secretary of HEW as to whether this would be a workable procedure, and with the support of the panel of experts, I think we can now proceed. I think all Americans are indebted to the panel, made up of men and women who have given of their time and interest to the problems of cancer, who gave weeks and months to the development of the panel report, a panel which I think represents the best in government, in which busy people in private life are willing to put aside their own businesses and tax their talents to developing a report such as this, and to continue to support it and help Congress, and particularly those on the health subcommittee, to fashion this legislation. We are very much indebted to these ladies and gentlemen.

Mr. President, today the Senate has the opportunity to authorize landmark legislation. As reported by the Senate Committee on Labor and Public Welfare, the Conquest of Cancer Act would enable the President to initiate a bold program aimed at the eventual conquest of this dread disease.

The background of this legislation, Mr. President, began in March of 1970 with the introduction of Senate Resolution 376, which called for a study of cancer, cancer research and the causes and cures of cancer. Underlying the broad-based support for that resolution was:

First, that cancer is the No. 1 health concern of the American people. It is the disease most dreaded by a majority of Americans, and its incidence is increasing. According to current statistics, of the 200 million Americans alive today, 50 million will be afflicted by some type of cancer, and 34 million will die of it, if better methods of prevention and treatment are not discovered;

Second, that recent advances in cancer research have brought this field to the verge of important and exciting developments in the early detection and possible control of this dread disease; and

Finally, that as a Nation we are neither putting forth the effort nor deploying the resources needed to exploit the full potential of these gains against cancer.

To assist in carrying out the new cancer study required by Senate Resolution 376, the Senate Labor and Public Welfare Committee established in June 1970, a panel of consultants on the conquest of cancer, composed of 13 eminent laymen and 13 eminent scientists, chaired by Mr. Benno C. Schmidt, managing partner of J. H. Whitney and Co., New York City, and with Dr. Sidney Farber, founder and scientific director, Children's Cancer Research Foundation, Boston, as cochairman.

As the panel began its deliberations, a further resolution from the Congress underlined the importance of the study undertaken: On July 15, 1970, the House of Representatives passed Concurrent Resolution 675, later passed by the Senate, expressing the unanimous sense of the Congress that "the Conquest of Cancer is a national crusade" and that "the Congress should appropriate the necessary funds so that the citizens of this land and all other lands may be delivered from the greatest medical scourge in history."

The report of the panel of consultants, entitled "A National Program for the Conquest of Cancer" was transmitted to the Committee on Labor and Public Welfare on November 25, 1970. Part I of the panel's report provides a brief summary of the cancer problem, identifies areas of special promise which offer unusual opportunities for intensified effort, and states the recommendations of the committee. The second part of the report sets forth the scientific and medical background in more detail.

Briefly, Mr. President, the special panel of consultants recommended:

First, that there be created an effective administration with clearly defined authority and responsibility;

Second, that there be created a comprehensive plan for a coherent and systematic attack on cancer, and

Third, that the necessary financial resources be made available.

At the end of my statement I shall include for the record the brief summary of the panel's recommendations.

At the beginning of the 91st Congress, I introduced S. 34 along with the distinguished ranking minority member of the Senate Labor Committee, Mr. JAVITS. S. 34 was designed to implement the recommendation of the special panel of consultants. It was cosponsored by more than half of the entire U.S. Senate. Briefly, S. 34 proposed:

First, that the prevention diagnosis, and cure of cancer be declared of the highest national priority;

Second, that an independent cancer

authority be established to conduct and support research on cancer, and to collect and disseminate information on cancer to the public and scientific community;

Third, that a national plan be submitted to the Congress, through the President, for the conquest of cancer which would include: measures to be taken in combating cancer; a timetable for the accomplishment of the measure; cost estimates for major portions of the plan.

Fourth, that an 18-member National Cancer Advisory Board be approved by the President with the concurrence of the Senate to advise and assist the administrator of the cancer authority.

As a part of his state of the Union message and in an additional message, the President has demonstrated his strong support for a major effort to conquer cancer essentially consistent with the recommendations of the special panel of consultants and S. 34. For example, in his special message of May 11, the President stated:

> In the past, the National Institutes of Health have had considerable success in fostering such coordination and cooperation and, in the process, they have earned both the respect of the scientific community and the gratitude of thousands who live happier and healthier lives because of NIH successes. It is for this reason that I have asked the Congress to establish a Cancer-Cure Program within the National Institutes of Health, where it can take the fullest advantage of other wide-ranging research.
>
> At the same time, it is important that this program be identified as one of our highest priorities, and that its potential for relieving human suffering not be compromised by the familiar dangers of bureaucracy and redtape. For this reason, I am asking the Congress to give the Cancer-Cure Program independent budgetary status and to make its Director responsible directly to the President. This effort needs the full weight and support of the Presidency to see to it that it moves toward its goals as expeditiously as possible. I am further recommending that this Director be supported by a strong management group which has as its one goal the cure of cancer, and which can pursue that goal with single-minded tenacity.

At the end of my statement, Mr. President, I shall include for the RECORD a copy of the President's statements.

Subsequent to the President's statement, Senator DOMINICK, the esteemed ranking minority member of the Health Subcommittee, introduced S. 1828 on behalf of the administration.

Public hearings on the bills were held in March and in June of this year. A wide range of witnesses, including the administration, the Association of American Medical Colleges, and the special panel of consultants, testified in support of the basic objective which underlies both bills—to substantially enhance this Nation's commitment to the conquest of cancer at the earliest possible time.

Within the context of that broad consensus though, there has been considerable discussion in respect to the best organizational manner in which to implement the program envisioned by both bills. Specifically, Mr. President, there are those, particularly within the academic scientific community, who were alarmed at the notion of the creation of a separate agency of the Government to implement the cancer program. To a substantial degree, their concerns go to the need to insure the viability of the National Institutes of Health as the lead agency for the support of biomedical research. In addition, there was concern that the new program might not rely upon the principle of scientific peer review which has characterized the NIH since its creation in 1937; and that the new agency might well be precedent-setting, thereby inevitably leading to the creation of a host of additional, separate programs with the attendant destruction of the NIH.

Now, Mr. President, the bill as reported by the committee deals with each of these concerns.

First, the most vexing question has been the organizational location of the new program. S. 34 envisioned the creation of a National Cancer Authority outside of the Department of Health, Education and Welfare, but with close substantive relationship with the NIH. S. 1828 as introduced called for the creation of a cancer cure program within the NIH, but reporting to the President except with respect to those functions as the President might delegate to the Secretary of HEW.

The bill as reported by the committee combines the best of both of those proposals. It calls for the creation of a Conquest of Cancer Agency within the NIH, but with direct access to the President and the Congress with respect to all matters of policy and substance. The committee's action in this matter, supported by the President himself, is deliberately designed to assure the closest cooperation between the programs of the new agency and the NIH, while simultaneously assuring the independence of management, planning, budgeting, and the assessment of priorities which are requisite to a successful program to conquer cancer as quickly as possible. Only the President of the United States has the authority to mandate this unique organizational pattern. And the President has given the American people his assurance in this regard.

Second, the bill and its accompanying report make it crystal clear that it is—and always was—the committee's intention to preserve and enhance the excellence that is the National Institutes of Health. Every member of the committee shares that view. No nation on earth can challenge the preeminence of the United States regarding the generation of biomedical knowledge.

Clearly, the NIH and its grantee institutions are principally responsible for that unquestioned preeminence. In large measure, the evolution of a scientific system of peer review has assured the quality and scientific merit of the research which the NIH has sponsored. Since the creation of the NIH in 1937, the peer review process has been an essential element in the NIH equation of excellence. That process has been successful because it has been appropriately modified as the scope of the NIH has increased since 1937. The committee expects that the objectivity, impartiality, and vigilance of outside peer review that has characterized the NIH over the past 34 years will also characterize the activities of the Conquest of Cancer Agency.

To a considerable extent the committee has recommended that the Conquest of Cancer Agency be within the NIH in order that its programs and those of the NIH can have a synergistic effect upon one another. The committee's bill specifically deals with the interrelatedness of the substantive programs of the NIH and those proposed to be undertaken by the Conquest of Cancer Agency. For example, the director of the Agency is authorized to:

First, take necessary action together with the Director of the National Institutes of Health so that all channels for the dissemination and cross-fertilization of scientific knowledge and information existing prior to the effective date of this act between the National Cancer Institute and the other Institutes of Health shall be maintained between the Agency and the Institutes of Health to insure free communication between cancer and other scientific, medical, and biomedical disciplines; and

Second, by regulation, provide for proper scientific review of all research grants and programs over which he has authority; first, by utilizing, to the maximum extent possible, appropriate peer review groups within the National Institutes of Health, and second, when appropriate, by establishing, with the approval of the cancer advisory board, other formal peer review groups as may be required. Furthermore, the National Cancer Advisory Board, authorized by section 407G of the bill, shall:

First, include the Director of the NIH as a member; and

Second, insure that the Director of the Conquest of Cancer Agency, by regulations, maintains scientific peer review of research grants and programs.

The committee understands and expects that the Directors of the NIH and the Conquest of Cancer Agency, as well as their respective staffs, shall work in comity with one another. For example, the committee intends that the Director of the Agency will make available to the Director of the NIH a copy of the Agency's budget and program plan not later than the time of its submission to the President.

Mr. President, I also want the record to be clear on the fact that there is reason to believe that a broader and more systematic attack on cancer will increase the likelihood that a major breakthrough can be made. Just last week there was reported the research results of Dr. Leon Dmochowski and his associates at the M.D. Anderson Hospital and Tumor Clinic in Houston, Tex. His group has for the first time succeeded in isolating and growing in large quantities of the virus that has been associated with certain types of human cancer, such as leukemia, and which is known to be causative in producing certain animal leukemias. This achievement will now permit studies in man to further pin down the likelihood as to whether this virus is in fact causative for a human cancer. Such studies should lead to control measures for prevention.

Mr. President, this discovery is analogous to the elucidation of the EB virus a few years ago with regard to another of the cancers—Burkitts lymphoma. Each of these efforts has been sponsored by the special cancer virus program of the National Cancer Institute, and this program will be one which may well provide powerful insights into the mysteries of cancer.

Mr. President, cancer experts have defined a number of areas which are deserving of a special effort. And I am including at the end of my statement a description of some of the broad areas which the Conquest of Cancer Agency will probably want to vigorously explore.

Finally, Mr. President, there is the concern that the creation of this Agency within the NIH will somehow inevitably lead to the destruction of the NIH as a result of analogous efforts for a whole host of other diseases, the most prominent of which is heart disease. The committee was fully aware of that concern at the time of its public hearings and executive sessions. In that regard, I want to quote briefly from the committee's report on the bill because we have dealt with this matter in our report:

The Committee, in recommending this far-reaching program for the Conquest of Cancer, has not attempted to reach any conclusions with respect to the applicability of its approach to other diseases. The Committee has had no opportunity to consider that question. No hearing record or legislative record with regard to any other diseases has yet been made. This unique approach we are now recommending for cancer amounts, at this point, to an empirical proposition. Prudence requires that there be an adequate opportunity for assessment of this program before considering whether to extend its approach to other critically important diseases.

In summary, Mr. President, this is an excellent bill. It is the product of intensive efforts of both distinguished private citizens and scientists, working in concert with the members of the Senate Health Subcommittee. The provisions of the bill before the Senate today come largely from S. 34 as it was introduced earlier this year. The modifications which have been included have improved the bill and should allay the concerns which have been raised as the committee worked on the bill.

The important thing is that the American people want action on the cancer front, and they want action now. The Senate has an opportunity to set in motion a series of events which is likely to benefit millions upon millions of people throughout the world. Surely this is an effort in which we can all take pride. I urge my colleagues to vote for the passage of S. 1828 as reported.

I ask unanimous consent to have printed in the RECORD a portion of the committee report concerning the Report of the Panel of Consultants and President Nixon's statement of May 11, 1971, regarding a national cancer cure program.

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

REPORT OF THE PANEL OF CONSULTANTS

The Report of the Panel of Consultants, entitled "A National Program for the Conquest of Cancer" was transmitted to the Committee on Labor and Public Welfare on November 25, 1970. The Report (Report No. 91-1402, 91st Congress, 2nd Session) was ordered to be printed on December 4, 1970. On April 14, 1971, it was ordered to be re-printed with illustrations, as Senate Document No. 92-9.

Part I of the Panel's Report provides a brief summary of the cancer problem, identifies areas of special promise which offer unusual opportunities for intensified effort, and states the recommendations of the Committee. The second part of the Report sets forth the scientific and medical background in more detail.

The principal findings and recommendations of the Panel were as follows:

1. Cancer is the No. 1 health concern of the American people. A poll conducted in 1966 showed that 62 percent of the public feared cancer more than any other disease. Of the 200 million Americans alive today, 50 million will develop cancer at present rates of incidence, and 34 million will die of this painful and often ugly disease, if better methods of prevention and treatment are not discovered. About one-half of cancer deaths occur before the age of 65, and cancer causes more deaths among children under age 15 than any other disease. Over 16 percent of all deaths in the United States are caused by cancer, making it by a wide margin our second greatest killer (after cardiovascular diseases). Cancer often strikes as harshly at human dignity as at human life, and more often than not it represents financial catastrophe for the family in which it strikes.

2. The amount spent on cancer research is grossly inadequate today. For every man, woman, and child in the United States, we spent in 1969; $410 on national defense; $125 on the war in Vietnam; $19 on the space program; $19 on foreign aid and only $0.89 on cancer research. Cancer deaths last year were 8 times the number of lives lost in 6 years in Vietnam, 5½ times the number killed in automobile accidents, and greater than the number of Americans killed in battle in all 4 years of World War II. Given the seriousness of the cancer problem to the health and morale of our society, this allocation of national priorities seems open to serious question. In addition to the poignancy of the disease, and the death and suffering that it causes, the economic loss is staggering, with estimates of its costs to the Nation running as high as $15 billion per year, of which some $3 to $5 billion represents direct care and treatment costs and the balance is loss of earning power and productivity.

3. The incidence of cancer is increasing. This is partly due to the fact that a greater number of our citizens are reaching more advanced ages, where cancer strikes more frequently, but it is also due to the sharp increase in lung cancer, undoubtedly attributable to the air pollution in certain environments and most importantly to the self-pollution of those who smoke cigarettes. It is estimated that if the American people stopped smoking cigarettes this alone would eliminate about 15 percent of all cancer deaths.

4. The nature of cancer is not yet fully known. We know that human cancers are caused by certain chemicals, by certain types of radiation, and probably by viruses. The precise mechanisms by which these carcinogenic agents cause, or interact to cause, cancer is not known, and very little is known about the natural defense mechanisms that prevent cancer in some cases and not in others. A great deal more must be learned about chemical carcinogens, radiation, and viruses, and how they work. We must also learn more about what takes place at the cellular level when cancer occurs. There is very strong suggestive evidence that viruses cause some human cancers, but which viruses, how they are transmitted, and how they operate are unknown. It is erroneous to think of cancer as a single disease with a single cause that will be subject to a single form of immunization (as in the case of polio) or a single cure. Cancer comprises many diseases and results from a variety of causes that will have to be dealt with in a variety of ways. However, as our knowledge is expanded, more and more cancers will become preventable or curable.

5. The cure rate for cancer is gradually improving. In 1930 we were able to cure only about one case in five; today we cure one case in three; and it is estimated that the cure rate could be brought close to one in two by a better application of knowledge which exists today, i.e. detection at an earlier stage through the more widespread use of existing techniques (such as the Papanicolaou test for women and mammography), coupled with an extension to all citizens of the same quality of diagnosis and treatment now available at the best treatment centers. There are three methods for curing cancer today; surgery, radiation therapy, and chemotherapy. Often two or even three of these methods are used in combination. Some types of cancer are far more curable than others. For example, early breast cancer treated by surgery, cancer of the cervix by radiation or surgery, and choriocarcinoma and Burkitt's tumor by chemotherapy, are among those most susceptible to cure today. Treatment techniques are improving markedly, paricularly in radiation therapy and chemotherapy, and more widespread availability of the best quality detection and treatment will give us more and more cures. However, it is still true that those cancers which disseminate rapidly are seldom curable today, and this represents a major gap in our existing knowledge. Where we stand today in our knowledge of the causes, nature, prevention, diagnosis, treatment, and control of cancer is set forth in detail in part II of this report.

6. There have been major advances in the fundamental knowledge of cancer in the past decade, and these advances in knowledge have opened up far more promising areas for intensive investigation than have ever heretofore existed. These areas of special promise must be explored with vigor, if we are to exploit the great opportunities that lie before us. They are examined in detail in part II of this report.

Among the areas of special promise which must be aggressively pursued are:

(*a*) The identification and study of the chemical, physical, and other environmental factors that cause cancer (food additives, air pollutants, industrial hazards, radiation, and other carcinogens);

(*b*) Viruses causing cancer (what viruses cause cancer, how are they transmitted, and how do they act);

(*c*) Cell and tumor biology (including cell surface phenomena, molecular functions, differentiation and genic expression, controls of cell division mechanisms of metastasis, nutritional requirements and other biological factors);

(*d*) Immunology (host resistance against cancer, its nature, causes and therapeutic use);

(*e*) Epidemiology (the variables in cancer incidence and types stemming from geographic, social, economic, nutritional, occupational, and constitutional differences);

(*f*) Cancer prevention (more effective utilization of existing knowledge and intensified research on preventive measures);

(*g*) Diagnosis (the development of new and improved diagnostic techniques);

(*h*) Chemotherapy (the development of new and better drugs and improvement in their uses);

(*i*) Radiotherapy (development of new and better techniques and apparatus for radiation therapy);

(*j*) Surgery (the best techniques in cancer surgery coupled with earlier diagnosis must be made generally available in order to fur-

ther increase the cure of cancer. Better rehabilitation techniques must be further developed and utilized to return the cancer patient to an active and full life);

(k) Combinations of treatment modalities (improvement in treatment results by better combinations of surgery, radiotherapy, chemotherapy, and immunotherapy).

7. A national program for the conquest of cancer is now essential if we are to exploit effectively the great opportunities which are presented as a result of recent advances in our knowledge. However, such a program will require three major ingredients that are not present today:

First, effective administration with clearly defined authority and responsibility;

Second, the development of a comprehensive national plan for a coherent and systematic attack on the vastly complex problems of cancer. Such a plan would include not only programmatic research where that is appropriate, but also major segments of much more loosely coordinated research where plans cannot be definitively laid out nor long-range objectives clearly specified; and

Third, the necessary financial resources.

At the present time there is no coordinated national program or program plan. The National Cancer Institute has done excellent work itself and has supported grants and contracts in the scientific community which have resulted in much outstanding work, but the overall research effort is fragmented and, for the most part, uncoordinated. The effort in cancer should now be expanded and intensified under an effective administration charged with developing and executing a comprehensive national plan for the conquest of cancer at the earliest possible time. The three foregoing elements are considered separately in more detail in the succeeding paragraphs 8, 9, and 10.

8. *Administration.*—An effective major assault on cancer requires an administrative setup which can efficiently administer the coherent program that is required in this formidable and complex scientific field. Such a setup will not be easy to achieve within the Federal Government. The effective implementation of such a program will require a simplification of organization arrangements and a drastic reduction in the number of people involved in administrative decisions. This type of straight-line organizational efficiency does not exist today in the National Cancer Institute, the National Institutes of Health, or the Department of Health, Education, and Welfare. Obviously, from many standpoints it can be argued that any cancer programs should be in the Department of Health, Education, and Welfare and indeed that it should be in the National Institutes of Health. However, there is real doubt whether the kind of organization that is required for this program can in fact be achieved within the National Institutes of Health or within the Department of Health, Education, and Welfare. Apart from the question of whether it can be done, there is also the question of whether it would be wise to require the Secretary of Health, Education, and Welfare to attempt to give cancer the priority necessary to carry out the congressional mandate in a department charged with the multiple health and other responsibilities of that Department.

In the past when the Federal Government has desired to give top priority to a major scientific project of the magnitude of that involved in the conquest of cancer, it has on occasion, with considerable success, given the responsibility for the project to an independent agency. Such an agency provides a degree of independence in management, planning, budget presentation, and assessment of progress which is difficult if not impossible to achieve in a large government department. Accordingly, if the Congress and the administration are truly committed to making the conquest of cancer a "national crusade", as expressed in the concurrent resolution of the Congress, it is the view of the Committee that a National Cancer Authority should be established whose mission is defined by statute to be the conquest of cancer at the earliest possible time. All the functions, personnel, facilities, appropriations, programs, and authorities of the National Cancer Institute should be transferred to the National Cancer Authority. The Authority should be headed by an Administrator appointed by the President with the advice and consent of the Senate, and he should report directly to the President and present his budgets and programs to the Congress. In considering the feasibility of an independent agency, it should be borne in mind that we are talking about a major scientific program and, as pointed out in subsequent paragraphs, not the delivery of patient care generally in cancer cases. The only patient care involved in this program will be that associated with clinical research and teaching and the development and demonstration of improved methods in the delivery of patient care undertaken as a part of the comprehensive program plan.

The powers of such a National Cancer Authority should be very broadly defined in order to accomplish a mission of this complexity. It would not be useful to attempt to enumerate here all the powers that such an Authority should have and in the writing of the implementing legislation, the Committee believes that the powers should be broadly defined and not enumerated. However, the following are illustrative of the kinds of powers which the National Cancer Authority will have to be able to exercise in order to carry out a comprehensive program of the type envisaged:

(a) The power to enter into prime contracts with authority in the prime contractor to enter into subcontracts;

(b) The power to commit available funds until expended rather than on a year-to-year basis;

(c) The power to authorize exceptions to existing regulations, where necessary, to permit the use of experimental drugs, biologicals, and devices in cancer research;

(d) The power to establish or support the large-scale production of specialized biological materials for cancer research, such as viruses, cell cultures, animals, and the like, as well as the power to set standards of safety and care for those using such materials;

(e) The power to support research outside the United States by highly qualified foreign nationals, collaborative research involving American and foreign participants, and training of American scientists abroad and foreign scientists in the United States, to the extent that such activities will promote the accomplishment of the mission. The Committee believes that cancer research offers a particularly fruitful field for collaboration with other nations, including those nations with whom present cooperation is limited but with whom greater collaboration is desired;

(f) The power to fund by loan, grant, contract, or otherwise any facilities or programs, or to take such other actions, as may be required for the accomplishment of the mission.

9. *Program plan.*—A comprehensive national plan for the conquest of cancer should be developed as promptly as possible. The development of a coherent overall program plan should include the following features:

(a) The present research activities now being carried forward under the National Cancer Institute should in no way be impeded or interrupted while plans are being made for the expansion, intensification, and coordination of the cancer research program;

(b) Existing research facilities and manpower should be used as promptly as possible for the accelerated exploitation of the opportunities in the areas of special promise. There is substantial unused capacity in this country today that should be utilized in order to attract and retain the manpower that is needed. It is a myth that we could not spend effectively on cancer very much more than is now being spent. The fact that Federal support for cancer research has leveled off since 1967 and that, due to inflation, the actual amount of work done has decreased, has created a serious gap between what we are doing now and what we could and should be doing in cancer research. It is estimated that current expenditures could be doubled within the framework of the existing facilities and manpower potential of this country today, exclusive of the great industrial research capability in this field which should be brought to bear on an appreciable scale in high priority areas to which this type of capability is particularly suited.

(c) Existing cancer centers should be strengthened and additional cancer centers in different parts of the country should be created. The solution of the cancer problem lends itself to a multidisciplinary effort, where teams of highly qualified specialists are available to interact on problems of research, both clinical and nonclinical, teaching, diagnosis, preventive programs, and the development of improved methods in the delivery of patient care, including rehabilitation. Among those who work in the cancer field, there is great emphasis on the advantages of critical mass—a critical mass of scientists and physicians committed to the cooperative solution of the cancer problem, of research facilities, of patients, and of financial and other resources. This is simply another way of saying that the comprehensive cancer center offers the best organizational structure for the expanded attack on cancer. In addition to the few comprehensive cancer centers that exist in the United States today, there are a number of other institutions which combine all or most of the capabilities for a multidisciplinary effort in cancer. These could serve as a base for the creation of additional centers. The new centers should have appropriate geographic distribution and should, wherever possible, be created where a nucleus of scientific, professional and managerial personnel already exists and preferably where a university or a medical school affiliation exists or is planned.

In the creation of new cancer centers, manpower limitations should be taken into account, and new centers should not be created where there would be a dilution in the effectiveness of existing centers which would offset any gain from the new center. There should be a realistic operating plan for each center which assures the scientific and managerial commitment and ability necessary to the creation and operation of a successful center.

It should be emphasized that the strengthening of existing cancer centers and the creation of new cancer centers does not mean that under this program general responsibility should be undertaken for the care of the Nation's cancer patients. The delivery of patient care in cancer cases is a part of the general problem of the delivery of patient care and should be so dealt with. However, this inhibition must not prevent the cancer centers from including such patient care facilities as are necessary for clinical research and teaching and for the development and demonstration of the best methods of treatment in cancer cases.

(d) The cancer centers should also serve as administrative coordinators of those programs which require regional coordination. Such centers should support and assist clinics and community medical centers in their own geographic areas in order to assure the widespread use of the best available methods for

early detection and treatment of cancer. They should also serve to collect data useful in the prevention and cure of cancer, including patient follow-up information, and be responsible for the dissemination of information, both at the lay and professional levels, that is useful in the prevention, diagnosis and cure of cancer. The effective dissemination and utilizati n of such information is a most important part of any national plan to conquer cancer.

(*e*) A national plan of the type envisaged must take account of the manpower requirements for this effort. There is a critical need for training and career opportunities for young scientists, physicians, and other personnel in this program. We must reaffirm to young investigators our confidence in the future of American science and in our national dedication to success in the conquest of cancer. A manpower program in this field should include training stipends, predoctoral fellowships for particularly promising candidates, postdoctoral fellowships for brilliant investigators, and career positions where appropriate through career initiation awards, career development awards, and senior career awards.

(*f*) A national plan for the conquest of cancer should provide for the generous use of grants as well as contracts and other methods of funding. There should be increased emphasis on the grants mechanism in order to stimulate continued independent exploration, particularly in those areas where knowledge is not sufficiently mature for a coordinated program aimed at reaching defined objectives.

(*g*) A comprehensive national program requires optimum communication and centralized banks of information. There must be an accurate and prompt information flow in both directions. This will call for integrated data processing, storage, and retrieval in order to rationalize the decision-making and to make information available when and where needed. As indicated above, the centers can be important foci in both the collection and dissemination of this information.

(*h*) A coordinated national program plan should, to the greatest possible extent, be generated by the voluntary productive interaction and joint planning of the scientists who will be responsible for doing the work. The program should not be the result of the happenstance of a multitude of random decisions independently arrived at. An integrated and coherent plan resulting from the joint effort of representative scientists who will be responsible for its execution is fundamentally different from the hierarchial imposition or direction of a research program from above. However, the effective use of collective planning does not mean that centralized administration or management of resources should be sacrified.

10. *Funding.*—The Committee estimates that a coordinated national program aimed at the conquest of cancer at the earliest possible time, as envisaged by the concurrent resolution of the Congress, would require an appropriation in fiscal 1972 of approximately $400 million. Thereafter, the cost of the program would increase at the rate of approximately $100 to $150 million per year, reaching a level of $800 million to $1 billion in 1976. These sums are not large in terms of our national resources or of the human suffering and economic loss attributable to cancer. A program of the type herein recommended is so important to the American people and to the world that we feel that the amounts called for should be provided even if this necessitates the raising of additional revenues. It is of utmost importance that the financing of this program not result in cutbacks in other health programs.

11. *National Cancer Advisory Board.*—Both the public and the scientific community must be effectively represented in this effort, and must have a part in its planning as well as its execution. To this end, a National Cancer Advisory Board should be created with 18 members, nine of whom are distinguished scientists and doctors in the field of cancer, and nine of whom are distinguished laymen. The members should serve for a term of 6 years with the terms of one-third of the members expiring every 2 years. Members of the Board should be appointed by the President of the United States with the advice and consent of the Senate. The Chairman of the Board should be elected by the members and should serve for a term of 2 years. The Board should meet not less than once each quarter and its function should be to advise and assist the National Cancer Authority and its Administrator in the development and execution of the program. The Administrator should be an ex-officio member of the Board. The Board should have statutory responsibility for the approval of each year's program plan and budget, but the responsibility for administering the program should rest with the Administrator. The Board should have full investigatory powers and should be required to report once each year to the President and the Congress on the progress of the National Cancer Authority in the accomplishment of its mission. This Board should supersede the presently existing National Advisory Cancer Council, and the members of that Council should serve as additional members of the National Cancer Advisory Board for the duration of their present terms.

12. Cancer is an implacable foe and the difficulty of eliminating it as a major disease must not be underestimated. A top priority commitment by the Congress, the President, and the American people is required if we are to mount and sustain an assault on cancer of the magnitude envisaged by Senate Resolution 376 and the concurrent resolution of the Congress. Such a commitment involves a recognition not only of the difficulty and complexity of cancer but also of the time and resources required to attack it effectively. While it is probably unrealistic at this time to talk about the total elimination of cancer within a short period of time or to expect a single vaccine or cure that will eradicate the disease completely, the progress that has been made in the past decade provides a strong basis for the belief that an accelerated and intensified assault on cancer at this time will produce extraordinary rewards. The Committee is unanimously of the view that an effective national program for the conquest of cancer should be promptly initiated and relentlessly pursued.

PRESIDENT NIXON'S STATEMENT OF MAY 11, 1971, REGARDING A NATIONAL CANCER CURE PROGRAM

Cancer has become one of mankind's deadliest and most elusive enemies. The conquest of cancer is one of the most important efforts of our time.

Success will test the very limits of our imagination and our resourcefulness. It will require a high sense of purpose and a strong sense of discipline.

In my message to the Congress on the State of the Union on January 22, 1971, and again in my special message to the Congress concerning a National Health Strategy on February 18, 1971, I expressed my determination to wage a successful campaign against this dread disease. I called upon the Congress to appropriate an additional $100 million to support such an effort. I am pleased that in recent days the Appropriations Committees in both the Senate and the House of Representatives have favorably viewed this request and I am hopeful that the House—which votes today—and the Senate will both follow the Committee recommendations.

FEARS AND HOPES ABOUT CANCER

Across the Nation, there is a growing consensus that our vast scientific and technological resources should promptly be marshaled in an unprecedented attack on this devastating disease.

This consensus springs both from fear and from hope.

Cancer is second only to heart disease in the number of lives it takes in this country. And the nature of its ravages makes it our most feared disease. If the present incidence of cancer were to continue, some 52 million Americans who are alive today would contract this disease someday. This means that cancer would strike one out of every four individuals in this country—and two out of every three American families. It would mean that in the next 10 years alone, 3½ million Americans would die from cancer. For many of its victims, death is a slow and painful process. And for many of their families, the personal tragedy is compounded by the financial implications of a prolonged disease.

At the same time, however, there is much reason for hope.

New vistas are now opening for further research into the treatment and prevention of cancer, the result of some remarkable advances which have been made during the past 10 years as we have multiplied many times over our fundamental knowledge in this area. Virus research, for example, has demonstrated that cancer can be produced in animals by over 110 of the nearly 1,000 viruses that science has identified. We have learned that animal cancers can be induced by over 1,000 chemical substances. Effective measures for preventing cancer have been developed in animals, and scientists have even demonstrated that human cancers can be prevented by avoiding exposure to certain chemicals. Other advances include new surgical procedures, more effective radiation therapy, and techniques for treating cancer with improved combinations of known drugs.

All of these developments have fueled our hopes and provided a broad frontier of possibilities for researchers in the months and years ahead. This is why I was able to suggest in my special health message to the Congress in February that "of all our research endeavors, cancer research may now be in the best position to benefit from a great infusion of resources."

MORE MONEY AND BETTER ORGANIZATIONS

The time has now come for us to put our money where our hopes are. In the first full budget developed by this administration last year, an increase of $20 million was provided for cancer programs. For fiscal year 1972, the administration request for cancer programs is slightly over $332 million—an increase of $100 million from the 1971 fiscal year. If these resources are provided by the Congress, we should be able to finance a new and massive assault on cancer. If it should turn out that we need more money, however, I will not hesitate to ask the Congress to provide whatever funds can be effectively utilized. But I would also emphasize this important point: More money alone will not be enough. Money can help set the stage for faster progress, but in the end it is brainpower alone which can lead us to our goals. This means, of course, that we need to mobilize the intelligence and imagination of our doctors and scientists. And it also means that we must do a better job of tapping the Nation's administrative and organizational skills, which can help remove many roadblocks to success. Our capacities for efficient management were instrumental in our efforts to split the atom and travel to the moon. Now we need to apply those same capacities to the conquest of cancer.

This means, for one thing, that a wide variety of research activities in all parts of the country, in many areas of society, and in a great number of disciplines must be carefully coordinated. There must be as much cross-fertilization as possible between various scientific pursuits.

In the past, the National Institutes of Health have had considerable success in fostering such coordination and cooperation and, in the process, they have earned both the respect of the scientific community and the gratitude of thousands who live happier and healthier lives because of NIH successes. It is for this reason that I have asked the Congress to establish a Cancer-Cure Program within the National Institutes of Health, where it can take the fullest advantage of other wide-ranging research.

At the same time, it is important that this program be identified as one of our highest priorities, and that its potential for relieving human suffering not be compromised by the familiar dangers of bureaucracy and red-tape. For this reason, I am asking the Congress to give the Cancer-Cure Program independent budgetary status and to make its Director responsible directly to the President. This effort needs the full weight and support of the Presidency to see to it that it moves toward its goals as expeditiously as possible. I am further recommending that this Director be supported by a strong management group which has as its one goal the cure of cancer, and which can pursue that goal with single-minded tenacity.

In addition, I am recommending that a new Cancer-Cure Advisory Committee be set up to provide a broad range of advice and assistance for the President and for others who lead the Cancer-Cure Program, particularly as they work to set intelligent priorities for the Nation's efforts in this area.

I am pleased to report that the detailed management and administrative mechanisms for carrying out these plans have been discussed in considerable detail within the National Institutes of Health, with experts in the field outside of Government, and in the Office of the Secretary of the Department of Health, Education, and Welfare. As these plans are translated into action, I hope that the Congress will comment on them and suggest additional ways in which we can work toward these significant goals.

I would not want to discuss the subject of cancer research, however, without offering a word of caution. Many of the experts that we consulted with told us that biomedical research is a notoriously unpredictable enterprise. Instant breakthroughs are few and the path of progress is strewn with unexpected obstacles. As we undertake this crusade, we must put on the armor of patience, ready to persist in our efforts through a waiting period of unknown and possibly anguishing duration.

Yet I feel confident that with such funding as I have proposed, with such organizations as we are developing, with the dedicated efforts of thousands of men and women from many disciplines, and with the cooperation of the Congress and the people of the United States, we can make great strides against this terrible enemy, bringing new hope for all Americans—and indeed new hope for all the world.

Mr. KENNEDY. Mr. President, the Special Panel of Cancer Consultants identified certain broad areas of cancer research which in their expert judgment warrant particularly vigorous exploration. These are:

(1) *Epidemiological Research* can identify intrinsic influences (such as chemicals, viruses, and radiation) that may play substantial roles in determining the frequency of cancer. Different types of cancer are known to occur with varying incidence in different geographic regions and under varying circumstances of social, economic, nutritional, and occupational conditions. Epidemiological identification of intrinsic conditions such as genetic predisposition, immunological impairment, hormonal effects, or metabolic differences may elucidate other factors affecting the incidence of cancer which could be clinically controlled.

(2) *Chemical Carcinogenesis* is a research area of prime importance because of the variety and quantity of new compounds introduced into the biosphere. Preliminary efficient screening should be used to eliminate or reduce this hazard. The ability to evoke neoplastic change in isolated tissue in culture should accelerate the research in defining hazardous compounds and the mechanisms by which cancer is caused. Further research is needed on:

(a) The basic cellular and molecular mechanisms of action of carcinogenic chemicals, viruses and radiations. There may be several mechanisms (both genetic and epigenetic) for each class of carcinogens.

(b) The kinds of interactions of viruses, chemicals, and radiations which result in the production of neoplasms in experimental animals and man.

(c) The proportion of tumors in man induced by viruses, chemicals, radiations, and combinations of these agents.

(d) The prevention of chemically induced cancer in man by the identification and removal of causative chemicals.

It is known that in most circumstances, a compound is transformed to a proximate carcinogen, which is then directly involved in the carcinogenic process. There appear to be common chemical characteristics of the proximate carcinogens and also common characteristics of the cellular metabolities with which they can react. Further research is called for on how to interfere chemically with the metabolism which produces the proximate carcinogens or to inactivate it once it is formed.

(3) *Virology*. The recognition that a variety of neoplastic diseases in domestic and wild animals are due to viruses makes it appear increasingly probable that some types of human neoplasia are due to viruses. Although viruses have been found in human cancers, proof of their etiologic relationship is still incomplete. An expanded study of viruses in cancer should include the mechanisms of (a) how a virus initiates cancer, (b) how a virus may be carried in cells for long periods of time without expressing its cancerous potential, (c) how a natural defense against viral oncogenesis occurs, (d) how a virus can sometimes cause tumors and sometimes other, non-neoplastic diseases, (e) how the presence of a virus can be detected by characteristic and special chemical reactions, and (f) how the interactions between viral infection and chemical carcinogens occur which sometimes can evoke tumors.

(4) *Tumor Antigens*. The characterization, isolation, and purification of antigens from normal cells and from specific tumor cells are important both to the understanding of differences in cellular chemistry in the neoplastic state and to the development of tools for the study of tolerance or rejection of tumors. Some of these antigens may be identical with those found in embryonic tissues, and some may be specifically associated with virus infection.

(5) *Cellular Immune Mechanisms*. Much further work is needed on the chemical, biochemical, and antigenic nature of cancer cell membranes in comparison with those of normal cells, especially in terms of the role of the membranes in coordinating cell activity with bodily needs. Substantial evidence indicates that some, if not all, tumors have surface antigens different from normal cells. These differences allow recognition and possible eradication of the tumor by cells of the lymphoid or reticuloendothelial system of the host. This surveillance mechanism is known to be influenced by genetic, hormonal, chemical, and physical factors, and perhaps by many others. The characteristics of production, distribution, and mechanism of action of the effector cells that participate in the defense against tumors are of great importance. Failure of cellular mechanisms to eradicate emerging tumor populations may be the final step before a tumor becomes established and begins to grow and so is worthy of intensified study.

(6) *Humoral Immunity* is conveyed through the agency of one or more of the five immunoglobulins and perhaps by other proteins in the plasma. Humoral effects on tumor cells span the range from lethality to apparent protection of the cell by interfering with cellular immune mechanisms. The interrelation of the immunoglobulins with other proteins, their relation to receptor sites on the cell, and their influence on cellular immune mechanisms, urgently need clarification.

(7) *Immunoprophylaxis and Immunotherapy* have both been shown to be effective in experimental animals, and useful immunotherapy has been reported in some children with acute leukemia. Specific and nonspecific stimuli may enhance immunologic response of the host's own immunocompetent tissue, both *in vivo* and *in vitro*. Techniques of using specific tumor antigens, additional immunocompetent cells, and nonspecific immunologic stimuli, are worthy of intensified study. The timing of immunotherapy with respect to other procedures needs clarification, but this form of treatment would appear to be most useful after maximal reduction in tumor size by surgery, radiation, or chemotherapy.

(8) *Diagnosis*. Precise and highly sensitive techniques of diagnosis prior to the appearance of clinical symptoms or of large masses of cancerous tissue are of major importance to advances in therapy. It is suspected that many, if not most, neoplasms secrete materials into the blood which have remote effects on the patient and which are not yet recognizable with tests available. Immunological assay methods have been successfully used to quantify tumor products in biological fluids. For example, chorionic gonadotropin indicates the presence of trophoblastic neoplasia and its detection allows diagnosis and appropriate therapy before a tumor mass is recognizable. A carcino-embryonic antigen appears in the blood of patients with carcinoma of the bowel, and a sarcoma antigen in patients with sarcomatous tumor growth. Continuing research to seek biochemical and immunological means of detecting cancers early deserves expansion. Automated analytic techniques with comparisons of results against computer-banked data for the healthy population and for the same individual at an earlier date would provide a more precise method for early diagnosis.

(9) *Chemotherapy*. Several disseminated human tumors have been cured with drugs alone, giving ample testimony to the proposition that selective toxicity does exist and that a potential for cure is present. Effort must be extended to understand the interaction of drug, host, tumor, oncogenic agent, and host defense mechanisms in this equation. Research on which drugs to give for which tumors, in what combinations, and when in the course of the disease (before operation, after operation, with radiotherapy, after widespread metastasis, etc.) are areas of great importance.

(10) *Tumor Cell Kinetics*. Only a portion of tumor cells are in an active growth cycle at any one time, and the synthesis of critical cellular constituents is known to occur during specific phases of that cycle. A much deeper understanding of selective toxicity during different phases of the cell cycle is needed in addition to elucidation of the natural death of cells within the tumor, the fraction of cells in the tumor which can reproduce, and techniques of killing cells which are not in the critical phases of synthesis. These types of information are required particularly for slow growing spon-

taneous neoplasms in experimental animals and in man.

(11) *Sanctuary.* Tumor cells lodged at a distance from the closest capillary or beyond the blood brain barrier may enjoy a pharmacological sanctuary where adequate drug concentrations cannot reach them to exert lethal effects. Experimental and clinical research of this problem is required.

(12) *New Drugs.* Chemical syntheses of compounds or polymers designed to interfere with critical steps in cancer cells biosynthesis and metabolism are important. The specific targets and techniques of selecting the compounds for trial must be arrived at by chemists and biologists in coordination, and these synthetic programs must be carried out in close proximity to biological testing, so that rapid feedback occurs. Empiric screening of natural products, particularly plant extracts and antibiotics, continues to provide compounds of major clinical usefulness. Nearly a dozen substances of botanical and microbiological origin are now in clinical use and have demonstrated therapeutic benefits against cancer. The programs of search for botanical and antibiotic drugs against cancer should be extended together with relevant biological screening in close proximity. Much additional research is also needed on:

(a) Metabolic or enzymatic differences between normal and malignant cells, which might lead to new drug design.

(b) Sophisticated testing of compounds, particularly antibiotics, against various important biosynthetic enzymes. Drugs which may affect enzymes unique to oncogenic viruses hold particular promise for neoplasms found to be caused by viruses.

(c) Pharmacology and metabolic disposition of known active compounds in human cancer patients.

(d) Development of growth-inhibiting compounds that are not immunosuppressive.

(e) Synthesis and structure-activity analyses of series of compounds that inhibit key enzymes, with the aim of discovering species or tissue differences in affinities for the drugs.

(f) Attempts to lay the groundwork for the development of new classes of drugs that would affect processes of malignancy other than growth, such as invasion and metastasis.

(g) Elucidation of the mechanisms whereby certain drugs potentiate the lethal effects of heat on tumor cells.

(h) Attempts to find new and effective drugs to produce a radiosensitization of tumors.

Predictive Testing of Drugs before human use is of major value and must be extended. The optimal dose, route, schedule and conditions of administration may be learned from experimental animals in addition to the toxicities and side effects which may develop. What is more, development of methods by which a drug can be tested in the laboratory for its effectiveness on the patient's own tumor prior to its clinical use is an area where important advance can be made.

Clinical Investigations in chemotherapy provide an essential link in cancer research, since the ultimate goal is prevention and relief of the disease in man. Cooperative group studies bring earlier results of higher precision and validity because of the positive intellectual input of several investigators in planning the research.

(13) *Radiotherapy.* Use of new radiation sources may allow avoidance of the problems of anoxia in tumor tissues and so substantially improve radiotherapeutic results. Another area of great importance is the continued and expanded study of the effects chemotherapeutic agents in combination with radiotherapy where the optimal choice of drug, schedule, dose, and radiation regimen needs wide investigation.

(14) *Surgical Improvements* can be made which should substantially increase cure rates. These involve the early use of surgery as a prevention of the development of invasive and matastatic cancer by removing precancerous tissues. In addition, the combination of radiation and surgery in the eradication of established neoplasms is subject to major improvement by appropriate design, precise scheduling, and the use of drugs, to take advantage of the small residual tumor populations after the initial major reductions. Organ transplantation should be developed as an aid to the extension of curative surgery.

(15) *Fundamental Biological Studies* are of the greatest importance in disclosing information about the causes of cancer and strategy for its cure and prevention. Molecular biology can eludicate DNA mutations. A change in DNA structure as a random event or as a response to an environmental trauma may lead to cellular death, or, if the injury is compatible with cellular survival, a mutation. Following such a mutation, a series of descendants may appear whose change in the DNA, if unrepaired, may be heritable and could be the cause of neoplastic transformation. In the course of normal growth and maturation, this change in DNA would be reflected in the composition of RNA, which in part provides messages specifying particular protein syntheses which determine the character of the cell's enzymes and thus its whole metabolic machinery. Mutations and derangements in the repression and derepression of genetic material are susceptible of study by a wide range of experimental systems. These studies must be pursued in great detail because of their relevance to cancer. Further work is needed in the area of biochemistry to support both the search for preventive and therapeutic measures:

(a) Further documentation of biochemical diversity in cell components and in responses to control factors is necessary to depict the true magnitude of the cancer problem and perhaps to sort out the threads of unity which must exist.

(b) Examination of tumors in terms of *isozymes* is particularly important because, if two different enzymes can catalyze the same reaction but possess different three-dimensional structures, they may respond differently to chemotherapeutic agents, and the information may suggest new modes of chemotherapy. Isozyme research is also important because it is relevant to the understanding of gene regulation in differentiation, in transformation of normal cells to cancer cells, and in the understanding of the relation of the two processes.

(16) *The Nature of Cell Surface* is imprecisely known. Its chemical and physical composition, its mediation of the cell's antigenic identity, its function in nutrition and in drug intake, are poorly understood. The mechanism by which the surface affects the control of a cell's mobility and the role of how this is distorted to allow the characteristic invasion and metastasis of cancer is not understood and merits continuing research.

(17) *Biological Organization.* Intercellular communication in a multicellular animal is an obvious reality. The right number of particular types of cells of given architectural relationships accumulate to make up our characteristic normal organs. Among the most typical features of cancers is a loss of normal architectural arrangement suggesting a major alteration in intercellular communication. Mediators of this intercellular communication must be sought. Tumors evoke a new blood supply and a chemical complex responsible for this activity, known as the angiogenesis factor, has recently been isolated and is worthy of major additional exploration. More research is needed on:

(a) The development of assay systems for sensing and measuring the growth-regulating chemicals which operate between different cells in specific growth situations and neoplastic conditions.

(b) The isolation and characterization of the active principles.

(c) The synthesis of precursors, analogs, and antagonists of these important intercellular regulators.

(d) The elucidation of the cell cycles and the manner in which new agents and analogs modify steps in the cell's replication cycle.

(e) The use of cell biological and genetic methods for modifying the cell's response to the action of such controlling factors.

(f) The mechanisms of action of known hormones and nutrients in the control of cell replication and differentiation.

(g) The application of this knowledge in the effective staging of cells for more efficient use of existing chemotherapeutic agents.

In addition to opening new avenues to cancer therapy, the knowledge derived from these approaches to the biology of growth control has the extra advantage of being widely applicable to other growth dyscrasias such as vascular and kidney disease, nerve regeneration or replacement, immune defects, and aging.

PROGRESS AND OPPORTUNITY HIGHLIGHTS FOR CANCER PREVENTION AND TREATMET

MANY CANCERS ARE CAUSED BY EXTRINSIC FACTORS

Many of the types and numbers of human cancers are caused by chemical, physical or biological factors in the environment or by sociologic patterns of life which increase one's risk to these factors.

This is important because, with the realization that genetic factors play a limited role in cancer, it means that it is not man's inherent destiny to develop cancer. It means further that we can improve the means to detect cancer-causing agents in the environment and thereby devise and implement better procedures to irradicate such factors, to prevent exposure, or to increase man's resistance to these agents.

CANCERS ARE PREVENTABLE NOW

The prevention of some cancers in man is not new—we have been doing this or have known how to do it for many years. Better utilization of diagnostic X-rays, diminution of tobacco consumption and the restriction or modification of commercial chemicals have clearly resulted in substantial reductions of the number and types of cancer in exposed individuals and populations.

This is important because it shows that cancer can be prevented following identification of causative factors and that this and additional know-how holds great promise for the prevention of other types of cancer in larger segments of our population.

VIRAL VACCINES PREVENT CANCER IN ANIMALS

Over one hundred ten different viruses have already been identified as causes of many different types of cancer in all major groups of laboratory and domestic animals. Highly effective vaccines have already been developed and used for the prevention of leukemias, sarcomas, and lymphomas like Hodgkin's disease in different animal systems.

This is important because it extends the principle of vaccine protection from the classic infectious diseases such as polio to cancer and is providing the intellectual and technological base upon which to prevent cancers in people (see below).

VIRUSES HAVE BEEN ISOLATED AND GROWN FROM HUMAN CANCERS

Viruses of four different types have been isolated from patients with leukemia, Hodgkin's disease, tumors of the womb, and breast cancer. We are particularly intrigued with the type B virus from human breast cancer because (1) this virus has many characteristics in common with a type B virus known to be a major cause of breast cancer in animals and (2) breast cancer is the most com-

mon cause of death in women at ages of peak risk to this cancer.

These very recent findings are *important because* the availability of large quantities of viruses isolated and grown from human cancers will make it possible to determine whether these viruses are actually major causative factors of these cancers in man. Such studies may very well lead to the development of means for the prevention of these cancers in people. These studies may also provide important clues as to how to better treat existing cancer patients with available drugs or with drugs that might be tailor-made for the control of these tumors.

IDENTIFICATION OF PRECANCEROUS LESIONS OR OF INCREASED RISK OF CANCER

Research leads are available and are developing which in addition to the Pap Test for cervical cancer may provide means for detecting diseases or non-apparent lesions which may predispose to the development of cancer. In particular, intensive studies are being conducted on the "Gold" antigen which may be diagnostic of colon cancer and on analyses of cells in sputum which may indicate early changes associated with lung cancer.

This is *important because* in many patients early diagnosis substantially increases the chances of successful treatment of the disease. People who show early predictive signs of cancer can be brought in to the physician's office or the clinic for more frequent and more intensive examination so that if they do develop cancer they can be treated early with a higher probability of success.

BETTER TESTS TO IDENTIFY CANCER-CAUSING CHEMICALS

Studies conducted over many years have shown that approximately one thousand chemicals are capable of causing cancer in mice and other animals. About twenty of these are known to be carcinogenic in man. Over the past three years alone three hundred thousand new chemicals have been synthesized per year throughout the world. About ten thousand of these are produced in quantities of at least one ton. At present approximately only three hundred chemicals can be tested in this country each year. Each test requires at least two hundred mice and two hundred hamsters which must be treated and held for two years at a total cost of $40,000 per chemical tested. More tests of the type that determined the hazardous potential of cyclamates, DDT, asbestos and other chemicals will be performed with additional funding. Perhaps more importantly, new tests are being developed that appear to be able to detect cancer-causing potentials of drugs, food additives and commercial chemicals within four to six weeks in a smaller number of animals or with animal cells grown in tissue culture and at greatly reduced cost.

This is *important because* with advancing technology, including the continuous introduction of new consumer and industrial products, we must develop sensitive relatively short term tests to safeguard man against undesirable products and contaminants of his environment.

DEVELOPMENT OF A UNIFYING HYPOTHESIS ON THE CAUSES OF CANCER

Substantial evidence has been obtained which suggests that cancer-causing information from silent or hidden viruses is inherited by the newborn of most animals, including man. Factors, such as other viruses, other diseases, chemical and physical comtaminants, and old age itself, may enhance or trigger the virus or its information for the production of cancer. Most recently, an apparent unique chemical substance (called a polymerase) has been detected in virtually every virus known to cause or be associated with leukemias, sarcomas, Hodgkin's-like cancers and breast cancer. This substance is also found in the cancers themselves but not in normal tissues.

These findings are *important because* the detection of this unique enzyme is supportive evidence for the "oncogene hypothesis" in that it suggests the causative presence of viral activity. Secondly, the detection of this material in certain individuals may well provide a sensitive means of early diagnosis of cancers at a time when they are nondetectable clinically. Thirdly, this is important because if the polymerase is essential for the continuation of the cancer as a cancer then specific drugs can be found or designed to interfere with this activity thereby preventing the development of cancer or interrupting the development of an existing cancer. Within the past six months three classes of drugs have already been identified which are capable of interfering with this substance in the test tube. Plans are well under way to develop other drugs and to test them in the clinic.

CANCERS CAN BE CURED WITH DRUGS

About fifteen per cent of man's cancers are of the fast growing type. These include tumors of the female afterbirth (choriocarcinoma), tumors predominantly of young children (Wilm's neuroblastoma, acute lymphocytic leukemia, and Burkitt's lymphoma) and Hodgkin's disease. Up to ninety per cent of patients with these diseases can be put into symptom-free remission for long periods of time following treatment with drugs under controlled dosages and regimens. A considerable number of these patients have survived symptom-free for more than five years and in some cases are considered to be cured.

This is *important because* it shows clearly that effective treatment of some cancers is a reality and because this technical know-how provides a base for even more effective treatment of the majority of cancers which are of the slow growing type.

There is excellent justification for the optimistic view that substantial progress has been made and will be made for the prevention and treatment of cancers in people. It must be stressed, however, that most such studies are complex, long term and expensive. Several years elapse between the detection of activity of a new drug for animal cancers and its effective utilization in man. Optimal testing for cancer-inducing properties of environmental chemicals now takes two years. The effectiveness of present vaccines for polio, measles, mumps, and other infectious diseases was proven in one season (4–6 months). When testable vaccines became available for cancers (e.g., childhood leukemia and adult breast cancer) it could take 5–45 years respectively to determine the goodness of the appropriate vaccine. Unquestionably, additional resources will substantially decrease these time frames by virtue of our ability to support present and to recruit and motivate additional investigators for the development of new and the exploitation of existing leads. Nonetheless, it must be appreciated that long term understanding and support are essential for the attainment of common major goals—effective prevention; and in the interim, cure of disease.

Mr. President, I ask unanimous consent to include in the RECORD at the conclusion of my remarks on S. 1828 a set of issue papers which extract from the committee's report on the bill, the hearing record, and the CONGRESSIONAL RECORD which extract relevant material with regard to the bill now under consideration.

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

ISSUE—WILL CANCER BE THE FIRST OF MANY SEPARATE AGENCIES?

The Committee, in recommending this far-reaching program for the Conquest of Cancer, has not attempted to reach any conclusions with respect to the applicability of its approach to other diseases. The Committee has had no opportunity to consider that question. No hearing record or legislative record with regard to any other diseases has yet been made. This unique approach we are now recommending for cancer amount, at this point, to an impirical proposition. Prudence requires that there be an adequate opportunity for assessment of this program before considering whether to extend its approach to other critically important diseases.

SENATOR CRANSTON'S FLOOR SPEECH MAY 21, 1971 ON SENATE RESOLUTION 126

This resolution must be considered in light of S. 34, the proposed Conquest of Cancer Act, now pending before the Subcommittee on Health of the Committee on Labor and Public Welfare.

I firmly support the move to make a massive attack on cancer, which killed 323,330 Americans in 1969. However, we cannot rationally or conscientiously ignore the No. 1 cause of death in this country, heart and cardiovascular diseases.

It is my hope that the submission of this resolution about which I intend to speak in more detail next week will mark the beginning of a massive, national attack on the No. 1 killer—heart and other cardiovascular diseases.

ISSUE

Position of the Panel with respect to the need for a separate agency.

Mr. SCHMIDT. Now, I would like to say in that regard, Mr. Chairman—of HEW prior to the President's recent statement, we reconvened our panel and we met in New York—I believe the date of that meeting was April 29. At that meeting, only thirteen members of our panel were present, and at that meeting we reconsidered this question of whether the independent agency was the right approach to this problem, or whether we should reconsider and revise that recommendation for some form of inclusion of the program within the NIH.

Dr. Henry Kaplan, who had been an active participant in the deliberations of the panel, stated at that meeting that he had on further reflections developed misgivings about the separation of the agency from the NIH, and that he would like to go on record as saying that he would like to see some solution found which would leave the agency within the NIH, but which would give it the independence and management planning, budget presentation and assessment of progress that we have proposed.

So, at that time the panel then—that portion of the panel present at that meeting—was divided by a vote of 12 to 1 on that issue. So that that will give you the background as I understand it, and I was present and presiding at all the meetings of the panel which were held.

Senator KENNEDY. Have there been any other votes taken other than those two?

Mr. SCHMIDT. No. As I said—No, we never voted other than at the time of the final recommendations. . . ."

Senator NELSON. The only point I was making was before you got to clean-up position, so to speak, where you decided as in all organizations and you say, let us make it unanimous—the vote was 16 to 10, wasn't it?

Mr. SCHMIDT. No sir, I don't recall any 16 to 10 vote at all. We didn't follow a procedure of taking votes normally.

Senator NELSON. There was no 16 to 10 vote at any time?

Mr. SCHMIDT. I don't recall that there was. At a preliminary time in the panel's deliberations, I think we did ask for—I did go around the table in this room and ask for indications of where people stood on various points, and I never recorded those votes and I never—I don't recall that this particular issue was ever put to that kind of a vote."

ISSUE

Can the new agency work independently within NIH?

Senator JAVITS. Do you believe that the degree of autonomy which can be attained with the highest interests of the conquest of cancer at heart is capable of being attained through an independent agency within the National Institutes of Health headed by a director, appointed by the President, subject to the advice and consent of the Senate, and who will serve under the direction of the President?

Secretary RICHARDSON. Yes, I believe so.

Senator DOMINICK. Mr. Secretary, I just have a very short series of questions here which parallel very much, I think, what the Senator from New York was saying.

It is my understanding that under the proposal which we have before us in S. 1828, upon which conferences have been held to see how we can put together the proper bill, that the director will report to the President, but will be working within the NIH on a mutually agreeable basis so that the cross fertilization of ideas in the other institutes will still be available, is that correct?

Secretary RICHARDSON. Yes.

ISSUE

Will basic research be undercut?

Dr. FARBER. May I make a brief remark about biomedical research in cancer? We have spoken here as though—this morning, as though these are different entities. There is no cancer research without bio-medical research. It rests heavily upon biomedical research and it returns to the rest of biomedicine an eminent amount of valuable information. The Cancer Institute has supported with its grants and funds a great deal of basic bio-medical research, and there has been interchange among and between these enterprises.

Just recently, within the last year, Senator Nelson is familiar with this, I am sure, the research worker, Professor Demon, in a cancer institute in Wisconsin, made an observation, quickly made also by Dr. Bolter, which has completely shaken the dogma of DNA. The foundation of modern molecular biology when these men showed that there is an enzyme working on RNA, which permits RNA to work upon DMA, and protean synthesis in a manner which was never thought possible by other people in molecular biology or biomedical science. This is a two-way street. It will be unthinkable for anyone in charge of a cancer enterprise to neglect biomedical research.

The whole purpose of the recommendations which were originally in S. 34 and now I understand are in your bill is to expand the relationship between cancer and biomedical research, and all other research supported by governmental bodies, by the government in various research bodies in Washington.

ISSUE

Will a "business-like" approach cure cancer?

Senator KENNEDY. There has been some suggestion that this kind of approach which has been made by the Panel itself is just trying to apply some managerial efficiency of the medical-industrial complex and that this will really not be—not contribute positively in a significant way to be——

Mr. SCHMIDT. Well, I certainly agree with Senator Nelson that it is possible to overestimate what "business-like methods" do in a program of this complexity and of this scientific depth. That does not, however, it seems to me, mean that we shouldn't do the best we can to have clearly defined authority and responsibility, to have a comprehensive overall plan, albeit one that includes a big segment of basic scientific research, and to have an independent budget and a clearly defined mission so that we can measure progress against that mission.

I don't think we necessarily do things better by keeping them in a larger compartment. I think sometimes the world's unfinished business can get done better if it is bit off in bites that people can define and take as a specific mission. I think that is what we are trying to achieve here. I don't know of any belief that there is any magic business formula here that is going to do this job.

All we are after is just good organization, good planning, and clear definition of mission.

ISSUE

Does the bill overpromise of an instant cure of cancer?

Senator KENNEDY. Let us take this issue of the question about an instant cure. As I understand from your testimony, both in terms of the recommendations of the commission itself, your testimony here on two other occasions, your presentations to the members of the Senate that was sponsored by the majority and minority leader, you were never really representing that there would be an instant cure as a result of this legislation.

Mr. SCHMIDT. Absolutely. On the contrary, Mr. Chairman, one of the points that we have made and made repeatedly is that cancer is not a single disease. It will not lend itself to a single form of immunization or a single cure, in all probability. We have endeavored in everything we have done to avoid raising false hopes. No one wants to raise false hopes, but it doesn't seem to me that the counterpart of that is that we should not make a greater effort.

ISSUE

Will peer review be undercut?

Secretary RICHARDSON. I think insofar as the National Institutes of Health as an entity overall established a peer review system which it believes valid, that it is appropriate for and desirable that NIH make this applicable to all the institutes. Here, however, we are dealing with legislation that would create a somewhat different kind of entity, one reporting directly to the President, although within the framework of the National Institutes of Health.

Therefore, we think since we are considering new legislation that this legislation should, while mandating a requirement or peer review, nonetheless leave open the possibility that the director of the new effort might, in mutual consultation with the Director of the National Institutes of Health and on the advice of his advisory body decide to do it some other way.

* * * * *

Dr. FARBER. Mr. Chairman, gentlemen, the peer review has been referred to as though it was a sacred cow, something which was once established remains the same over the years. That is not the case at all. In the 25 years I have known the NIH intimately, the peer review system has been shaped and reshaped many times and improved always. But two features have always remained, and these two will continue with the Cancer Authority or any other operation of this kind, I am perfectly certain. These features are, first, complete fairness to every applicant with honesty integrity on the part of those who participate in the peer review. The second is expertise. Not all sixty study sections may be needed for this cancer authority, but the pattern which is there will certainly be used by anyone who wants to make a success of an enterprise of this magnitude. It may be that a smaller number would be required, but experts who are capable of giving advice in a dispassionate manner with complete fairness to any applicant from any part of the country, this will continue.

* * * * *

Senator NELSON. Will you feel better if we wrote in the report that it was our urging that we follow, so long as we insist that there is some review, that the new Director follow the time-honored and tested procedures that have been followed in the NIH in the past?

Mr. MURTAUGH. That would be reassuring.

* * * * *

In large measure, the evolution of a scientific system of peer review has assured the quality and scientific merit of the research which the National Institutes of Health has sponsored. Since the inception of the National Institutes of Health, the peer review process has been an essential element in its equation of excellence. That process has been successful because it has been appropriately modified as the scope of the National Institutes of Health has increased. The Committee expects that the objectivity, impartiality, and vigilance of outside peer review that has been characteristic of the National Institutes of Health over the past 34 years will also characterize the activities of the Conquest of Cancer Agency.

* * * * *

Mr. SCHMIDT. Now, so far as peer review is concerned, no committee could have been more dedicated to the proposition of peer review than our panel was, and it is not the desire of our panel to impinge in any way on the reflective necessity of peer review, nor do we believe that our recommendations would lead to that result. So far as any thought of a systematic—Mr. Chairman, I am just attempting to hit what I think have been some of the highlights of the testimony this morning, and then I will conclude.

ISSUE

To what extent will the President delegate authority to the Secretary?

Secretary RICHARDSON. Under U.S.C. Section 301, I have now found out, the President has authority to redelegate any authority vested in him anyway, so to that extent S. 1828 is redundant. But we put it in there for the reason essentially that the President's office shouldn't have to exercise any *purely administrative* function that he believes could better be vested somewhere else.

S. 1828, as originally introduced, provided that the Director would serve under the direction of the Secretary of Health, Education, and Welfare with respect to such functions as the President might prescribe. This provision was not included in the bill as reported, because under existing law—3 U.S.C., Sec. 301—the President has broad delegational authority. The Committee understands, however, that since the President has stated he will assume personal command of the program, and that he wants the Director to be personally accountable to him, he does not intend to make broad use of this authority.

ISSUE

What should be the composition of scientists and laymen on the Advisory Board?

The National Cancer Advisory Board will be composed of the Director of the National Institutes of Health and eighteen members appointed by the President, by and with the advice and consent of the Senate. No more than twelve of the appointed Board members shall be scientists or physicians, and no more than eight shall be members of the general public. The Committee felt that the National Cancer Advisory Board would be required to make decisions and recommendations that are largely scientific in nature, and therefore it should contain a predominance of scientific and medical personnel, while at the same time, having the laymen public point of view represented.

The Secretary of Health, Education, and Welfare, the Director of the Cancer Conquest Agency, and the Director of the Office of Science and Technology will be ex officio

members of the Board. The Committee understands that all members of the Board may participate fully in discussions, hearings, voting, etc., and that there will be no distinctions made in such activities between appointed and other members. The Committee views the Board as an effective mechanism through which communications between the Cancer Conquest Agency and the National Institutes of Health can be further maintained.

* * * * *

Mr. SCHMIDT. Now, on the point of ratio of the board, I have no strong feeling about the 9–9 ratio on the board. We thought a lay participation was desirable and we came to the numbers of equal participation, but I can say from my own experience on the panel that it was the scientific members on the panel who contributed most and were most effective, although the lay members contributed very substantially, so that if it were the view of the committee or the view of the Congress that those proportions were troublesome, I would certainly have no problem with that.

ISSUE

Should the bill funnel the Agency's budget through NIH?

The Director of the Cancer Conquest Agency will prepare and submit its annual budget directly to the President. The new Agency must clearly have access to the funds and resources necessary to accomplish its mission in the shortest possible time. The President has already announced his intention to ask for whatever funds can be effectively used.

It is therefore the Committee's intent that the Director be treated under the Budget and Accounting Act of 1921 as a head of a department or establishment of Government. The Office of Management and Budget should give technical budget guidelines directly to the Agency, and the Agency will formulate its budget and submit it directly to the OMB for the President's approval. Subject only to limitations imposed by the President and the Congress, the Director will have full authority to reallocate funds among program activities within his overall budget. This flexibility is necessary if the Agency is to be able to respond promptly to changing priorities or unanticipated research opportunities. For that reason, the Committee rejected an amendment offered by Senator Nelson which would have required the Cancer Conquest Agency budget to go to the Director of the National Institutes of Health for review and evaluation before going to the President.

It is, however, expected that plans and budgets will be developed in close coordination with the National Institutes of Health. The Director of the Cancer Conquest Agency should have an opportunity to review and comment on the plans and budget of the National Institutes of Health that are in any way related to cancer research. The Director of the National Institutes of Health should have an opportunity to review and comment on the plans and budgets of the Cancer Conquest Agency.

In this regard, the Committee intends that the Director of the Cancer Conquest Agency will make a copy of the Agency's annual budget and program plan available to the Director of the National Institutes of Health not later than the time of its submission to the President. This will give the Director of the National Institutes of Health an opportunity to submit his comments to the President, without interfering with the Cancer Conquest Agency's budget independence. The Committee believes that such reviews and comments, particularly in development phases, will facilitate progress in both cancer research and in biomedical research generally.

Finally, Mr. President, I ask unanimous consent to have included in the RECORD at the conclusion of my remarks a letter to the editor of the New York Times by Mr. Benno Schmidt. Mr. Schmidt was a member of the special panel of cancer consultants and its excellent cochairman. His letter in response to a Times editorial is a systematic explanation of the views of the panel with regard to the need for legislation as contained in S. 1828 as reported.

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

JUNE 3, 1971.

EDITORIAL PAGE EDITOR
The New York Times,
New York, N.Y.

DEAR MR. EDITOR: The New York Times in its editorial of May 31, 1971, *War on Cancer,* presents so misleading a picture of the political, scientific and organizational aspects of present discussions looking to an increased national effort in cancer research that some comment seems desirable. The purpose of this letter is to review briefly the recent history on this subject and to attempt to put the present discussions and differences into perspective.

In April of last year the Senate of the United States appointed a Panel of Consultants to study the cancer problem and develop recommendations for making the 'conquest of cancer" a major national goal. Thirteen members of that Panel were drawn from among the nation's outstanding cancer scientists and doctors, and thirteen members were lay representatives of the public. The Panel had no interest other than to discharge the mission given it by the Senate of preparing the best possible report on:

(1) Where we stand today in the field of cancer;

(2) What are the areas of greatest promise for significant advance; and

(3) What steps should be taken to make the conquest of cancer a major national goal?

After six months of the most wide-ranging and intensive study, including the consideration of the written or verbal testimony of 289 witnesses and advisers, the Panel arrived at its findings and recommendations which were presented to the Senate on December 4, 1970.

The Report of the Panel has been called by the American Association for Cancer Research, an organization that includes 1600 of the country's outstanding cancer scientists, "the most comprehensive, realistic and constructive analysis of the state of cancer medicine and cancer research that has ever been made."

First, let us look briefly at the facts relevant to the Times charge that President Nixon and Senator Edward Kennedy are engaged in a "duel to gain political advantage from cancer." The member of the Senate who worked most closely with the Panel during its deliberations and the formulation of its findings and recommendations was Senator Ralph Yarborough of Texas, then Chairman of the Health Subcommittee of the Senate Committee on Labor and Public Welfare. It was Senator Yarborough whose Resolution created the Panel and it was he who introduced in the last session of the Congress the *Conquest of Cancer Act* (S. 34) to enact into law the recommendations of the Panel. At the time of Senator Yarborough's work with the Panel, and at the time of his introduction of the Cancer Bill, he had already been defeated for reelection to the Senate in the Democratic primary by Senator Lloyd Bentsen. I have no question that Senator Yarborough's support of the Conquest of Cancer Act was nonpartisan and nonpolitical, and this was certainly what the Panel desired and intended. The Panel was bipartisan in its makeup and unanimous in regarding the cancer issue as wholly outside of politics. Having had an intimate connection with the early history of this legislation, I know from the bipartisan support which we received that the legislation was similarly regarded by all concerned.

When the new Congress was organized, Senator Kennedy became the new Chairman of the Health Subcommittee of the Committee on Labor and Public Welfare of which Senator Javits was the ranking Republican member. Accordingly, Senators Kennedy and Javits became the sponsors of the Conquest of Cancer Act in the new Congress, along with 51 bipartisan cosponsors in the Senate. This hardly qualifies as an effort on the part of Senator Kennedy to gain political advantage from cancer, unless political advantage accrues from a good faith effort by the Chairman of the Health Subcommittee to implement the nonpartisan recommendations of a nonpartisan panel on a nonpartisan subject within the jurisdiction of his Committee.

Turning now to the organizational point referred to in the Editorial, after a most thorough study of the pros and cons the Panel concluded that a major program of cancer research of the type envisaged by the Congress could best be conducted by an independent authority under an administrator appointed by the President and responsible directly to the President and to the Congress. It was thought desirable to get the cancer program out from under the six layers of bureaucracy and the red tape which overlay it today, and to give it clearly defined authority and responsibility and the independence in management, planning, budget presentation, and assessment of progress which are so necessary to the success of a complex and major scientific effort of the magnitude of that involved in the cancer problem.

In criticism of this conclusion, the TIMES editorial points out that the analogy to the splitting of the atom or the space program (where independent agencies were given the job) is not valid because we do not have the basic scientific knowledge in cancer that we had in those fields, and therefore this program is not a program of engineering implementation of existing knowledge as those programs were. I assure you that the Panel was thoroughly aware of this distinction in making its recommendations, and we took it into full account. The valid analogy is not the scientific analogy, but the organizational analogy. The cancer program, in order to succeed, needs the same independence in management, planning, budget presentation and assessment of progress that those programs needed and in those respects the organizational analogy is a valid one.

The TIMES editorial also speaks of the dangers of fragmenting basic biomedical research if the recommendations of the Panel are adopted. The direct opposite is true. Today there is no comprehensive and coherent overall plan for the conduct or the coordination of the cancer research program itself or for its coordination with other biomedical research. The Panel recommendations, strongly influenced on this point by the views of the Director of the National Cancer Institute, call for an overall plan to be generated primarily by a representative cross section of the best of the scientists who will be responsible for its implementation. Furthermore, our recommendations call for the kind of coordination of the effort which will enable the scientists at work on this program to know what other scientists are doing in the same and related fields.

This does not mean that we are calling for an unbalanced programmatic approach, because the Panel's plan envisages a substantial increase in unprogrammed, basic biomedical research supported by grants. But the recommendations do envisage a comprehensive overall program with important segments of programmed research in those areas which are ready for that approach.

"Fragmentation of medical research" is not necessarily related to common funding. Its avoidance depends upon the existence of a plan and the effectiveness of the coordination thereunder. However, this has become a favorite phrase of those opposed to the independent management of the cancer effort, although I have never seen it accompanied by any analysis of the degree of fragmentation that exists today or the effect of the recommended coordination under the new proposals.

Understandably, the recommendation of the Panel for an independent organization met with opposition from the National Institutes of Health, of which the National Cancer Institute is now a part. Our recommendations would not move, terminate or interrupt the activities of the National Cancer Institute, but they would make that Institute the nucleus of a National Cancer Authority with its own management, planning, and budgetary responsibility. It seems to be in the nature of things that organizations fight against losing any of their component parts, particularly the largest single component part. Therefore, it is not surprising that the Director of the N.I.H. opposed this aspect of the recommendations of the Panel. Similarly, it is not surprising that the Secretary of Health, Education and Welfare supported him in this opposition and that the great majority of the noncancer scientists who receive support from N.I.H. joined in support of the N.I.H. position. In particular, the medical schools have been virtually unanimous in expressing their distrust of the proposed new arrangements, in spite of the fact that, in fact, medical schools would receive greater support for their cancer-related activities under the Panel recommendations than they have received heretofore. Also, I believe that the example of greater support for cancer would also result in greater support for biomedical research generally.

I would like to emphasize that our Panel is strongly of the view that cancer research should not be funded at the expense of other biomedical research or medical education. But the way to avoid this is not to divert funds appropriated to cancer to these purposes, but to use the cancer funds for cancer and look squarely at the funding needs of these other areas.

I would also like to emphasize that no member of our Panel desires to weaken the other activities of the National Institutes of Health. Many members of our Panel have worked closely with the N.I.H. for a number of years and we recognize that the N.I.H has done outstanding work in certain of its intramural programs and in funding grants and contracts made in response to applications throughout the country. But the Panel believes that the time has come for more comprehensive overall planning of the cancer effort than that which results from the happenstance of the sum total of the approved grants and contracts, and that independent management can best give us this new emphasis in moving away from the status quo. We see no need for this to weaken other activities of the N.I.H. Quality need not be a function of size (in fact, the opposite is more often true), and the Congress and the Executive have the power to keep the N.I.H. in its very important remaining roles as strong as they want it to be.

President Nixon, recognizing the validity of the arguments for clearly defined authority and responsibility and for eliminating what he describes as "the familiar dangers of bureaucracy and red tape," has indicated a desire to provide the cancer program with independence in management, planning, budget presentation, and assessment of progress. At the same time, he is aware of the fears that exist among the medical schools and many biomedical scientists that taking this program out of the N.I.H. will weaken N.I.H. and thereby weaken biomedical sciences outside the field of cancer. Therefore, he has made recommendations which attempt to resolve this problem by leaving the program in the National Institutes of Health, while at the same time giving it the stature and independence envisaged by the Panel's recommendations. He has also called for a strong cancer advisory committee, in line with the Panel's recommendations, which would assure the representation of the scientific community and the public in the planning and execution of this effort. Far from playing politics with this issue, he is, it seems to me, joining Senators Kennedy, Javits and others in attempting to give the American people what they want—a higher priority for cancer and the most effective possible use of our scientific and technological skills to reduce the impact of this most dreaded of all diseases.

The New York Times, which has been in the forefront of those calling for a reorientation of our priorities, should applaud President Nixon, Senator Kennedy and the many others who are attempting to make intelligent progress in this most difficult field. Admittedly, the organizational issue is a difficult judgment decision, upon which opinions can intelligently and honestly differ, but insofar as I have been able to see from a very close vantage point, the President and the Senators involved in this matter are working diligently and without partisan motives to find the best answers for the American people.

In many ways, the most disturbing aspect of the New York Times editorial is not the misleading quality of its political observations or its simplistic approach to a difficult organizational question, but is its negativism on cancer research itself. Of course, no general cure for cancer is in sight and there is still much ignorance about the origin of cancer, but there are vast new insights in cell biology, in immunology, in virology, in detection and diagnosis, in chemotherapy and radiotherapy, and in other areas which offer the promise of extraordinary rewards if they are pursued with diligence, intelligence and efficiency. Nobody wants to hold out false hopes. Cancer is not a single disease, and it probably will not lend itself to a single form of immunization or a single cure, and certainly there is no suggestion of a fixed date for all the answers. However, in the past two decades there has been a broad and powerful wave of advances in cancer research. In some places, the tide has raced ahead, providing enough knowledge for the prevention or cure of certain types of cancers. The momentum of advances, the breadth and depth of current knowledge, and the recognizable goals in research are such that a greater effort can and should be sustained.

Cancer is an implacable foe and the difficulty of eliminating it as a major disease should not be underestimated. No one is suggesting that "the country's entire yearly military budget," or anything approaching that amount could properly or efficiently be spent in this field. What is being suggested is a top priority commitment by the Congress, the President and the American people, recognizing not only the difficulty and complexity of cancer, but also the time and resources required to attack it effectively. The Panel believes that this would involve expenditures commencing at $400 million per year and moving up over a 5-year period to an annual rate of $800 million to $1 billion.

We believe that an effective and well managed program of this magnitude should be promptly initiated and relentlessly pursued. Without holding out false hopes, we can give our cancer effort new impetus and new emphasis, and move away from the defeatism that has so long characterized our attitude toward cancer and that is so evident in the tone of the New York Times editorial. Such a program can be an important step in the reorientation of our national priorities. Where could we find a better field in which to make our advanced technologies and scientific skills work for us and for all humanity?

Sincerely yours,

BENNO C. SCHMIDT, *Chairman,*
National Panel of Consultants on Cancer.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. Mr. President, the chairman of the Health Subcommittee, the Senator from Massachusetts (Mr. KENNEDY), as well as other members of the committee, including the Senator from Colorado (Mr. DOMINICK) and the Senator from New York (Mr. JAVITS), have quite obviously put in a lot of time, conducted extensive hearings, and worked very hard to prepare a bill which has as its objective expanding our efforts to find better methods of treatment and care for the victims of cancer, with the ultimate objective being the conquest of cancer itself.

No one, so far as I know, would quarrel with the efforts of those who have been involved in preparing this bill, as well as the panel that carefully evaluated this question over a long period of time and recommended this approach in the important undertaking to ultimately conquer cancer.

Insofar as I know, no one in the United States would quarrel with the objective, and everybody in the Congress, and the public, too, would be prepared to appropriate and spend whatever amount of money could be effectively spent in seeking to accomplish the objective in which we are all interested.

My reservation about the bill is that it creates a separate institute outside of the National Institutes of Health. In my opinion, this particular provision is going to hamper the effort to successfully conquer cancer. I fear that this will handicap the effort more than it will enhance it.

Furthermore, creating a separate independent institute, with its own board bypassing the Director of NIH, reporting directly to the President, is going to establish a precedent which will require the Congress, if we are going to act in a logical fashion, to create other separate institutes. In fact, the National Heart and Lung Institute has now requested that they be treated in the same fashion. So that there will be a National Heart and Lung Institute housed within the building of NIH, but reporting, with its own advisory board, its own Director, directly to the President of the United States.

Their case will be just as good as a case for a separate cancer institute outside of NIH.

In fact, the statistics are that 38.4 percent of the people who die in this country die from diseases of the heart. That is the jurisdiction of the National Heart and Lung Institute. Malignant

neoplasms cause 16.9 percent of the deaths; cerebral vascular diseases, 10.8 percent of the deaths; accidents, 5.9 percent; influenza and pneumonia, 3.7 percent; uncertain causes of infant mortality, 2.2 percent; diabetes, 2 percent; arteriosclerosis, 1.8 percent; bronchitis, emphysema, and asthma, 1.6 percent; cirrhosis of the liver, 1.6 percent; all other causes, 15.1 percent.

I have repeatedly asked the proponents of this measure—that is, the proponents of creating an independent institute outside of NIH—just what is to be gained by it. You can search the testimony, and you will find that there is not much of a reason for it except a kind of emotional commitment to do something with an independent institute that they think cannot be done if they remain within the NIH, the finest institution of its kind anywhere on earth.

The Senator from California (Mr. CRANSTON) joined me in filing individual views. I should like to read into the RECORD our comments on the bill, as spelled out in our individual views:

We voted to report S. 1828 as amended in Committee, and to co-sponsor the original S. 34, because we strongly support the objective of the bill.

The bill is designed to expand the resources and intensify the effort to achieve better methods of treating and controlling cancer with the final conquest of cancer as the ultimate objective.

There is no doubt that the Congress, the Administration and the Nation are prepared to give extensive support to expanding the effort to eliminate cancer. This is amply demonstrated by the fact that the President asked for, and Congress appropriated, an immediate additional $100 million for cancer research in the Second Supplemental Appropriations Bill (PL 92–18) for fiscal year 1972.

However, while we agree with the *intent* of the bill, we have serious reservations about the design and structuring of the *approach* as spelled out in the language of the bill.

The bill provides that a newly-created independent Conquest of Cancer Agency will be established *within* the National Institutes of Health with the Director of the Agency and the National Cancer Advisory Board each reporting independently and directly to the President on all matters respecting cancer research, including programs, plans, budget proposals and annual progress reports.

Thus, the Director of NIH is specifically by statute bypassed in the chain of command and communications. We think this is a serious error because the NIH Director has under his jurisdiction the other nine Institutes, several of which are engaged in continuing cancer and cancer-related research, and he is, therefore, the only individual in or outside of NIH with the overview and responsibility for all cancer-related activities and research.

No credible rationale for bypassing the NIH Director can be found in the testimony. The proponents assert that bypassing the NIH Director will somehow expedite the program, enhance the prestige of the enterprise and assure the acquisition of a higher quality Director. A better argument can be made, we think, that this approach will tend to handicap the program rather than improve and expedite it.

For all practical purposes, this bill creates an independent Agency, with its own Director and independent Advisory Board housed within the NIH but in no way responsible to the Director of NIH.

Of course, it is intended by language in the bill (as reported from Committee) that the Director of NIH and the Director of the Cancer Agency will engage in whatever cooperative efforts are indicated to implement the program effectively.

We think this arrangement raises very serious practical and policy questions that will impair the effort and set a very bad precedent.

While it is our view that the best approach was spelled out in our proposal to create a special cancer authority within an independent NIH, (described in our joint floor statement of May 21, 1971, set forth at the end of our view) we think that at the very minimum, this bill should require that the annual budget and program be submitted to the Director of NIH and that he submit it to the President with his comments and evaluations.

We recognize that the Committee Report states:

"The Committee intends that the Director of the Cancer Conquest Agency will make a copy of the Agency's annual budget and program plan available to the Director of the NIH not later than the time of its submission to the President. This will give the Director of the NIH an opportunity to submit his comments to the President, without interfering with the Cancer Conquest Agency's budget independence. The Committee believes that such reviews and comments, particularly in development phases, will facilitate progress in both cancer research and in biomedical research generally"

We feel this report language is insufficient.

It is anomalous that the only person in government with overall responsibility for cancer-related research in the various Institutes within NIH does not have the formal responsibility for presenting his evaluation of the cancer program and budget to the President. The NIH Director's only statutory role concerning the cancer budget and program is as a member of the Cancer Advisory Board, where he is only one voice of 22 members.

Furthermore, there are sharp divisions within the medical and scientific community over the best approach or approaches to the conquest of cancer. When, in fact, there are such substantive divisions over a particular research program or budget, it should be the NIH Director's formal responsibility to so advise the President.

We also believe that in the interest of efficiency and sound management, the NIH Director should be made responsible for coordinating the cooperative activities of the Cancer Agency with the other NIH Institutes.

The Congress and the public should recognize that by creating a totally independent Cancer Agency reporting directly to the President, a compelling precedent will have been set for creating similar agencies to deal with other afflictions—for example, an independent Heart and Cardiovascular Disease Institute. The case for creating such an Institute can surely be presented in an equally convincing way, and it will be difficult to deny such Institute the same status. Inevitably, cases will be developed for other Institutes with arguments for independent status presented as forcefully as Cancer's or Heart and Cardiovascular Diseases.

Advocates of heart and cardiovascular disease research already have written the Secretary of HEW seeking status for the National Heart and Lung Institute equal to that established for cancer research.

Arthritis is a disease which affects literally millions of persons; why shouldn't the National Institute of Arthritis and Metabolic Diseases be given equal status?

In short, we believe that totally independent status for *any* Institute will tend to weaken NIH, and to hinder the success of an attack on cancer or any other disease, rather than strengthen it.

The breakup of NIH, probably the finest biomedical research structure in the world, would be, in our opinion, highly undesirable and unwise. S. 1828 as reported poses a clear and present threat of this breakup.

Dr. James A. Shannon (who served as Director of NIH during its period of greatest growth) stated in a letter submitted as testimony on March 9–10, 1971, during hearings on S. 34 before the Health Subcommittee:

"The several Congressional actions which propose that the new program be mounted under a separate Authority, perhaps reporting directly to the President, and, as a corollary, to be operated outside the NIH, is to my mind without merit and dangerously destructive. The NIH is many things, but above all, it symbolizes a set of processes for the governance of the orderly growth and development of science . . . the NIH, in the sense described above, is an invaluable and irreplaceable guarantor to the nation that order, stability, sound judgment, balance, flexibility, responsiveness, and responsibility will characterize the country's assault on the problems of disease, disability, and death."

A large number of management problems arise when a research effort is made independent of others in NIH. Cancer research is heavily dependent on extensive supporting resources of NIH, such as clinical facilities, animals, instrumentation, computer services, central research grant services and a variety of logistical services. The various Institutes share scientific and manpower resources. They deal with the same grantee institutions and the same contractors. They should be governed by common and consistent policies.

We fully recognize that those joining in the Committee Report have only the best intentions in inserting language calling for communication and coordination between the Cancer Agency and NIH. We believe, however, that what is needed is an interrelationship under the overall direction of the NIH Director, which would be stronger than could be achieved among research Institutes of clearly differing rank and authority.

As Dr. Philip R. Lee, former Assistant Secretary for Health and Scientific Affairs in HEW, testified at the March 9–10 hearings:

"Cancer is not simply an island waiting in isolation for a crash program to wipe it out. It is in no way comparable to a moon shot . . . which requires money, men and facilities to put together in one imposing package the scientific know-how we already possess. Instead, the problem of cancer—or rather the problem of the various cancers—represents a complex, multifaceted challenge at least as perplexing as the problem of the various infectious diseases . . . We do not know where the breakthroughs will come and I think it would be a great mistake to begin to dismantle NIH in favor of an untested approach."

Therefore, we see no compelling reason to set up cancer research as an independent entity, an approach which we suspect may turn out to be more detrimental than beneficial to conquering cancer or any other disease. We believe the answer to a successful attack on cancer is to strengthen NIH as much as possible.

And we should expand the resources as we are doing in the field of cancer research and cancer treatment.

I point out that when we look at the organizational chart of NIH, we note that there are ten institutes. One of those is the National Cancer Institute. Each of the 10 institutes has its own advisory council. Several other institutes within the NIH work on cancer and cancer-related research.

So if this bill is passed unamended, we will have a budget of about $332 million being spent by the Cancer Institute and $100 million more being spent on cancer-related research in other Institutes.

I have no doubt that all that money

and more can be usefully spent in seeking a solution to the problem about which we are all concerned. But note that under this bill, $332 million will go to the National Cancer Institute, which is set up independent of and outside the NIH but is physically housed within it, with its own board, not under any direction at all of the Director of NIH, reporting directly to the President, while several other institutes under the direction of the Director of NIH will be spending approximately $100 million in cancer-related research. So we will have the anomalous situation of the Director of NIH being responsible, under this bill, for the 9 other institutes, several of which will be spending a total of approximately $100 million on cancer-related research—mainly, the General Medicine Institute, the Neurological Diseases and Stroke Institute, the Institute of Child Health and Human Development. So he will have the overall direction of that research or the overall supervision of it.

Then we will have another $232 million being spent by an independent cancer institute established legally outside of NIH, housed there, however, and reporting, as I said earlier, directly to the President. It does not make much sense at all. I think that if everybody sat down and thought about it for a while, they would recognize that this is not the best approach to accomplish the end we all seek.

I also note one other aspect: The President did not support this independent institute. The President did not endorse it. The President was for keeping the National Cancer Institute within NIH. But he changed his mind and came out in support of the proposal for a separate agency as advocated by Senator KENNEDY.

I think the President was right on that point in the first place, and he should have adhered to this position.

I did not agree with the aspect of his position which would continue to have these institutes operating through the various bureaucratic layers of HEW. I favored an independent NIH with a special cancer authority within NIH and under the Director of NIH, with just the Director of NIH between the cancer authority and the President of the United States.

Everyone who knows anything about how government operates knows very well that at some stage the President will have to delegate the responsibility to somebody else to handle the Cancer Institute's budget and program. No President is an authority in this field. So is the science adviser, who may or may not know anything about it, going to do it? Or will it be done as the President originally considered—that he delegate it back to the Director of NIH? Then we will have created a bureaucratic kind of Rube Goldberg thing, where we bypass the Director of NIH, go straight to the President with the budget and plan and program, and then the President has to have somebody overview that, and he cannot do it, so he refers it back to the Director of NIH.

That was the original proposal, and that was dropped. But somebody is going to handle this; and I think that good commonsense dictates that when the budget and plan and program for the cancer institute is drafted by the director of the institute and prepared on the advice and counsel of the advisory board, that it then should go to the director for his formal comments and evaluation. With all the disputes that there are and will continue to be, about the best approaches in seeking the conquest of cancer the President, the Congress and the country should have the benefit of the independent observations of the Director of NIH. Important disputes within and medical and scientific community should be pointed out by the Director of NIH.

The Director of the NIH is responsible for all the institutes. Let us take a look at the NIH structure for a moment. There are 60 study sections made up of distinguished scientists from the various disciplines under NIH. These study sections are composed of scientists from the various scientific disciplines such as biochemistry, medicine, surgery, genetics, and so forth. So we have the 60 study sections within NIH with scientific expertise from all over the country. These 60 study sections evaluate the scientific proposals, coming from various institutions and individuals are the basis of their scientific merits. Then they are sent or referred to the appropriate advisory councils for the various institutes within the NIH. So that some will be sent to the National Heart and Lung Institute, some to the Cancer Institute, some to the National Institute of Allergies and Infectious Diseases, and so forth. Then each one of these institutes has an advisory board. The National Advisory Board then decides which one of the programs that have been submitted to them, after evaluation by one or more of the 60 study sections, should be funded. All of this activity is also under the Director of the NIH.

The money for these projects, about $100 million worth, in the field of cancer related research, will be in other institutes within the NIH, not the Cancer Institute.

Who should be responsible for the coordination of all cancer related activities within NIH and activities and relationships between all institutes involved in cancer research?

Obviously, it is the Director of the NIH. All we have in the bill is some language which indicates that they should cooperate. But, do not be misled by it. The National Cancer Agency is an independent, legal entity reporting directly to the President, period.

I think we are setting a dangerous precedent that will haunt us for a long time to come. I want to know what is the argument when the next institute comes, the National Heart and Lung Institute, as they are now requesting, to say that they want the same treatment on the same ground, on the same basis, with the same merit as an independent institute outside of the NIH reporting directly to the President, just the same as the Cancer Institute.

I have yet to hear what answer there is to that.

The answer is "Yes," if it is valid for the Cancer Institute, it is valid for the Heart and Lung Institute, for metabolic diseases. This is the beginning of the dismantling of NIH, which I think is the greatest institution of its kind anywhere on earth. I do not believe that we should be going that route; whereas I am sure I will not be able to persuade this House, as I could not persuade the committee, to accept my vewpoint on this, I hope that the House of Representatives will take a good, hard look and take all the good parts of the bill, of which there are many without any doubt, plus the funding which I am happy to support, but correct this aspect of the bill so that we do not begin to dismantle the NIH.

Mr. President, I ask unanimous consent to have printed in the RECORD some NIH comments in response to Dr. Solomon Garb's questions and answers relating to management subjects, contained in his letter of April 26, 1971, on a national cancer authority.

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

NIH COMMENTS ON DR. SOLOMON GARB'S QUESTIONS AND ANSWERS RELATING TO MANAGEMENT SUBJECTS, CONTAINING HIS LETTER OF APRIL 26, 1971, ON A NATIONAL CANCER AUTHORITY TO MEMBERS OF THE FEDERATION OF AMERICAN SOCIETIES FOR EXPERIMENTAL BIOLOGY

ALLEGATIONS OF INEFFICIENCY, OVERLAPPING, ET CETERA

1. *Statement—page 3: Question*—"What is the evidence of inefficiency, delay, duplication of review and overlapping of responsibility in HEW?" *Answer*—"Statements and testimony by HEW administrators brought the Panel around from its original position of keeping the cancer agency in NIH to liberating it from HEW altogether. The evidence on which this was based would be most easily accessible now in a book by Dr. A. L. Levin entitled 'The Satisficers' and in the report of the General Accounting Office entitled 'Administration of Contracts and Grants for Cancer Research—NIH, HEW Report B-164031(2).'"

Comment: The Panel did not interview anyone in the DHEW above the level of the National Cancer Institute. The only contact made with the Office of the Director, NIH, was an introductory meeting by the Panel's Staff Director with the Director, NIH, at the beginning of the study.

"The Satisficers" was written by a young physician who had served his two years of military duty in the Public Health Service Commissioned Corps. It consists of a series of anecdotes all designed to show, in the words of its preamble, that "Officials do not try to maximize but, instead, they 'satisfice' (satisfy and suffice)." Without discussing the specific aspects of the book (it does not contain material directly related to the cancer issue), I can only comment that, if things are as universally bad within the spectrum of Government observed by Dr. Levin as they are portrayed in his book, there would appear to be no reason to suppose that the rest of the Government is not afflicted by the same bureaucratic syndromes and, indeed, that independent agencies would be exempted from them. Those who know NIH can make their own judgment as to whether or not it is managed by "satisficers."

The GAO report points to certain delays which are involved in the NIH scientific review process for research grants and its final review and signature of research contracts and in the appropriations and funding process. It recommends that research grants be awarded up to a specified dollar limit with-

out review by study sections and that authority be delegated to the National Cancer Institute for final negotiation of research contracts. The Department commented that it would study the recommendation on grants and pointed out that the decision to delegate final contract authority to NCI had already been made as a consequence of a study made within the Department. The problem of uncertainties of funding results, of course, from causes external to NIH; however, in the case of cancer research, the request for an additional $100 million was submitted in the form of a 1971 supplemental estimate, so that the funds would be available by this July 1 (rather than await the normal 1972 appropriation action later in the year). Certainly none of this supports the conclusion that the cancer research program can only be effectively managed outside of NIH.

2. *Statement—page 3: Question*—"What specifically in the H.E.W. structure do you feel leads to the problems mentioned?" *Answer*—"The National Cancer Institute is one of ten institutes in the National Institutes of Health. A recommendation from the Director of the NCI must go through several assistant directors of the National Institutes of Health to the Director of that organization. But NIH itself is one of three bureaus under the Surgeon General, so the recommendation then moves to the assistants to the Surgeon General and the Surgeon General himself. From there, it goes to the Assistant Secretary for Health and his assistants and staff who head one of three divisions of HEW. From there, the recommendations next go to the Deputy Secretary for HEW, then to the Secretary for HEW, and finally to the Office of Management and Budget."

Comment: This description of the hierarchy is inaccurate. First, NIH is *not* "one of three bureaus under the Surgeon General." Since 1968, it has been one of three operating agencies reporting directly to the Assistant Secretary for Health and Scientific Affairs. The Surgeon General functions as a deputy to the Assistant Secretary and has acted for him in his absence. Second, deputies and assistants participate in the budget process on an advisory basis; they do not constitute separate layers of management decisionmaking. The Under Secretary is not a separate level of review. Reviews by deputies and staff assistants facilitate final decisions by the responsible line managers.

3. *Statement—page 5: Question*—"Wouldn't moving cancer research to a separate agency increase overhead costs?" *Answer*—"On the contrary, it would decrease those costs. Right now, there is enormous wastage of time, energy, and money getting through the levels of bureaucracy. The individual grantee may not always be aware of this, but he is nevertheless affected. Large sums are wasted on superfluous offices and personnel in the NIH and HEW hierarchies. This wastage reduces the money available for grants and fellowships. Time is wasted at many levels, and time costs money. The energies of N.C.I. officials and scientists are dissipated in dealing with a large number of nominal superiors in the bureaucracy; superiors who sometimes know little or nothing about cancer."

Comment: These are rather sweeping allegations concerning the nature of the management processes within NIH and DHEW. We have not seen the evidence to support them. In fact, the Questions and Answers enclosed with Dr. Garb's letter reflect considerable misunderstanding of these processes. This will be evident in the discussion later in this document on the budget process.

4. *Statement—page 2: Question*—"Why do people in HEW object to a National Cancer Authority?" *Answer*—"We understand the question raised by some in the Department of Health, Education and Welfare and by the director of the National Institutes of Health, because no one likes to admit that overlapping delays in decision making, duplication and inefficiency exists, but the fact is that they do exist and we see no potential for removing them other than through a new organizational arrangement."

Comment: The basis for objecting to a National Cancer Authority is much more substantial than this suggests. There are undoubtedly some delays and overlaps. However, we have seen no "evidence" to support a conclusion that progress in cancer research has been significantly impeded by administrative problems and that existing inadequacies are not correctable within the organizational framework of NIH and HEW.

We would further point out that the Panel's report provides no specific information to support its conclusions on organization and management. All of the discussion in the report on these subjects is contained on pages 4 and 5 of the Summary. It consists merely of (1) a series of generalized assertions and conclusions without any supporting examples or other evidence and (2) a listing of powers which should be vested in the new Authority without pointing out wherein these powers were lacking in the current situation. As a matter of fact, NCI already has most of the cited powers and we are advised that NIH has taken steps to obtain others.

RELATIONSHIPS WITHIN NIH

1. *Statement—page 4: Question*—"I have heard it said that moving cancer research out of H.E.W. into a new agency would cut cancer off from all other biomedical communication. Is this true?" *Answer*—"Not at all. Cancer scientists would continue to communicate and interact with other scientists just as they always have. They never had to rely on N.I.H. for that. . . ." On page 7, it is pointed out that "the present NCI buildings would be assigned to the National Cancer Authority."

Comment: The problem is not merely one of scientific communication. It is one of insuring appropriate coordination and management of closely related programs and achieving a balanced allocation of resources among them in accordance with priorities. Various Institutes and Divisions of the NIH are engaged in and support research work that is highly relevant to the areas of special promise listed by the Panel. The virologists, immunologists, cell biologists, epidemiologists, pharmacologists, and others involved in such studies are focused on fundamental life processes undoubtedly vital to the understanding of cancer, even though they may be addressing their research with different problems in mind. Also, cancer research is heavily dependent on the extensive, central supporting resources of NIH—e.g., clinical facilities, animals, instrumentation, computer services, central research grant services, and a whole variety of logistical services. The various Institutes compete, in many ways, for the same scientific and technical manpower resources. They deal with the same grantee institutions and the same contractors and must be governed by common policies to avoid confusion and to insure a consistent approach to the overall problems of these institutions and contractors. Scientists and other staff living side by side at NIH should be treated under policies which are equitable for all concerned. These are but a few illustrations of the need for overall program and management action across the several areas of biomedical research.

2. *Statement—page 4: Question*—"If cancer reesarch would be helped by taking it out of H.E.W., wouldn't heart research and other research also be helped by taking them out of H.E.W.? *Answer*—"Perhaps, I hope that H.E.W. can be effectively reformed before that becomes necessary." However, it is further stated on page 5 that "the reform of HEW at this time appears to us to be a political impossibility. The rescue of one part of it, NCI, is possible, and in time may help speed other reforms."

Comment: This recognizes the precedent the Cancer Authority proposal would provide for intensive pressure by other categorical interests for similar treatment. Apparently, it reflects the view that the future of NIH as a national leader in biomedical research is not a paramount consideration—a view which we certainly cannot share. Nor does it confront the management problems which would be involved for the Executive Branch through such a fragmentation of biomedical research programs and their organizational separation from responsibilities for other health programs of the Department of Health, Education, and Welfare.

THE BUDGET PROCESS

1. *Statement—page 9: Question*—"It is hard to believe that H.E.W. officials would oppose more funds for cancer research. Why would they do such a thing?" *Answer*—"Those who deal with them intimately say it is a desire to demonstrate their willingness to keep federal expenditures down. Each tries to outdo the other and when this is compounded five or six times through the whole superstructure above the N.C.I., the result is disaster. The National Cancer Authority would eliminate this cumulative folly."

Comment: In the first place, HEW officials do not oppose more funds for cancer research. Both the 1971 and 1972 budgets of the President included substantial increases for cancer research.

In the second place, the above description reflects a totally erroneous concept of how the budget process works. It does not begin at the bottom and go up through echelons with each taking a slice off the estimate. In fact, the formal process usually begins with the establishment of fiscal policies at the top. A critical factor is the overall dollar ceiling initially provided the Department by the Office of Management and Budget. The Department in turn allocates ceilings and provides other guidelines to the agencies as a basis for formulating their budgets. Agencies submit their budgets within these ceilings but are usually offered the opportunity of outlining urgent needs which cannot be covered under the ceiling. Not infrequently, higher echelons will increase an estimate for a given program either because of a different judgment on priorities, an easing in the overall dollar ceiling, or a combinaiton of the two. There are negotiations and appeals at various levels before decisions are finally made. In short, it is a complex process and one which is not accurately described in terms of cumulative effects up through the hierarchy. It is emphasized that decisions at the top—namely, by the Office of Management and Budget, as the President's management arm—are major determinants in the process of formulating the budget as well as in the presentation and defense of the budget before Congress. Expenditure ceilings set by the Congress and the President are also important controls over the execution of the budget.

2. *Statement—pages 8 and 9: Question*—"Why couldn't we compromise, forget about moving the National Cancer Institute out of H.E.W., and just settle for getting the extra funds for research?" *Answer*—"because the extra funds would not materialize. . . . For the years 1968, 1969, and 1970, the H.E.W. officials who testified before the House and Senate appropriations subcommittee asked for decreases in cancer research funding. . . . During these years the professional judgment budgets of the NCI were high enough but they were cut in turn by NIH, PHS, several layers of HEW and the Bureau of the Budget. What we propose now is to have the director of the National Cancer Authority go directly to the Office of Management and Budget with his professional judg-

ment figure and prevent the six layers of cuts that winds us up in despair."

Comment: This goes back to the misconception about the budget process which have already been discussed. The overall constraints come from the Office of Management and Budget in the first place. HEW witnesses are obliged to defend the President's decisions before Congress. The "decreases" requested by HEW were not from existing levels but in the amounts of proposed increases; the HEW action was required for defense of decisions made by the President and the Office of Management and Budget.

"Professional judgment" budgets have little meaning in the context of fiscal realities. A separate Cancer Authority, like NSF and NASA, would be subject to the overall fiscal policies established in the Executive Office of the President and would be obliged to defend the President's decisions before Congress.

It is simply not true that extra funds for cancer research will "not materialize." The President, a year ago last February, asked for an increase in cancer research of $21 million for fiscal year 1971 and last January, approved the obligation of the full amount of the $49 million increase finally appropriated by Congress. For fiscal year 1972, he has asked for another $100 million to be available this coming July 1, which, in effect, will raise the total increase to $250 million above the program level for fiscal year 1970 and most of fiscal year 1971 (that is, until the 1971 appropriation was approved by Congress in January).

3. *Statement—page 9:* "In his book, 'The Satisficers'. on p. 100, Dr. Arthur Levin, who had been in the Surgeon General's office, writing of a secret meeting of top H.E.W. officials at the Linden Hill Hotel, stated: 'The Bethesda health plan, however was different. The plan proposed, among other things, that the federal government cut its spending for health research by 30 percent. . . . The plan proposed, in effort, to mark time in our research efforts and to spend the money in other ways.'"

Comment: We are not familiar with the Linden Hill Hotel meeting in the Spring of 1967. However, the "proof of the pudding" is that the next budget submitted by the President included an increase of 7 percent in funds for biomedical research. As mentioned previously, the Office of the Surgeon General echelon no longer exists.

4. *Statement—page 2:* (Quote from the Panel Report) "In the past when the federal government has desired to give top priority to a major scientific project of the magnitude of that involved in the conquest of cancer, it has on occasion, with considerable success, given the responsibility for the project to an independent agency."

Comment: The positive arguments for a separate authority and some of the criticisms of the present system are not entirely without merit, particularly if viewed from the narrow perspective of "what's best for cancer," as if this could be disjointed from and pursued independently from the health goals of the Nation.

Careful analysis, however, suggests that the advantages of independent agency status are due less to organizational status than to the nationally perceived climate of urgency surrounding the problem with which the organization deals. NSF has not experienced meteoric growth, despite such independent status, for the simple reason that science qua science is not a flag around which non-scientists readily rally. Nor is independent agency status insuring favorable budget treatment to NASA, now that the public no longer feels as intensely about the space race as it did a decade ago. If the President and the Congress, with broad public support, commit this Nation to a continuing crusade against cancer, their intent will be implemented, in whatever organizational setting.

THE PANEL'S DELIBERATIONS

1. *Statement—page 3: Question*—"In view of some of the questions or points of opposition to the Panel's recommendations and to S–34, is it possible that the Panel did not consider the entire problem thoroughly enough?" *Answer*—The Panel Chairman is quoted as follows: "I am pleased to be able to say that none of the questions or points of opposition which I have seen is new. These same questions and points of view were thrashed out at great length in the Committee's own deliberations before our final recommendations were arrived at." The following statement is also made on page 3: "If the salvation of this nation depended upon our success in dealing with the cancer problem, I doubt that anyone familiar with the situation would recommend continuation of the present organizational arrangements."

Comment: From the foregoing questions and answers as well as the Panel Report, it would appear at least doubtful that the Panel did have before it a thorough exposition of the questions or points of opposition and that it was indeed fully familiar with the present organizational arrangements and the way in which the budget process works within HEW.

Mr. NELSON. Mr. President, critical to cancer research is the need to maintain a wide range of basic research, which has in the past, and no doubt will produce in the future, breakthroughs in cancer research.

It is essential that cancer research be closely integrated with research being conducted by other NIH Institutes and with all basic research.

The biomedical community is concerned that by setting cancer research apart from other disciplines, such an integration with basic research may be diminished.

The following are examples of cancer breakthroughs, and discoveries in other diseases, that have occurred unexpectedly.

Mr. President, I ask unanimous consent that these examples of serendipity be printed in the RECORD.

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

EXAMPLES OF SERENDIPITY IN BIOMEDICAL RESEARCH

Research frequently produces unexpected knowledge that is useful in a direction quite different from the original purpose of the investigation. Recognition of the usefulness of such incidental knowledge, by the original investigator or by others, leads to concentrated research efforts in the new areas, which may pay high dividends. It is the occurrence of such observations and their utility that led Pasteur to state that "chance favors the prepared mind." One should not lose sight of the interdependence of biomedical science, taking account of the productivity of research in one field and failing to identify the original incidental findng from another field which stimulated it. A few examples are cited below.

Oncogenicity of SV 40 virus. During work on poliomyelitis vaccines, which were produced by growing the poliovirus in monkey kidney cell tissue cultures, a semian virus was found to be a common contaminant of the tissue cultures. When such cultures were inoculated into baby hamsters, tumors were produced at the site of inoculation. This was one of the early observations that stimulated a rebirth of the theory of viral induction of cancer.

T antigens in virus-induced tumors. Adenoviruses are the causes of a variety of diseases of the upper respiratory tract in children and young adults. In work to develop vaccines against these agents, the viruses were tested for tumor-inducing potential. Some adenoviruses were indeed found to be oncogenic. They were also found to produce special antigens in the tumors even when the virus could no longer be detected in these lesions. These are the so-called "T" antigens, which are footprints of the virus. After this finding, "T" antigens were looked for, and identified, in tumors caused by other viruses.

Immune mechanisms in cancer. Efforts in transplantation, to control the immune response against grafted tissues or organs, included the use of immunosuppressive agents, and resulted in an increased incidence of tumors. This has, conversely, stimulated the search for mechanisms of enhancing the immune response to cause suppression or elimination of cancers.

Rifampicin. This substance is an antibiotic which was originally produced as an antibacterial agent. It and its derivatives were later shown to have activity against poxviruses and reoviruses. This led to testing of these drugs against RNA tumor viruses, with recent results indicating that they are effective in inhibiting transformation of cells by such viruses.

RNA-dependent DNA polymerase. DNA is the principal genetic material of animal and plant cells. It serves as the template for making more of itself and of RNA, which is the messenger substance, carrying information from the nucleus to the cytoplasm of the cell. RNA is also the basic substance of cell constituents on which the cell manufactures its enzymes, hormones, etc. There are viruses, however, which have only RNA, and the mechanism by which they reproduced was unknown. Enzymes involved in the synthesis of nucleic acids were discovered to be part of the mature virus particle in infectious agents such as pox- and reoviruses. This discovery led to the search for such enzymes in RNA tumor viruses. Eventually it was shown that one of the enzymes involved is able to produce DNA on the RNA template, which explains the mechanism of tumor-induction by an RNA virus. As a corollary, the mode of action of rifampicin is explainable.

L-Dopa. This substance and its metabolic derivative dopamine have been known for many years, as an intermediate in the formation of certain hormones, norepinephrine and epinephrine, involved in nerve transmission and in the control of blood pressure. A great deal of attention on the control of blood pressure was related to the study of the mode of action of a substance called reserpine, its effect on levels of serotonin, and the further relationships of these to the adrenal glands. About 10 years ago, some studies of basal ganglia in the brain, where the adrenal hormones are found only in low level, revealed high concentrations of dopamine. This was followed by the finding that in Parkinson's disease, which is a disease of the basal ganglia, dopamine is virtually absent. This led to attempts to ameliorate Parkinsonism by restoring brain levels of dopamine. Since, as had been learned from other unrelated studies, dopamine does not enter the brain from the blood, l-dopa was used, and was found to be effective in high doses. Thus, work focused originally on neural hormones and their mechanisms of action, which led to the Nobel prize for Axelrod and von Euler, also led to an unanticipated and spectacular therapeutic agent because of certain incidental and unrelated findings.

Discovery of the rheumatoid factor. The rheumatoid factor is an immunoglobulin found in patients with rheumatoid arthritis and related disease. Research related to this substance has added immensely to the knowledge of rheumatoid disease. The observation which led to its discovery was made purely by chance. While working on an epidemic disease transmitted by mice, a research worker was testing antibody pro-

duction in patients, including herself because she had contracted a laboratory infection. Some of the reagents for the complement-fixation test, which she was doing, were set up the night before the test was to be completed by the addition of the final reagent, complement. The following morning she noticed that the sheep red blood cells in the tubes containing her serum had agglutinated, while all the others had not. A flash of insight correlated this observation with the fact that she was the only case of rheumatoid arthritis in the group. This hypothesis was confirmed on further investigation.

Chemotherapy of cancer with methotrexate. In the 1940's, a considerable amount of attention was devoted to the synthesis of drugs that would interrupt certain chemical pathways which depended on enzymes associated with definite vitamins. A series of compounds were synthesized as antifolic agents for use against bacteria and other infectious agents. Some of these were tested in other systems, because of the relationship of diet to hormone activity. Folic acid was found necessary for response to estrogen. Methotrexate, one of the anti-folic agents, depressed estrogen response in animals on regular diet. Some observations of the effect of methotrexate on hormone-production by tumors which occasionally produce hormones showed a depression of such hormone-production. This observation led to trial of methotrexate in choriocarcinoma, a tumor of the placenta which regularly produces hormones. The drug was shown to be effective in eradicating this tumor. It is currently one of the key drugs in the chemotherapy of acute leukemia.

Thus, research initially undertaken to study the interactions of hormones and vitamins, led to an agent effective against a lethal tumor in young women, and in leukemias and lymphomas.

Prednisone. It was observed, in early studies of steroid hormones, such as ACTH and cortisone, used originally in the treatment of rheumatoid diseases, that they had a striking effect on lymphoid tissue, with dissolution and decreased production of lymphocytes. This led to trials on the use of prednisone in tumors of the lymphatic system, where it has contributed to therapy of various leukemias.

When alternate methods of synthesis of cortisone were being studied, two steroids were made as intermediates. Biological studies of these showed that they had potent and unexpected activities. One was prednisone which is a corticoid used in treatment of arthritis because it does not produce edema, and, as already mentioned, in treatment of leukemias. The other is florinef which is used by patients with adrenal disease, because it is a potent salt-retaining substance.

These are but a few examples of unexpected and profitable leads from research focused in another direction. There are so many of these examples that two books have been published describing accidental discoveries. These are:

Science and Serendipity; Great Discoveries by Accident. By D. S. Halacy. MacRae-Smith, Philadelphia, 1967.

Great Accidents in Science that Changed the World. By J. S. Meyer. Publisher Unknown 1967.

The PRESIDING OFFICER (Mr. BUCKLEY). Who yields time?

Mr. DOMINICK. Mr. President, I yield 15 minutes to the distinguished Senator from New York (Mr. JAVITS).

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

Mr. JAVITS. Mr. President, I believe that even Senator GAYLORD NELSON's presentation evidences the degree of devotion which has gone into the study of this problem. Although we disagree, I thing that the Senate can be satisfied that every conceivable way of looking at this matter has been met. But there is a fundamental difference, and this is what it is—and I know that my colleagues with spirit enough will tell me if they think it is an incorrect diagnosis.

There is the added position that if we proceed within the context of all existing research, including biomedical and research in the life sciences, and the whole thing goes forward, as it were, together, the likelihood of success in cancer is just as great, or if it is slightly less great, the advantages to be gained by the other disciplines, from the fact that they will go in tandem with cancer research, is worth the minor difference which we might have in the breakthrough program on cancer.

That is one point of view, which has been eloquently and very well expressed by the Senator from Wisconsin (Mr. NELSON).

On the other hand, Senators DOMINICK, KENNEDY, and I, and a majority on the committee, feel that we are so close to breakthroughs in cancer, that cancer represents to the people such an awesome disease or illness, that we must, as a national effort, quite apart from the scientific question, undertake a crash program under a unified direction, to make the final breakthroughs.

Now the feeling is a real one. The whole difference, in my judgment, the fulcrum of the answer to the eloquence of the argument of the Senator from Wisconsin (Mr. NELSON), supported by many professionals and scientists in the field, is the twin proposition that the country finds the death rate from cancer unacceptable because it thinks it is imminently avoidable.

That is the question we think we are close enough to breakthroughs on, and that one final drive will do it; whereas, in these other fields, including the heart field, there is such a diversity, whether diet or many other things, that we do not feel we are as close to a breakthrough, which will mean as much as it did in infantile paralysis, as to warrant a crash effort.

That is our whole effort. We believe that we are that close. We believe that the findings of the commission, which are very imminent, prove that we are close. That is why we take our position. We do not take our position to shatter everything that we have done in the health field. We believe that this deserves one final push and that it is worth it.

We have done the best we could to avoid the difficulties in our drafting of the legislation to every extent possible. However, we are fundamentally legislating a massive drive aimed at the conquest of most cancers.

If Senators will note item 1 on page 4 of the committee report, they will see that that pictures why we think the public is so taken with this situation. Aside from the fact that it is the No. 2 killer—heart disease and stroke being No. 1—the fact is that cancer often strikes as harshly at human dignity as at human life and, more often than not, it represents financial catastrophe for the family in which it strikes.

Then, if we look at page 16, we will see the key to this situation as we see it. That is that we get the feeling of the imminence of a possibility of a breakthrough. We have that imminence of the possibility of a breakthrough plus the awesomeness of the illness which we are trying to eliminate. We have the rationale of our views as to what is the right program. Everything else that I will add to this is justification. These are the essential elements of the situation as we see it. And if the Senate agrees with us, then the bill should be passed and this is the right prescription.

Page 16 reads in part:

> There is broad agreement that cancer research has advanced to the stage where a substantial increase in resources and effort could be very productive. There seems to be a consensus among cancer researchers that they are within striking distance of achieving the basic understanding of cancer cells which has eluded the most brilliant medical minds in the world for all this time. Several significant breakthroughs have occurred recently, and cancer researchers feel they are close to others.
>
> While it is true that such breakthroughs are often "serendipitous", and cannot be forced, the Committee feels that a substantial increase in resources, along with increased organizational efficiency, will shorten the time necessary to achieve them.

Mr. President, stated in colloquial terms, I know many a person, as does every other Member of the Senate, who loses a member of the family to cancer and says to himself, "If only this death could have been put off for 1, 2, 5, or 10 years, we are sure that a cure would be found and that this life could have been saved."

Mr. President, this is unlike any other major killer. We are trying to accelerate the finding of a cure for this dread disease. That is the justification for this approach. And it is supported both by the civilian and professional side in this magnificent landmark report of the national panel of consultants on the conquest of cancer. This report has been printed as a Senate document.

Mr. President, I ask unanimous consent, since these men and women have rendered such remarkable service to the country, that the list of the members of that panel, together with their connection, be printed at this point in the RECORD.

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

> Panel of Consultants on the Conquest of Cancer, composed of 13 eminent laymen and 13 eminent scientists, chaired by Mr. Benno C. Schmidt, Managing Partner of J. H. Whitney and Company, New York City, and with Dr. Sidney Farber, Founder and Scientific Director, Children's Cancer Research Foundation, Boston, as Co-Chairman. Other members of the Panel were:
>
> Mr. I. W. Abel, president, United Steelworkers of America,
>
> Mr. William McC. Blair, Jr., general director, the John F. Kennedy Center for the Performing Arts,
>
> Mr. Elmer Bobst, chairman of board, Warner Lambert Pharmaceutical Co.,
>
> Dr. Joseph Burchenal, vice president, Sloan-Kettering Institute for Cancer Research,
>
> Dr. R. Lee Clark.

Dr. Paul B. Cornely, president, American Public Health Association,
Mr. Emerson Foote,
Mr. G. Keith Funston, chairman of board, Olin Corp.,
Dr. Solomon Garb, scientific director, American Medical Center at Denver,
Mrs. Anna Rosenberg Hoffman,
Dr. James F. Holland, chief of medicine A, Roswell Park Memorial Institute for Cancer Research,
Dr. William B. Hutchinson, president, Pacific Northwest Research Foundation,
Dr. Henry S. Kaplan, chairman, Department of Radiology, Stanford University Medical Center,
Dr. Mathilde Krim, Sloan-Kettering Institute for Cancer Research,
Mrs. Mary Wells Lawrence, Wells, Rich & Green Advertising Agency,
Dr. Joshua Lederberg, professor of genetics, Stanford University School of Medicine,
Mr. Emil Mazey, secretary-treasurer, United Automobile Workers,
Mr. Mike O'Neill, managing editor, New York Daily News,
Mr. Jubal R. Parten, member of board, Fund for the Republic,
Mr. Laurance S. Rockefeller, chairman, Rockefeller Brothers, Inc.,
Dr. Jonathan E. Rhoads, chairman, department of surgery, University of Pennsylvania School of Medicine,
Dr. Harold P. Rusch, professor of cancer research, McArdle Laboratory, University of Wisconsin,
Dr. Wendel G. Scott, clinical professor of radiology, Washington University,
Mr. Lew Wasserman, president, Music Corp. of America, Inc.,

Mr. JAVITS. Mr. President, everything else goes by way of confirmatory evidence. The Senator from Wisconsin (Mr. NELSON) very graciously, as his wont, stated exactly what we are relying on. We give the director of the conquest of cancer agency and the director of NIH a common track. He gets the material at the same time the President does. We give very strict instructions, referring to page 25 of the report, for the director of the conquest of cancer agency to work in tandem with the Director of NIH so as to be sure that all channels for the dissemination and cross-fertilization of scientific knowledge and information existing prior to the effective date of the act between the National Cancer Institute and the other Institutes of Health shall be maintained between the Agency and the Institutes of Health to insure free communication between cancer and the other scientific, medical, and biomedical disciplines.

Mr. President, this is not only a national question. It is also an international question because there are no secrets. We want to get information from the other countries of the world by telling them everything that we know.

We have emphasized very strongly the question of peer review of a scientific reporting of the research programs and projects by those who are doing the research.

We have tried—and I think we have done a workmanlike job—to meet the arguments that have been properly advanced against our plan and that of the panel. However, we must bear in mind that this is a massive attack upon a given target in a specialized way.

Mr. President, I have one last point which I think is critically important. The argument was made that the next people to come along will be the heart people, then the kidney people, then the diabetes people, and that all will ask for the same thing. I think it is only fair to say, that as far as I am concerned, I have the suspicion—and I believe this goes for other Senators as well and others who are engaged in this effort—that if we think we have the same promise of a breakthrough and the situation commends itself to our judgment, we are certainly entitled to invoke the authority of this panel with great importance and with mass resources, as I have said.

We could then make a breakthrough. When the time comes for a breakthrough in heart disease, kidney disease, or any other major killer—as we think the time has come with respect to cancer— we can attack that problem. It may have come or may not have, but it could not be any worse than it is, and it can be very much better.

Let us remember that just as in the case of infantile paralysis, through this agency we might be able tomorrow to save a life that would have been taken by this dread disease of cancer. I believe that we can do this if we accelerate our effort.

Mr. President, I could not conclude my advocacy of this bill without referring to a man with whom I served in the Armed Forces of the United States 25 years ago —C. P. Rhodes, then the director of the Medical Division of the Chemical Division of the Army.

C. P. Rhodes came to us from the presidency or the head or medical director of the Sloan Kettering Institute, for years the leading and outstanding cancer research of a voluntary character in the United States. Twenty-five years ago, C. P., or "Dusty," Rhodes, as he was called in the Army, preached this very doctrine. He said:

> There are so many hypotheses that we have to knock down in order to arrive at a final resolution of what may be the answer, that the faster we can knock them down, the faster we will get the answer. We must always allow for that great scientist, that genius, sitting in his attic with chin in the palm of his hand, who will come up with the answer. But we cannot sentence millions to death while waiting for the answer.

It may happen. If it does, that is fine. In the meantime, let us accelerate this dreadful, painstaking process of knocking down one more hypothesis as fast or faster until we get some answers. We are getting a good many answers now and that is what makes us feel—and we have this tremendous authority to back us up—that a massive offensive is justified and necessary. I deeply believe in it, the Senator from Colorado (Mr. DOMINICK) does, the Senator from Massachusetts (Mr. KENNEDY) does, and a great majority of the committee does. I know that the Senator from Wisconsin (Mr. NELSON), the Senator from California (Mr. CRANSTON), and others who do not agree with us will join with us in the fervent hope that we are right.

Mr. President, I hope very much the Senate approves the bill.

Mr. President, I would like to, in closing, again make clear the remarkable nature of this bill. It has been a truly bipartisan measure, as indeed it should be; for there is no place for politics in our efforts to conquer cancer. I would like to call to the attention of my colleagues the remarkable exercise of statesmanship, by the administration—the President and Secretary Richardson—the chairman of the Health Subcommittee, Senator KENNEDY, with whom I introduced S. 34, to establish a National Cancer Authority in order to conquer cancer at the earliest possible date, and which bill had the bipartisan support of more than half the Senate, and Senator DOMINICK. We can have great respect for the consensus achieved in reporting S. 1828 and can only hope that it will be a portent of our future efforts to deal with other aspects of the Nation's health crises.

We are all familiar with the tragic statistics of the toll cancer takes of our population every year—323,000 died from cancer in the United States; but one aspect of these figures bears reemphasis. Cancer strikes at the most valuable group in the population—our youth. It is the largest single killer of children between the ages of 1 and 15, and the emotional and economic toll which cancer takes of its victims and their families is staggering. We cannot accept this loss of potential talent and manpower.

It has been suggested that we cannot legislate scientific progress. This is true, but what we are doing in S. 1828 is to create the organizational and scientific capability needed to conquer cancer and insure that no research is curtailed because of organizational or fiscal constraints. And we are convinced that we are on the threshold of a breakthrough in cancer which can be accelerated by some years through a directly targeted national program like that in this bill. Advances made in basic cellular knowledge, cancer etiology, immunology and chemotherapy all suggest that we are on the verge of significant breakthroughs in the cure and prevention of cancer. A sustained and intensified effort now may be able to capitalize on these imminent breakthroughs. Indeed, news reports from Houston which tell us that researchers have isolated a human cancer virus only give added emphasis to our efforts to establish a national program to conquer this dread scourge.

Benno Schmidt, head of the National Panel of Consultants on the Conquest of Cancer, has pointed out:

> Three things that do not exist today are necessary if we are to have an effective national program to conquer cancer. First, there must be an effective administration with clearly defined authority and responsibility. Second, there must be a comprehensive national plan for a coherent and systematic attack on the vastly complex problems of cancer. Third, there must be the necessary financial resources.

S. 1828 reflects these requirements. Primarily, a Conquest of Cancer Agency will be established as an independent agency within the National Institutes of Health. It will be headed by a Director, appointed by the President with the advice and consent of the Senate. Essentially, the Agency will carry out the research now conducted by the National

Cancer Institute and simultaneously expand and intensify these activities into a coordinated national program. In doing this, the new Agency will make grants and contracts; encourage private industrial research; strengthen existing cancer centers and establish new ones, emphasize a multidisciplinary approach to research and teaching; establish a cancer data bank; and support the production of needed specialized biological materials. Finally, the Agency will be authorized to support foreign cancer research; and to support manpower training programs to insure an adequate supply of expert manpower to continue the fight against cancer.

S. 1828 also establishes a 22-member National Cancer Advisory Board including the Director of the National Institutes of Health, which will advise the Director of the Conquest of Cancer Agency on the formulation of a comprehensive program, evaluate the Agency's annual budget, and maintain high standards of peer review. The Advisory Board will also report annually directly to the Congress.

There are two aspects of the bill which merit special attention, these are closely related to and concern the establishment of an independent agency within NIH, and the manner in which the new agency will be administered.

The Conquest of Cancer Agency is within NIH, but will report directly to the President and the Congress and thus have access to the highest levels of Government and at the same time not be placed in competition with the other highly commendable programs of the NIH. However, it should be borne in mind that although the Conquest of Cancer Agency is an independent agency within NIH, and an organizational creation designed to best facilitate the attack on cancer, it is in no way proposed that the Agency disrupt in any way ongoing relationships with the other institutes of health or fragment basic biomedical research or disrupt communications between specific research fields.

The Director of the Agency would have complete flexibility to reallocate resources to take full advantage of unanticipated research breakthroughs and would submit his budget directly to the President. It is intended that the cancer budget will be treated in the same manner as other Cabinet-level departmental budgets. The National Cancer Advisory Board will be the only review stage between the Conquest of Cancer Agency and the President. It is, however, expected that plans and budgets will be developed in close coordination with the National Institutes of Health; and the Director of the Cancer Conquest Agency will have an opportunity to review and comment on the plans and budget of the National Institutes of Health that are in any way related to cancer research, while the Director of the National Institutes of Health will have an opportunity to review and comment on the plans and budgets of the Cancer Conquest Agency.

It is intended that the Director of the Cancer Conquest Agency will make a copy of the Agency's annual budget and program plan available to the Director of the National Institutes of Health not later than the time of its submission to the President. This will give the Director of the National Institutes of Health an opportunity to submit his comments to the President, without interfering with the Cancer Conquest Agency's budget independence. Such reviews and comments, particularly in development phases, will facilitate progress in both cancer research and in biomedical research generally.

In addition, the Director of NIH, as a member of the National Cancer Advisory Board—section 407G(a) of the bill—will have an input into the formulation of the Conquest of Cancer Agency budget.

By having the Agency submit a separate budget we hope to insure that the attack on cancer will not be downgraded in the budgetary shuffle, both within the Government as a whole or within the NIH. The Conquest of Cancer budget will be highly visible, and responsibility for its functions will not be hidden in layers of bureaucracy. Similarly, funds allocated for cancer must be used for cancer research and cannot be diverted to other programs.

If present trends continue, of the 204 million Americans alive today, 51 million will contract cancer at some time in their lives, and 34 million of them will die from it. And if present trends continue the success of the search for means of prevention and cure could be deferred for years before it could be realized by a program like that in this bill.

Mr. President, I believe that we have now confirmed that we should make the conquest of this dreaded mass killer—16 percent of all deaths in the United States are caused by cancer—our highest national health priority until we conquer it.

I urge my colleagues to support the passage of S. 1828.

I yield back the remainder of my time.

Mr. NELSON. Mr. President, for the purpose of brief response I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. NELSON. Mr. President, the Senator from New York very effectively states the position of the advocates of a separate, independent authority outside of NIH. That is the precise point of difference between the position of the supporters of this bill and myself.

So far as amassing resources are concerned, I think, as I said earlier, I do not believe there is anyone in this body who is not prepared to vote the appropriation of whatever amount of money can effectively be spent in the pursuit of a cure for cancer. Nobody disagrees with that at all.

We are not talking about the amount of resources we should bring to bear on this problem. We all agree on that. I would support much more money than is already provided here if it could be spent effectively; and I expect as we expand the effort we will be able to spend more money than is proposed for the next year and spend it effectively. Everybody will endorse that effort. So we do not have that difference at all about the objective, the necessity, or the importance of expanding our effort, or of the fact that more resources should be put into the effort. We do not disagree about the fact we ought to put all of the energy we can into solving the very important problem that the country and all the world is concerned about.

The precise difference, and nobody has explained it on the floor, is how do we get a more effective thrust out of this effort, a more effective utilization of our resources, by taking an institution which is an integral part of the NIH—which has all kinds of relationships with a number of other institutes—and improve our effort and drive more effectively by moving this institute outside of NIH?

That is the question I have been asking of witnesses who have come before the committee and everyone else. I have yet to get what seemed to me to be a logical answer.

What is the gain in taking this institute out of NIH rather than having its board and its director prepare the budget, prepare its program, prepare its plan, bring it up to the director of NIH for his comments and evolution prior to referrals to the President.

Nobody has explained how an independent institute enhances or improves the program for the conquest of cancer. Therefore, I do not see the point in doing it.

As I said before, I think this is going to handicap our efforts. No convincing argument has been made, in my judgment, in behalf of an independent institute.

In committee hearings I asked the question and here this afternoon I ask in what way will an independent institute improve our program. No one has explained it yet. I think people have gotten emotional about it and have decided we can do something by putting the institute outside of NIH and that something is going to happen that will not happen if it is kept within the institute.

I yield the remainder of my time.

Mr. JAVITS. Mr. President, will the Senator yield to me for 2 minutes so that I may answer?

Mr. DOMINICK. I will yield to the Senator but first I would like to comment briefly.

I find the arguments of the Senator from Wisconsin very interesting. He and the Senator from California (Mr. CRANSTON) cosponsored S. 34. That bill would have taken the cancer authority totaly out of NIH.

Now, as I understand his argument, he is saying that S. 1828 is the same as S. 34 and he is opposed to it. I find this to be somewhat interesting.

I was one of the first members in committee to bring up the problems that would arise if we were to take the Cancer Institute out of NIH; but I thought we should keep it in to preserve the relationship between cancer and other types of research. We have given the cancer program enormous prominence and it will have the ability to go forward on necessary research and treatment. This is a terrible disease. But S. 1828 provides that it will go forward within the NIH and not outside. This is of major importance in the bill.

I yield to the Senator from New York.

Mr. JAVITS. Mr. President, the Sena-

48-059 O - 72 - pt. 18 - 37

tor from Colorado made the first point I was going to make, that we are not taking this out of NIH. So far as humanly possible we are keeping it in NIH and also making a massive specialized effort. That is the compromise and that is why the Senator from Colorado is with us and not against us.

The Senator asks what makes this better and why do we need it. We need it because the record of performance under the old scheme is inadequate. The panel found that to be so and they said on page 284, in the scientific section:

But it also becomes clear that there has not been an organized national cancer control effort, carefully planned and centrally administered. This has led to unnecessary expenditures and duplication of effort in some areas.

Then, on page 3 in the summary of findings they said:

A national program for the conquest of cancer is now essential if we are to exploit effectively the great opportunities which are presented as a result of recent advances in our knowledge. However, such a program will require three major ingredients that are not present today:

First, effective administration with clearly defined authority and responsibility;

Second, the development of a comprehensive national plan for a coherent and systematic attack on the vastly complex problems of cancer. Such a plan would include not only programmatic research where that is appropriate, but also major segments of much more loosely coordinated research where plans cannot be definitively laid out nor long-range objectives clearly specified; and

Third, the necessary financial resources.

Our performance up to now demands this new approach because it has been inadequate. To make it adequate this is what the panel recommends we do, and that is why we are doing it.

Mr. NELSON. Mr. President, I yield myself 2 minutes to respond to the Senator from Colorado (Mr. DOMINICK).

As I stated and as the Senator from California stated in separate and individual views, we joined as cosponsors of S. 34 because we believe in the objective, and we believe in it very strongly.

I expressed my reservations about an independent agency outside of NIH very early, as soon as I looked at the bill. I had reservations about that aspect. Then, after extensive hearings and exploration, it was clear that the reservations I had in my opinion on that one point, just that one point in the bill, were sound reservations, and I think they still are.

I yield 10 minutes to the Senator from California (Mr. CRANSTON).

S. 1828—ASSENTS AND DISSENTS; THE CONQUEST OF CANCER

Mr. CRANSTON. Mr. President, first I would like to congratulate the distinguished chairman of the Health Subcommittee, the Senator from Massachusetts (Mr. KENNEDY), for his persistence in seeking to focus public and governmental attention on the inadequacy of current programs to combat the consequences of cancer. His tenacity in pursuing the conclusions of the panel of experts in the cancer field, who were brought together by resolution of the Senate Labor and Public Welfare Committee—S. Res. 376 of April 27, 1970—and whose establishment I fully supported, has resulted in the recommendation of S. 1828 by the Committee on Labor and Public Welfare with the full support of the administration. Senator Kennedy has most unselfishly deferred consideration of his bill, S. 34, in order to reach agreement with the administration.

In November 1970, the report of the panel of consultants concluded:

A national program for the conquest of cancer is now essential if we are to exploit effectively the great opportunities which are presented as a result of recent advances in our knowledge. However, such a program will require three major ingredients that are not present today.

First, effective administration with clearly defined authority and responsibility;

Second, the development of a comprehensive national plan for a coherent and systematic attack on the vastly complex problems of cancer. Such a plan would include not only programmatic research where that is appropriate, but also major segments of much more loosely coordinated research where plans cannot be definitely laid out nor long-range objectives clearly specified; and

Third, the necessary financial resources.

To implement these recommendations the panel recommended:

First. The establishment of a National Cancer Authority which would be given all the functions, personnel, facilities, appropriations, programs, and authorities of the National Cancer Institute. The Authority would be an independent agency, reporting directly to the President and presenting its budgets and programs to Congress.

Second. The development of a comprehensive national plan for the conquest of cancer to include expansion, intensification, and coordination of the cancer research program; accelerated exploitation of opportunities in areas of special promise; construction of additional and strengthening of existing cancer centers—which should serve as administrative coordinators of programs requiring regional coordination—manpower development; the generous use of grants as well as contracts and other methods of funding; optimum communication and centralized banks of information; and voluntary interaction and joint planning of the scientists who will be responsible for doing the work.

Third. Increased funding up to the amount of $800 million to $1 billion in fiscal year 1976.

The committee version of S. 1828 has responded to each of the three major recommendations of the panel of consultants as follows:

S. 1828 would establish a Conquest of Cancer Agency as an independent agency within the National Institutes of Health under a Director reporting directly to the President. The Agency's purpose would be to conduct an energetic national program for the conquest of cancer.

The Agency would submit its budget estimates directly to the President and be generally responsible to him. The new Agency also would present its budget estimate to the Congress and would receive directly from the Office of Management and Budget the funds appropriated for the Agency by Congress.

The bill would make the National Cancer Institute a part of the Conquest of Cancer Agency. It would also establish a National Cancer Advisory Board to advise the Agency in the development and execution of its program. The Board would assume the functions now performed by the National Advisory Cancer Council, which it would supersede. The Director of the Agency is authorized in the bill to take necessary action, together with the Director of the National Institutes of Health, to maintain existing channels for the free communication of scientific knowledge between the Agency and the other health institutes, and for the coordination—through mutual program and budget review—of their respective activities.

I voted to support S. 1828 in committee—as I also cosponsored S. 34, the original bill before the committee—because of my full agreement with the intent of the bills and the conclusions of the cancer panel calling for a national mobilization to conquer cancer. The mechanisms established by S. 1828 are intended to increase the productivity and improve the administration of programs to combat cancer. However, I have several reservations concerning their effectiveness in actual implementation.

Elevation of the cancer program to a separate entity outside the authority of NIH will, I fear, set a virtually irresistible precedent for establishment of similar agencies to conquer other diseases which devastate our society. For example, according to U.S. Public Health Service 1969 estimates, heart diseases account for 38.4 percent of deaths; cancer, 16.9 percent; accidents, 5.9 percent; influenza and pneumonia, 3.7 percent; certain causes of infant mortality, 2.2 percent; diabetes mellitus, 2 percent; arteriosclerosis, 1.8 percent; bronchitis, emphysema, and asthma, 1.6 percent; cirrhosis of the liver, 1.6 percent; and all other causes, 15 percent.

Advocates of heart and cardiovascular disease research already have written the Secretary of Health, Education, and Welfare, seeking status for the National Heart and Lung Institute equal to that proposed for cancer research in S. 1828. This could well be the beginning of the dissolution of the NIH, probably the finest unified biomedical reasearch institution in the world.

In addition to this compelling consideration is the failure of S. 1828 to provide adequately for the degree of management support which would be lost by removing the Cancer Conquest Agency and the National Cancer Institute from operational supervision within NIH. Cancer research depends heavily on extensive supporting resources of NIH, such as clinical facilities, animals, instrumentation, computer services, central research grant services and a variety of logistical services. In other words, the institutes share scientific and manpower resources. They deal with the same grantee institutions and the same contractors, and should be governed by common and consistent policies.

I trust that while it may prove difficult to work out common and consistent policies, administrative steps will be taken to insure that the supporting resources of NIH will be available to the cancer con-

quest agency. If I did not assume that this could be worked out, I would offer an amendment to the pending measure to cover this point. I assume that NIH will take this step because it makes sense to do so in terms of conquering cancer, and because failure to do so would contribute to the weakening of NIH itself.

I am concerned that, without the overall direction of the NIH director with respect to cancer research, this management support which is a major budget item will be duplicated in the new agency, diverting scarce funds from the direct task of conquering cancer into the more indirect administrative support programs.

Mr. President, the statutory interrelationships between the Cancer Conquest Agency and its counterpart medical research programs are limited in S. 1828 to the following provisions:

1. The director of the agency is given authority to coordinate cancer research with the other research programs of NIH.

2. The agency director is authorized to utilize the resources of other agencies.

3. The director of the cancer conquest agency is authorized to transfer funds to other Federal agencies, including the NIH, for cancer-related programs.

4. The agency's director is authorized to take action with the director of NIH to maintain between the agency and the institutes of health the communication channels which has existed previously between the National Cancer Institute and other institutes of health.

5. The director of NIH is made a member of the 22-member national cancer advisory board.

None of these authorities give the Director of NIH, nor are they intended to do so, any line responsibility over the cancer reseach program.

The committee report language stating the committee's intent that the Director of NIH may submit his comments to the President regarding the budget and program plan of the Cancer Conquest Agency is insufficient. What is needed is statutory authority making clear that the Director of NIH should have the formal responsibility of submitting the cancer program plan and budget to the President, along with his evaluation of the cancer program and budget and appropriate recommendations.

If each of these provisions were carried out to the maximum extent, it is possible we might have a program capable of contending with the responsibilities envisioned by the cancer panel. However, I feel the likely association between the Cancer Conquest Agency and the Institutes of Health will in practice be all too tenuous.

In effect what the bill establishes is a completely independent agency labeled as located within the National Institutes of Health but with no responsibilities given to the Director of NIH. The Cancer Conquest Agency head is given only discretionary authority to coordinate programs and to transfer funds to programs of individual institutes.

The basic flaw in practice and concept lies in the bypassing of the Director of NIH, who has under his jurisdiction the other nine Institutes, several of which are engaged in continuing cancer and cancer-related research, and who is, therefore, in probably the best position in the Federal Government to have a complete grasp of all cancer-related activities and research. However, the Director of NIH's only formal, statutory connection with the Cancer Conquest Agency is as a member of the National Cancer Advisory Board where he will share in decisionmaking with 21 other members.

As Dr. Philip Lee, chancellor, University of California at San Francisco and former Assistant Secretary of HEW—Health and Scientific Affairs—stated in testimony before the Senate Labor and Public Welfare Committee—

To have the best chance of success, a battle against cancer must be able to draw not only on the cancer specialists and investigators in the National Cancer Institute, but on the other specialists in other Institutes of the N.I.H.—the experts on virus diseases, on genetics, on aging, on endocrinology, on molecular biology, on pharmacology and immunology. This will require the same kind of close collaboration among the various N.I.H. institutes that has been required many times in the past.

He went on to say—

There is a further problem with the proposed national cancer authority—competition for scarce resources. I believe a separate authority would immediately create competition for funds and scientific talent. This would not help the conquest of cancer and it might set back research in other crucially important areas.

Mr. President, beyond the competition created for funds and creative talent are the disagreements often encountered among members of the scientific community as to the best approach and method of attacking a research problem. This is especially true applied to cancer research. As the report of the cancer panel pointed out, the routes to the conquest of cancer are many. Decisions as to the routes to choose should be made in close association with decisions being made in related research programs to prevent duplication and wasted effort. These potentials for conflict can best be averted by providing the Director of NIH with the overall supervision of research programs and responsibility for their coordination. The Association of American Medical Colleges assembly in a resolution adopted recently fully supported this view, in the following language:

The present state of our understanding of cancer is a consequence of broad advances across the full scope of the biomedical sciences. In preparing for a greater effort, it is of the utmost importance to understand that despite the progress thus far made, the basic nature and origins of cancer are still not known. The kind of scientific formulation that permitted the development of nuclear energy and that underlies our space exploration does not exist for cancer. Further advance in fundamental biomedical sciences is essential to the solution of the unsolved problems that limit our ability to control cancer. Thus, the development of a special and extraordinary national program in cancer should be in the context of broad support of the related and underlying fields of scientific effort and in an organizational framework which assures sound direction and leadership in advancing this complex set of interrelationships.

The framework of the NIH, which had its origins with the Act of 1930, enlarged by the National Cancer Act of 1937, and the successive statutes creating the several categorical institutes in the post-war period, has made it possible to bring into being the most productive scientific community centered upon health and disease that the world has ever known. It is precisely because this organization has assured a close integration between fundamental scientific endeavor and organized attack upon specific disease problems that this extraordinary blossoming of medical science, and thus our medical capability, has taken place. Therefore be it

Resolved that the Association of American Medical Colleges wholeheartedly endorses Federal support of a broad-based and intensive attack on the cancer problem called for by President Nixon in his State of the Union Message and of the magnitude envisaged in the report of the National Panel of Consultants on the Conquest of Cancer, and that this major expansion be undertaken as an integral part of the existing national framework for the advancement of biomedical knowledge for the nation's health as provided by the structure of the NIH and the National Cancer Institute.

As Dr. John Cooper, president of the AAMC, pointed out in testimony on June 10, "this same view has been endorsed by the leading academic societies in this country. As a result," he said—

It is not an exaggeration to describe this view as truly representative of the Nation's academic medical community which encompasses most of the scientific leadership upon which progress in cancer is critically dependent.

Mr. President, Senator NELSON, Senator SCHWEIKER, and I tried to avert the weaknesses of the bill before us by offering, as an amendment—No. 109—to S. 34, an alternative plan which would have maintained programs for cancer research in the National Institutes of Health but in a new national cancer authority within National Institutes of Health whose Administrator would also be Deputy Director of Cancer from the new National Institutes of Health. The National Institutes of Health in turn would have been separated from HEW and made an independent agency accountable directly to the President. I felt and still feel that such an organization arrangement would provide the necessary focus and priority emphasis deserved by cancer programs and at the same time would maintain the greatest degree of collaboration and coordination with other biomedical research efforts.

We believed that the serious and valid objections raised by the biomedical research community could be met through this approach, and that the conclusions and recommendations of the cancer panel could best be implemented through that mechanism.

Before closing, I want to pay special tribute to my colleague from Wisconsin (Mr. NELSON) with whom I joined in submitting individual views in the committee report—No. 92–247—on S. 1828. The serious questions Senator NELSON has raised about the approach in the bill and its predecessor (S. 34) in no way indicate he is any less committed to the conquest of cancer than the distinguished principal sponsors of the measure, Mr. DOMINICK and Mr. KENNEDY. Senator NELSON and I fully support the urgent need to prevail over cancer at the earliest possible date. I know he joins me

in hoping that our fears and reservations about the approach in S. 1828 will prove groundless and that the cancer conquest agency will live up to the promise of its name.

Mr. President, I have grave reservations that the solution reached in the committee bill, S. 1828, can be successfully implemented and it is for that reason that it is with some reluctance that I shall cast my vote for the bill.

However, we must conquer cancer. This measure—considered with care by so many public officials and private citizens, many of them professionals with vast experience and the very highest qualifications, others of them laymen like the indomitable Mary Lasker with the deepest dedication and concern and with truly remarkable experience in what it takes to launch a vital new undertaking with requisite public, private, professional, and lay support—constitutes what all of us must hope is a start toward the end of cancer.

I, therefore, urge support of this measure.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, how much time do the Senator from Massachusetts and I have remaining?

The PRESIDING OFFICER. Thirty-nine minutes.

Mr. DOMINICK. I say to the Senator from Massachusetts I have a request for about 20 minutes of time.

Mr. KENNEDY. I do not have any requests. I should like to take about 5 minutes at this point.

Mr. DOMINICK. Very well.

Mr. KENNEDY. Mr. President, I should like to address myself to some of the remarks made by the distinguished Senator from Wisconsin (Mr. NELSON) and the distinguished Senator from California (Mr. CRANSTON) in the separate views filed by those Senators in the committee report.

I want to express my appreciation to the Senator from California for his generous remarks at the outset of his comments. He has been an extremely active member of the Health Subcommittee, and probably next week will be importantly adding to the debate on the health manpower legislation. He has left a strong imprint on that legislation, as on many other bills, so I think all of us should seriously consider his comments and those of the Senator from Wisconsin (Mr. NELSON) with a great deal of care.

A rather interesting and perhaps ironic point has been raised by those gentlemen in terms of their concern about the dismemberment of the NIH by the fact that we are establishing an independent agency which would be within the NIH following the recomendations of the panel. Regarding the demise of the NIH, I repeat, it is interesting to hear the comments of those gentlemen, since only last spring they introduced Senate Resolution 126, which would do for heart disease exactly what they are apparently concerned about.

So I have some difficulty in following the line of their argument and listening to their rhetorical questions, asking as to how we are going to be able to better meet the problems and challenges presented by cancer by setting up a special agency given the fact that the very same principle has been incorporated in the resolution sponsored by the distinguished Senator from Wisconsin and the distinguished Senator from California to which I have referred.

But that aside, three important provisions have been included in S. 1828 in terms of the role of the Director of the Conquest of Cancer Agency.

On page 14, under the administrative provisions, the Director is authorized, in carrying out his functions under this part, to—

> Take necessary action together with the Director of the National Institutes of Health so that all channels for the dissemination and cross-fertilization of scientific knowledge and information existing prior to the effective date of this Act between the National Cancer Institute and the other Institutes of Health shall be maintained between the Agency and the Institutes of Health to insure free communication between cancer and the other scientific, medical, and biomedical disciplines.

Then on page 15, we have the following language:

> The Director shall, by regulation, provide, for proper scientific review of all research grants and program over which he has authority (A) by utilizing, to the maximum extent possible, appropriate peer review groups within the National Institutes of Health, and (B) when appropriate, by establishing, with the approval of the National Cancer Advisory Board, other formal peer review groups as may be required.

This language was not all that the distinguished Senator from Wisconsin wanted, but once again, we are utilizing established peer review group procedures which have been utilized successfully in the past, and which those of us who supported S. 34 and support S. 1828 support vigorously.

Then on page 17 of the bill:

> The Director shall submit to the Board for its evaluation, comments, and recommendations each year's program plan and budget prior to the formal submission of the budget request to the President.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. KENNEDY. I yield myself 4 additional minutes.

The Director of the National Institutes of Health is a full member of the advisory board. He will be aware of and a full participant in its deliberations. Obviously his role as a Director of the National Institutes of Health will be strong and his views will be listened to and respected by members of the advisory board.

Furthermore, Mr. President, in responding to questions by the Senator from New York (Mr. JAVITS) and the Senator from Colorado (Mr. DOMINICK), during our hearings on the bills, Secretary Richardson, who obviously has the broadest view and scope of this problem, responded to an inquiry by Senator DOMINICK as follows:

> It is my understanding that under the proposal which we have before us in S. 1828, upon which conferences have been held to see how we can put together the proper bill, that the director will report to the President but will be working within the NIH on a mutually agreeable basis so that the cross fertilization of ideas in the other institutes will still be available, is that correct?
>
> Secretary RICHARDSON. Yes.

And also we have comments, in terms of whether this bill would really adversely affect the research in the biomedical sciences. Dr. Farber, who has been a distinguished researcher and co-chairman of the panel testified:

He said:

> Just recently, within the last year, Senator Nelson is familiar with this, I am sure, the research worker Professor Demon, in a cancer institute in Wisconsin, made an observation, quickly made also by Dr. Bolter, which has completely shaken the dogma of DNA. The foundation of modern molecular biology when these men showed that there is an enzyme working on RNA, which permits RNA to work upon DNA, and protein synthesis in a manner which was never thought possible by other people in molecular biology or bio-medical science. This is a two-way street. It will be unthinkable for anyone in charge of a cancer enterprise to neglect biomedical research.

That thesis has been supported time and time again by the recommendations of the panel group as well as by the reports.

I think that the Senator from New York (Mr. JAVITS) has commented adequately on whether we are going to have a proliferation of separate agencies. I share the view that if this is going to be an effective way to meet the scourge of cancer, we should then keep an open mind with regard to the applicability of this unique model to other diseases. But we have not had an adequate record made in terms of other diseases at this point, as our report points out on page 25. And, therefore, we have not made recommendations with respect to other diseases. We will have to wait and determine the effectiveness of this program first.

Mr. President, I hope that S. 1828 will be passed by the Senate this afternoon.

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

Mr. KENNEDY. I yield.

Mr. CRANSTON. I thank the Senator from Massachusetts again for his leadership in this effort and for his generous remarks in regard to this bill. I do not want to prolong the discussion of this measure.

I do want to say, in response to the Senator's comments about a resolution that I introduced with Senator Nelson, regarding looking into the matter of cardiovascular diseases, that that resolution in no way calls for the creation of an institute. It in no way prejudges what should be done about that and related diseases.

The PRESIDING OFFICER. The Senator's 4 minutes have expired.

Mr. CRANSTON. May I have 1 minute?

Mr. NELSON. I yield the Senator whatever time he needs.

Mr. CRANSTON. It simply urges that we take a long, hard look, through a panel, at what this disease is doing to the citizens of our country, and we seek recommendations as to what we should do about that disease. There has been enough adequate research on that disease to show that it is the No. 1 killer, that 38.4 percent of American deaths are caused by

that disease. Those are not only elderly people. Among the young people of our land, apparently about as many die of those diseases as from cancer.

I hope that as we now come to grips with the matter of cancer, the No. 2 killer, we will set in motion steps that will help us come to grips with the No. 1 killer, heart and cardiovascular diseases.

Mr. NELSON. Mr. President, I wish to comment on the same point. Senator HANSEN and I introduced a resolution to make a heart and lung study. It was copied after the Yarborough resolution. If that resolution were passed and the panel were created, whether the panel would come up then with the same kind of recommendation, I do not know. If it did, I would disagree with that aspect of the recommendation, as I disagree with that aspect of the recommendation of the cancer panel.

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

Mr. NELSON. I yield.

Mr. KENNEDY. It is my understanding that the heart people have already requested an independent agency patterned after the cancer agency. Is the Senator familiar with that request?

Mr. NELSON. Yes, they have. I think it is inevitable that they will request that if this bill is passed. I disagree with that.

I wish to emphasize once more that I think the panel did an excellent job of evaluating what the problem was. I think that the committee and Senator KENNEDY did an excellent job. I just disagree on the one point of an independent institute outside of NIH; that is all. But it is a very fundamental point which I think is a serious fault in this bill.

I am debating the question today not in the expectation that I will persuade anybody to change the bill, because I know I will not, on this side. But I am hopeful that the House will give it a deliberate, careful look and will remedy what I think is a serious defect in an otherwise very fine bill.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, I yield 10 minutes to the distinguished Senator from Maryland, a member of the Subcommittee on Health.

Mr. BEALL. I thank the distinguished Senator from Colorado.

Mr. President, as cosponsor, I rise in support of the pending measure, S. 1828, the Conquest of Cancer Act. This bill would establish a Conquest of Cancer Agency as a independent agency within the National Institutes of Health. It is hoped that this new agency will provide the administrative and organizational framework for a stepped-up and successful battle against cancer. President Nixon has already requested, and the Congress has approved, an additional $100 million for the cancer program for this fiscal year. In addition, the President has pledged, if more money is needed, "to provide whatever funds can be effectively utilized."

As a member of the Health Subcommittee, I believe that the legislation reported to the Senate floor is a good bill and should receive the support of the Senate. I, of course, am pleased to have had the pleasure of helping to shape this legislation in subcommittee.

As my mail indicates, legislation to accelerate the Nation's battle against cancer certainly has the support of fellow Marylanders and other citizens across the country.

CANCER—CITIZENS FIRST HEALTH CONCERN

Cancer is the No. 2 killer of our people and their No. 1 health concern. A 1966 poll revealed that 62 percent of the American people feared cancer more than any other disease.

Over 16 percent of the deaths in the Nation are caused by cancer. Cancer deaths last year claimed more lives than we have lost in 6 years in Vietnam, and were greater than the total number of Americans killed in action during World War II. Cancer deaths last year were 5½ times the number killed in automobile accidents.

The economic loss to the Nation from cancer deaths are truly astronomical. The panel of advisers on cancer research estimated that direct care and treatment costs plus the indirect costs represented by loss of earning power and productivity by victims of cancer was a staggering $15 billion. Of that sum, $3 to $5 billion represented direct care and treatment costs.

Mr. President, cancer strikes all ages. About one-half of all cancer deaths occur before age 65. Cancer causes more deaths among children 15 and under than any other disease. Although these statistics convey the magnitude of the problem, they do not reveal the individual suffering and hardships that result both to the family and victims and friends. One can only understand this from personal experience or through an examination of individual cases. Earlier this year Carroll County in my State was stunned and saddened when cancer claimed the life of one of its most promising young men, Mike Causey, who was only 17 years of age.

Mike excelled both athletically and academically at Westminster High School. Mike was president of his class for 3 years, was voted by his senior class as the best leader, and was also very active in his church and his community. Mike's untimely death underscores the need for the national commitment and program for the conquest of cancer.

Mr. President, the incidence of cancer is increasing. The fact that our citizens are living longer and the incidence of cancer is higher among senior citizens is partially responsible. It is also due to a large increase of lung cancer, which many attribute to pollution, both air in certain areas, and the self-pollution caused by our citizens' insistence on smoking notwithstanding the warning that appears on every cigarette package. It has been estimated that if every American citizen would quit smoking, cancer deaths could be cut by 15 percent. I am pleased to say that I am one American who has been able to stop smoking. While accelerating the attack on cancer, we must continue to push the fight against pollution, both as individuals and as a nation.

This is necessary for if the present incidence of cancer were to continue, 52 million Americans, one out of every four individuals in this country, will contact cancer some day. This would mean that cancer would strike two out of every three families and in the next 10 years 3½ million citizens will die from cancer.

EARLY DETECTION IMPORTANT

It is hoped that the results of this stepped up effort and a continuing improvement in the cure rate for cancer will enable us to prove these dreary projections untrue. It is important to emphasize to the American public that many forms of cancer today, detected early enough, can be cured. In 1930, we were able to cure only one out of five cancer victims; today, we can cure one out of three and it is estimated that with the better use of existing knowledge we could cure one out of two. The 1.5 million citizens who are alive and well today, 5 years after being treated for cancer, are a living testimony of early detection and treatment. In addition, another 700,000, treated within the past 5 years, are alive and well. One is generally considered cured 5 years after treatment if there has been no reoccurrence.

While the above are encouraging, we do not want to hold out to the American public that a cancer cure is imminent. First, cancer is exceedingly complex. It is not a single disease with a single cause that will likely be solved by a single cure such as the Salk vaccine did for polio. Cancer more properly should be thought of as many diseases resulting from many causes and for which we will need many cures. President Nixon, although strongly committed to the conquest of cancer, sounded a word of caution and urged the American public to be patient when he said "that biomedical research is a notoriously unpredictable enterprise. Instant breakthroughs are few and the path of progress is strewn with unexpected obstacles. As we undertake this crusade, we must put on the armor of patience, ready to persist in our efforts through a waiting period of unknown and possibly anguishing duration."

Also the cancer panel sounded a similar note when it stated:

> While it is probably unrealistic at this time to talk about the total elimination of cancer within a short period of time or to expect a single vaccine or cure that will eradicate the disease completely, the progress that has been made in the past decade provides a strong basis for the belief that an accelerated and intensified assault on cancer at this time will produce extraordinary rewards.

TRIBUTE TO NIH

Mr. President, this afternoon much mention has been made about the National Institutes of Health and the proposed legislation. Representing the State of Maryland, I naturally am proud of the National Institutes of Health and its many dedicated employees. There is no question that the United States is No. 1 in medical research. NIH and its dedicated men and women are in no small part responsible for the preeminence of biomedical research in the United States. In fact, the bill that the Senate is considering today might be thought of as a tribute to the work they have done, for the National Cancer Institute at NIH has

helped to push basic research to the place where the Nation is now able to launch a massive attack against cancer.

The National Panel of Consultants on the Conquest of Cancer observed that—

> Advancements in the fundamental understanding of cancer in the past decade have opened up far more promising areas for major advances in cancer prevention and treatment than have ever before existed.

Similarly, the Labor and Public Welfare Committee report acknowledged the "excellent work" done at and supported by NIH grants and contracts. And the President paid tribute to NIH in his cancer message when he said:

> They have earned both the respect of the scientific community and the gratitude of thousands who live happier and healthier lives because of NIH successes.

Because I was aware of the NIH record, I shared the viewpoint of most members of the scientific community that it would be unwise to establish a new cancer authority outside NIH. I feared that such a move might be destructive of the excellent NIH structure. It might have prevented or hindered the important and necessary cross-fertilization between cancer research and other biomedical research. It should be pointed out that in the cancer area we still need basic scientific breakthroughs. Cancer research has profited from a close relationship with biomedical science in the past and the interdependence of the medical science is likely to be needed and to continue in the future. It is also true that other disciplines will most likely profit from a close contact with a great expanded cancer research effort.

But I think that today we have the best of both worlds, because today we have the availability of the tremendous research that has gone on at the National Institutes of Health as well as a national commitment to find the cure for this dread disease.

I want to congratulate Senators DOMINICK, KENNEDY, and JAVITS, and the administration for reaching the compromise which is before the Senate today, a compromise which will enable the Nation to get on with the business of searching for cures for cancer. I support the compromise. The compromise authorizes a new independent Conquest of Cancer Agency which will be located within NIH. The Conquest of Cancer Agency will be headed by a Director who will report to President Nixon. This compromise certainly represents an important improvement over the original measure. By keeping the new Conquest of Cancer Agency within NIH, cancer's link with the other biomedical researchers will be continued and the danger of the loss of association with the National Institutes of Health is largely eliminated.

In summary, defeating cancer or substantially reducing its incidence is as difficult and as complex an undertaking as this Nation has ever embarked. To be successful it will require talented men and women, extraordinary management, adequate resources, and probably some good luck. President Nixon has pledged he will make the added resources available as research unlocks promising leads necessitating additional sums of money. The bill the Senate will pass today will enable the country to launch this conquest of cancer effort. It is an undertaking that will have the prayers and support of all of our citizens.

I personally feel confident that this accelerated attack will enable us to make great strides against this dreaded disease of mankind. As a member of the Health Subcommittee, I intend to follow and to do everything I can to make the conquest of cancer effort successful. I urge enactment of the measure.

FORT DETRICK

I invite attention to section 407D, on page 34 of the committee report. Section 407D reads:

> In order to carry out the purpose of this part, the Director shall—

Subsection (3) then reads:

> Expeditiously utilize existing research facilities and personnel for accelerated exploration of the opportunities for the conquest of cancer in areas of special promise;

I point out that recently we have gone out of the business of biological warfare in this country, and as a result many talented people and a great deal of unique facilities are available which can and should be utilized in the conquest of cancer effort.

I am, of course, speaking of Fort Detrick which is located within my State of Maryland. Fort Detrick is uniquely suited for biomedical research in cancer and related areas. It has $250 million worth of facilities and equipment which are available now for use in the fight against cancer.

A number of our top medical science professionals have indicated the need for a research center with the same capabilities as Fort Detrick. They have said that if Fort Detrick were not available for use in virus research, it would have to be built. With these facilities available, Mr. President, the cancer fight can proceed swiftly ahead with no time lost for construction. I urge that the Detrick Laboratories be made part of the Federal Government's crusade to beat cancer.

Mr. President, I believe that one additional point needs to be made. Despite the expanded effort against cancer envisioned by S. 1828, I would hope that the countless communities across the country will not in any way diminish their individual crusades against cancer. These individuals and community efforts, which occur throughout my State and the country, are very important in the overall battle against this dread disease.

I ask unanimous consent that an article which appeared in the June 30 Frederick Post, describing one of the successful cancer crusades in my State, be printed in the RECORD.

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

WE WANT TO WIPE OUT CANCER IN YOUR LIFETIME

A successful Cancer Crusade is made up of a whole lot of dedicated people who for reasons of their own, some very dear to their hearts, are willing and desirous of working in this campaign—the largest of all public health drives.

Some of the people who made the Frederick County Cancer Crusade another goal-busting success are pictured on this page . . . but these are only a handful of the more than 1,400 men, women and children who each did their part to help Frederick County exceed its $25,000 goal by almost $3,000.

This Cancer Crusade involved all walks of life—the rich and the poor, students and teachers, doctors, lawyers, businessmen, retired persons by the scores.

Cancer Society President Francis W. Bush Sr. and Crusade Chairman Sterling E. Bollinger jointly praised the fine team of 1,400 volunteers, and especially the divisional chairmen—including Crusade Vice Chairman Isaac L. Stevens.

The chairmen include: Joseph D. Baker, special gifts; Robert P. Marendt Jr., business and industry; Donald C. Linton, clubs and organizations; Edwin F. Nikirk Jr., memorials; Mrs. Dale Carter, city residential; Claude H. Barrick, county residential; Mrs. Samuel Thompson, office volunteers; Mrs. William Roessler, public education; Dr. Bjarne Pearson, professional education; Mrs. Nellie S. Simpson, service chairman; and Gene T. Mills, public information.

It would be difficult to point out individuals, but mention is due the two largest divisions in the crusade—The County Residential Division chairmanned again by Claude Barrick of S. W. Barrick & Son Inc., of Woodsboro, and the City Residential Division, again headed by Mrs. Dale (Doris) Carter, Frederick County Health Department. Their lists of volunteers follow:

CITY

Mrs. Carter-James Harrison, Miss Anne Stone, Mrs. James McSherry, Mrs. Alan H. Hargis, Mrs. Irene Spurrier, Mrs. Glenn Waltz, Isaac Stevens, Mrs. Ella C. Murphy, Murray F. Fox, Mrs. Charles L. Gorgas, Mrs. Arthur Kester, Mrs. C. B. Hobgood, Mrs. Charles Crawford, Mrs. Gordon Palmer.

Also, Mrs. Helen Mills, Mary Jane Cregger, the American Legion Auxiliary Unit No. 11 members, Mrs. Robert Fisher, Mrs. Edwin Nikirk, Mrs. T. V. Levinson, Miss Pauline Sheets, Mrs. William O. Wertenbaker, Jr., Mrs. Beulah Roop, Mrs. Ernest B. Harris, the Home League Ladies of the Salvation Army, Miss Denise Porr.

Also, Mrs. Harry Main, Mrs. Alton Shaff, Mrs. Belle Keyser, Mrs. D. L. Wigginton, Mrs. Jack L. Roach, Mrs. Robert S. Turner, Mrs. Lloyd Stup, Mrs. Kea Hersperger, Mrs. Mary Holdcraft, Mrs. George Dorsey, James and Billy Graham, Mrs. Grace Chafin, Mrs. Ruth E. Stup, Mrs. John Hanson, Stanley Staley, Mrs. Elmer Wachter, Mrs. Joseph Price, Mrs. Harold Schaden, Mrs. Thomas Eichelberger.

Also, Miss Dorothy Keys, Mrs. Leonard Dobucki, Mrs. William J. Mohan, Mrs. Charles Rumpf, Mrs. George F. Cresap, Mrs. Thomas Notally, Mrs. Edward Routzahn, Mrs. John Ponton, Mrs. Paul Gordon, Mrs. Adel Demiray, Mrs. Wilson Stup, Mrs. Dare Morton, Mrs. Ruth E. Brandenburg and son, Mrs. Owen Mercer, Miss Eleanor Brown, Mrs. Robert Stanton, Mrs. Alice Davis.

Also, Mrs. Claude R. Delauter, Mrs. George Ambush, Mrs. Raymond Scott, Mrs. William Kennedy, Mrs. George C. Meyer, Ronald Summers, Mrs. Kenneth Crampton, Mrs. William Barry, Mrs. Douglas Whittington, Mrs. M. L. McKenna, Mrs. William R. Cole, Mrs. Frank House, Mrs. J. Earl Gilbert.

COUNTY

Claude Barrick-Elmer Highhouse, Mrs. Leon Howard, Mrs. R. J. Opel, Mrs. John Carnochan, Jr., Mrs. Louis Faville, Mrs. Eugene Kefauver, Mrs. Albert Main, Mrs. Joseph Hering, Mrs. John C. Spahr, Mrs. Ellen Jacobs, Mrs. Austin Cooper, Mrs. Carroll Lee Zecker, Mrs. Verna Ward, Mrs. Louise E. Fraley, Mrs. C. Ray Green, Mrs. Clyde V. (Jessie) Knipple, Mrs. Dorsey Lovell, Mrs. James Fisher, Mrs. Keefer R. Crampton, Mrs. Fred Oyhus, Mrs. Glenn Bumbaugh.

Also, Charles C. T. Stull, Mrs. Frank Ster-

ling Warner, Mrs. Stafford Grabill, Mrs. Millard Eiler, Mrs. William Buzzerd, Mrs. Paul Brunner, Mrs. Joseph Brown, Mrs. Brinton E. Sullivan, Mrs. Frank Gladhill, Mrs. Bertram Enfield, Mrs. Richard Jones, Mrs. Karl S. Manwiller, Jr., Mrs. Stanley Y. Bennett, Mrs. John Graham.

Also, Mrs. Sterling Bollinger, Mrs. Dale Ericson, Mrs. John Moser, Mrs. Charles Hoke, Mrs. Harvey Starkey, Mrs. Joseph Beeson, Mrs. Claude Barrick, Mrs. George F. Quinn, Mrs. Carl Harbaugh, Mrs. John D. Vachon.

During the crusade year, there were scores of organizations and other individuals who planned and carried out special fund-raising projects, or were cited for their efforts on behalf of the campaign.

One of the projects which for the third consecutive year drew praise from county and state cancer officials, as well as interested citizens, was the "Road Block" solicitation by students of the University of Maryland who chose to "demonstrate" in the Crusade rather than on campus.

John Wrightson was chairman of the project which involved members of Alpha Gamma Rho fraternity and Pi Beta Phi sorority. Members soliciting for the crusade at area shopping centers included:

Alpha Gamma Rho—Wrightson, Jason Myers, Tommy Bligeman, Bert Ford, Rob Powell, Greg Browning, Bob Fry, Rick Stuller and Larry Grossnickle; Beta Phi—Irene Zolnaski, Linda King, Barb Porterfield, Chris Baumann, Sharon McKim, Patty Griffin, Holly McCabe, Dale Ganley, Julie Johnson.

Every little bit helps—and so it was with projects for cancer such as the back-yard carnival conducted by the children at the home of the Willard Posts on Thomas Avenue . . . Net: $3.50.

Frederick High Students, according to Thomas Van Pelt, held a welfare drive under Student Council and the share for the Cancer Crusade was $55. Student Council officers involved were Perri Fellers, president, and Stephanie Brown, vice president, and Welfare Committee members Allen O'Hara, Eric Summers and Carol Main.

One of the biggest efforts in terms of people involved was the Rallye Day USA charity road rally sponsored by the Francis Scott Key Mustang Club, with H. Wayne Williams as chairman. The April 18 event netted $108 for the Cancer Crusade.

The Traffic Department of C & P Telephone Company in Frederick sponsored a cancer drive in memory of LeRoy Koogle, a former plant employee and cancer victim. The program netted $325 for the crusade. Principals in the project were Chairman Dorothy DeGrange and Mrs. Anna Bussard and Mrs. Olie Nikirk who sold the most tickets. John Copenhaver of Baltimore, Bill Fourhman of Westminster and Pat Murphy of Middletown received the gifts.

Every crusade has its gems, and this was no exception, according to Mrs. Louise Creager, executive secretary of the Frederick Cancer Society.

One of the projects, Mrs. Creager explained, was the "Send a Mouse to College" campaign in which anyone could, by contributing 27 cents, pay for an experimental mouse to be used in cancer research.

The mouse "hunt" was conducted in April by Hood College students, with Grace E. Lippy as chairman. The project netted $120.22 for the fight against cancer through research.

One of the envelopes containing 27 cents came from Martha Kazenmadel, all the way from Saddle River, N.J., and included the following notation:

"If possible, please use my 27 cents to purchase some equipment or something. Please do not buy a mouse and kill him."

What goes into a successful Cancer Crusade? A lot of dedicated people and a lot of work . . . and a purpose that's worth working for:

"We want to wipe out cancer in your lifetime."

The PRESIDING OFFICER (Mr. STEVENSON). Who yields time?

Mr. DOMINICK. I yield 5 minutes to the distinguished senior Senator from Maryland (Mr. MATHIAS).

The PRESIDING OFFICER. The Senator from Maryland is recognized for 5 minutes.

Mr. MATHIAS. I thank the Senator from Colorado for yielding me this time.

Mr. President, I support the bill with a great deal of sincerity. Like most Americans, we have all felt the scourge of cancer in our families. We all know the toll it takes in the lives of Americans and what it costs in human terms, human terms so deep and personal that we do not even like to consider what cancer means in the economy of America.

Few of us realized, until a very short time ago, for example, how cancer attacks our children or, for that matter, how impartial it is to the ages of the victims it strikes.

Mr. President, let me revert to the subject raised by the distinguished junior Senator from Maryland (Mr. BEALL), the question of facilities now available which can be of some help to children who are threatened by cancer today, and to older Americans who are threatened by cancer today—to whom time is a matter of great importance.

It is all very well to talk about programs which are ultimately going to be of help to the whole of the American people, but it is a different thing to talk about programs which can be put into effect today, where progress can be made today, and not just a question of the long-range prospect of help, or a blueprint being needed which will be effective for all Americans who will be born after the year 2000.

What is important to American lives in danger from cancer today is some help today.

What the junior Senator from Maryland has suggested, and what I should like to emphasize now, is that we have facilities in being, bought and paid for—insofar as anything that the Government has can be said to be bought and paid for—which have cost the American public about a quarter of a billion dollars, for studying the effects of the various strains of the virus of cancer on human beings. That is the point at which we begin to find the causes of cancer and, thereafter, the cure for cancer.

We have a team of people trained to operate this system, as the junior Senator from Maryland has pointed out. They are all waiting and ready to go to work. This is the team at Fort Detrick, trained in biological warfare but immediately adaptable to the peaceful cause of finding the cure for cancer.

If we can utilize the facilities at Fort Detrick, we will accelerate the impact of this legislation immediately, because a telephone call today can put Fort Detrick to work for peace. As a matter of fact, there would be no delay at all in utilizing this unique facility. It would not only save time but it would also save money, because if we do not use Fort Detrick, the expert judgment in this country is that we will have to go out and duplicate the facilities which already exist there.

Thus, in terms of time and money, the purposes of this legislation, which I believe will get the overwhelming support of the Senate, can be served by immediate utilization of Fort Detrick, whose experts are objective, have no partisan ax to grind, and are interested in nothing but performing their jobs efficiently.

Fort Detrick is a magnificently specialized laboratory which could be rapidly transformed into a bastion in the fight against cancer. So states Dr. James F. Holland, president of the American Association for Cancer Research, and a number of other scientific experts in this field who have testified that the Fort Detrick facility is available and ready to go to work at once.

One of the problems is, I fear, that the case of Fort Detrick is being considered as just another base closing, just another situation where a community which has benefited by the proximity of a large military installation regrets its closing. Well, of course, those elements do exist, but the fact is that this is not just a base-closing question but one of a pledge made to the American people by the President of the United States, a pledge which can be redeemed more quickly, more economically, more efficiently, and, I think, more successfully, by utilizing the facilities at Fort Detrick.

Therefore, I am very much pleased to associate myself with the remarks that have been made by the distinguished junior Senator from Maryland in urging passage of the bill and the utilization of Fort Detrick to accomplish the purposes of the bill.

Mr. DOMINICK. Mr. President, I want to thank the two disitnguished Senators from Maryland for their support of this bill. I know how important the facilities at Fort Detrick could be in finding answers to the various kinds of cancer. I note that the bill gives the Director of the Cancer Conquest Agency specific authority to acquire any facilities he deems necessary to carry out the cancer program. Presumably, to make use of Fort Detrick, this would only involve a transfer from DOD to HEW.

Mr. President, at this point I yield 5 minutes to the distinguished Senator from Vermont (Mr. PROUTY).

The PRESIDING OFFICER (Mr. STEVENSON). The Senator from Vermont is recognized for 5 minutes.

Mr. PROUTY. Mr. President, as a cosponsor of S. 1828, the Conquest of Cancer Act, I urge Senators to support the bill as reported by the Committee on Labor and Public Welfare Committee.

While not the major cause of death in our Nation, cancer is the disease most dreaded by Americans. Of the 200 million Americans alive today, 50 million will develop cancer at present rates of incidence and some 34 million will die of this painful disease. Cancer must be conquered and we as a Nation must commit ourselves to this conquest. The measure before us embodies this commitment as expressed by President Nixon and a bipartisan array of sponsors and cosponsors of the two bills which resulted in the compromise in the amended version of S. 1828 now before us.

As a member of the Senate Health Subcommittee, I would like to share briefly with Senators the problems that developed in seeking a means to achieve a shared goal.

There were clear, well-intentioned differences of opinion as to whether our expanded efforts against cancer should be conducted by an agency independent of the present National Institutes of Health or within the NIH framework. After much thought I became convinced that maintaining the integrity of biomedical research was essential to achieve our goal because the problem of cancer straddles almost all the life sciences any one, or all, of which may contribute to the final conquest of cancer.

The bill before us reflects a compromise between those who deeply felt that a separate agency was needed in our fight against cancer and those of us who believed that the battle must be waged in the closest harmony with the NIH troops already on line.

I commend all who endeavored so long and hard to achieve this compromise. It is indeed in the finest tradition of the United States Senate.

I am convinced that as set up in this measure the Conquest of Cancer Agency, independent but within NIH, is the best vehicle for carrying out our firm commitment to apply whatever resources are necessary to conquer cancer as rapidly as possible.

Some Senators may express concern that the role of the Director of the National Institutes of Health as it pertains to the new Agency should have been more clearly defined in this bill. Perhaps this is so, but with Dr. Robert Marston as Director of the National Institutes of Health I have no doubt the activities of NIH and the Agency will be carefully coordinated and that there will be no let up in the research momentum he has so expertly developed in his 3 years as Director of NIH.

To a large extent the success of the Conquest of Cancer Agency, or any agency for that matter, depends on the quality of its leadership. The National Institutes of Health has been made excellent by great directors like Dr. Marston and I am confident that with his deep commitment to conquer cancer President Nixon will appoint a Director of the Conquest of Cancer Agency who will follow in this tradition of excellence and in the closest cooperation with Dr. Marston.

Mr. President, I believe this bill as reported is essential to reach a goal everyone seeks and hopes is reachable, the conquest of cancer. I urge Senators to enthusiastically support S. 1828.

Mr. President, I thank the Senator from Colorado for yielding.

Mr. DOMINICK. Mr. President, I thank the Senator from Vermont for his contribution.

Mr. President, as far as I know, we have now outlined the matter in detail. I do not have any additional requests for time. I do not know whether the Senator from Massachusetts has. Apparently he does not.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD an extremely interesting article entitled "Cancer Virus Isolation in Human Is Reported," written by Victor Cohn, and published in the Washington Post.

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

CANCER VIRUS ISOLATION IN HUMAN IS REPORTED

(By Victor Cohn)

The first isolation of a human cancer virus—an elusive goal of science for more than half a century—was claimed by a Texas medical team yesterday.

Two Houston scientists said they extracted the virus from the cells of a 5-year-old boy who died of Burkitt's lymphoma, a lymph gland cancer.

The pair—Drs. Elizabeth Priori and Leon Dmochowski of the *University of Texas'* noted *M.D. Anderson Hospital* and *Tumor Institute* —then succeeded in growing the virus in human lymph cells in the laboratory.

If confirmed, their achievement could open the way to learning not only the way many cancers are caused, but possibly how to prevent them, maybe by vaccination.

There is already widespread excitement over the reported discovery at the National Cancer Institute in Bethesda, under whose contract the work was done.

The findings still must be checked by many scientists. It may take long study before anyone can positively say that the particles they are growing are human cancer viruses.

There is also a prior claimant for "first" isolation of a human cancer agent—the isolation of another type of virus linked with another variety of Burkitt's lymphoma by Drs. Michael Epstein and Y. M. Barr in Britain in the mid-1960's.

Their "EB" (for Epstein-Barr) virus is still called only a "cancer-associated, herpes-type virus" (because it resembles the viruses of herpes diseases). It has been implicated in other diseases too, and its true role is still unclear.

The Houston claim comes from a team led by a well-established authority, the 61-year-old, Polish-born Dmochowski, head of virology at M. D. Anderson. He believes he has strong evidence that "indeed a human virus has successfully been obtained for the first time."

His sphere-shaped virus is a so-called C-type, the same type that is the proven cause of cancer in rats, mice, cats, dogs, monkeys and other mammals.

"If this finding is true," said Dr. John B. Moloney of the National Cancer Institute, "this is a huge step forward. Here is something we have been looking for for a long time."

It could prove the most important discovery so far in the institute's $40-million-a-year "special cancer virus program." This effort mainly financed the Texas work and many other recent advances, as part of an intense search for cancer viruses and a cancer cure.

An animal cancer—chicken leukosis or leukemia—was first shown to be caused by a virus in 1908. But it has been only in the last few decades that evidence has begun to accumulate that human cancer too may be associated with viruses.

The Texas evidence comes in a year in which, first, scientists reported still another type of cancer virus (B-type) in high number in the milk of women having a strong family incidence of breast cancer.

Next, in late June, doctors discovered an apparent epidemic of Hodgkins disease—another kind of lymphoma—in 12 members or close contacts of the 1954 graduating class of an Albany, N.Y., high school. This raised the possibility that Hodgkins disease is infectious and caused by a virus—or maybe caused by a virus triggered by some common factor in this group's environment.

In all, Dr. Frank Rauscher of the cancer institute noted recently, "the era of the '70s is the era of confrontation with the cancer mystery and will reveal more about the mechanism of cancer than any time since the inception of research."

Houston's Dmochowski (with C. E. Grey) first identified what he believed to be C-type viruses in the lymph nodes of a Hudson patient in 1957.

But identifying a virus—in electron microscope photos magnified perhaps 90,000 times—and snagging it are two different things. The latter was finally accomplished by Drs. Priori and Dmochowski and colleagues with the virus from the boy with Burkitt's lymphoma, a cancer that particularly affects the face and knee bones.

To "isolate" a virus a scientist must not only grow it in a lab dish full of cells. He must then show that he can infect other such cultures with an extract, then do so in culture after culture in what virologists call "serial passage." The Houston group has made 40 such passages.

They have sent cultures to others, and workers at both the cancer institute and New York's Memorial-Sloan-Kettering Cancer Center have determined that the particles are not contaminants, or animal cancer viruses that somewhat migrated into the laboratory.

What are the next steps in proving that "ESP-1"—the name of the new virus, for Elizabeth S. Priori—is really a human cancer virus?

If the victims were animals, scientists would try to infect other animals. In humans they must be more indirect: showing that the virus harms cells in the laboratory, for example; looking at other patients for the virus; looking at the general population to learn the virus distribution.

Evidence already indicates that the virus infects human embryo cells grown in the lab, said Dmochowski.

Mr. TAFT. Mr. President, the Conquest of Cancer Act, which I have cosponsored and is before us today, is the result of deep concern and a firm commitment by Americans to expedite the discovery of a cure for cancer. The consensus of all that the conquest of cancer is a top priority must be matched by the financial resources, human knowledge, and the administrative framework necessary to make this goal a reality.

I believe that this bill will provide that framework. The study and discussion of how we might be most successful in achieving the conquest of cancer has been consistently characterized by dedication, reason, and compromise. Recent advances in cancer research prompted the passage of S. 376 in March of 1970, which authorized an in-depth study of cancer research including recommendations to facilitate its conquest. In June of 1970, the eminent panel of consultants on the conquest of cancer began this study. With singleness of purpose, these thoughtful men and women reported their findings and recommendations. They told us that a national program for the conquest of cancer would be essential to build upon recent advances in this field of research. They recommended that the program must be administered with clearly defined responsibility and adequate financial resources.

In his state of the Union address, President Nixon made the discovery of a cure for cancer one of his six great goals for this Nation. He requested the appropriation of an additional $100 million to begin

this campaign against cancer. Based on the recommendations of the panel of consultants, the distinguished Senator from Massachusetts (Mr. KENNEDY) and the distinguished Senator from New York (Mr. JAVITS) introduced S. 34, the Conquest of Cancer Act. After the exchange of ideas in hearings and numerous discussions, the distinguished Senator from Colorado (Mr. DOMINICK) and the distinguished Senator from Michigan (Mr. GRIFFIN) introduced S. 1828, an act to conquer cancer, on behalf of the administration. Further exchanges of ideas concerning the best method of achieving our common goal—the conquest of cancer—brought forth the compromise bill which we are now considering. I congratulate all who have joined in this effort.

S. 1828, in its present form, would establish a Conquest of Cancer Agency as an independent agency within NIH. While the new agency would be administratively independent, the continued coordination of cancer research with other biomedical research is insured in this bill.

It is my hope that the threads of dedication and reason which have run through each stage of this legislation will culminate today in the overwhelming approval of the Conquest of Cancer Act.

Mr. PERCY. Mr. President, I wish to offer strong support for S. 1828, the Conquest of Cancer Act.

Cancer strikes young and old, strong and weak, and black and white indiscriminately. In our lifetime, cancer will attack one in every four Americans. In the 1970's alone, 6.5 million Americans will develop cancer, 10 million will undergo medical treatment for cancer, and 3.5 million will die from cancer unless better methods of prevention and treatment are discovered.

This Conquest of Cancer Act is timely. It comes at a time when research successes in the past 10 years are raising hopes, when cancer research is in the best position to benefit from an infusion of resources. The cure rate is gradually improving, up from 20 percent in 1930 to 33 percent today, and headed for a potential 50 percent in the near future.

I am pleased to have been a cosponsor of S. 34 as I am a cosponsor of S. 1828. However, I hope this Conquest of Cancer Act signals the beginning of our national commitment to find relief, not only for cancer, but for all dread diseases. On August 3, 1970, I called for a crash program for the cure of dread diseases: cancer, heart and stroke. Today, I pledge again to do everything in my power to help eliminate those diseases by 1976 or earlier.

I would like to commend the administration, Senator KENNEDY, the full committee, and the subcommittee for a job well done in bringing forth this most important piece of legislation that will surely hasten the day when we will find a cure for cancer. I would be remiss also if I did not mention the important role played by an outstanding nationally syndicated newspaper columnist, Ann Landers, who urged her readers to support S. 34 and help wage war on cancer. I alone in just one Senate office received a total of 28,250 telegrams and letters attributable directly to this one column. As has been aptly said before, "never underestimate the power of a woman."

Mr. TOWER. Mr. President, I rise to give my strong support to S. 1828, the Conquest of Cancer Act.

As a cosponsor of S. 1828, I am extremely pleased that the Committee on Labor and Public Welfare has reported this bill unanimously to the full Senate. It must be noted that the bill as reported differs to an extent from the bill Senator DOMINICK introduced on behalf of the President on May 11.

However, the measure we now consider represents the bipartisan commitment which is needed if we are to make the progress in the field of cancer research demanded by the American people. The Senate Labor and Public Welfare Committee should be commended for striking a compromise between the President's objectives as outlined in his special message of May 11 and the objectives contained in S. 34 introduced by Senators KENNEDY and JAVITS on January 26, 1971.

The pending bill will establish a conquest of cancer agency with independent budgetary authority. The Director of the agency will be responsible to the President. The autonomous nature of this agency is necessary to insure the national commitment to eradicate cancer that has now been endorsed by the executive and legislative branches of the Federal Government.

While I firmly believe that a national cancer commitment is in order, I also feel that such action should not be undertaken in an isolated manner. The United States is the recognized world leader in the field of biomedical research. Our effort in this field has been coordinated and directed by the National Institutes of Health. The scientific intricacies involved in cancer research necessitate the implementation of a program that will allow a free flow of ideas between the National Institutes of Health and the Cancer Conquest Agency.

I am convinced that this bill will allow for such a continuum which will promote an overall attack upon this dreaded disease. By making the Conquest of Cancer Agency an independent agency within the frame work of the National Institutes of Health, we will insure the existence of a mechanism to explore, in much greater depth, the questions relating to the many types of cancer. With this legislation, we will embark upon a national crusade directed by a dedicated nucleus of scientists and physicians.

Americans should be heartened by the action we take today. Yet, it would be a disservice to Americans directly concerned with this disease to categorically state that an end to their hardship is in sight. President Nixon warned against such misguided optimism in his special message of May 11:

> I would not want to discuss the subject of cancer research, however, without offering a word of caution. Many of the experts that we consulted with told us that biomedical research is a notoriously unpredictable enterprise. Instant breakthroughs are few and the path of progress is strewn with unexpected obstacles. As we undertake this crusade, we must put on the armor of patience, ready to persist in our efforts through a waiting period of unknown and possibly anguishing duration.

It must be made fully clear that this legislation represents only a commitment to achieve a long sought scientific objective. Legislation alone cannot cure anything. The Congress can only stimulate activity toward such an end. Yet, we are today making such a commitment, and my undying faith in the intelligence and creativity of the American people leads me to believe that we eventually shall see success in the fight against cancer.

I gave my full support to President Nixon's special request for an additional $100 million for fiscal year 1971 funds for cancer research. I intend to give my full support to future appropriations increasing this Nation's commitment to find a cure for cancer.

I, therefore, urge my colleagues to support S. 1828 as the proper vehicle to encourage scientific breakthrough in our efforts to find a cure for cancer.

Mr. WILLIAMS. Mr. President, with the establishment of the National Cancer Institute in 1937 and the excellent work it has undertaken over the past 34 years, significant progress has been made in the Nation's efforts to fight this dread disease.

Much has been accomplished, yet much more remains to be done.

As far as the American people are concerned there is no question that cancer, like polio and cholera and smallpox before it, must be eradicated. The American people feel about cancer the way they felt about splitting the atom and the way they felt about the moonshot—that these are truly exceptional and unusual circumstances; that there is no reason why people must suffer with this disease; and that cancer can be conquered.

By a wide margin, members of the American public fear cancer more than any other disease. And with good reason. Of the 200 million Americans alive today, 50 million will develop cancer and 34 million will die of cancer if we do not find better means of prevention and treatment.

Cancer not only represents financial catastrophe for the family which it strikes but the greater tragedy is the eroding effect it has upon human dignity.

On March 25, 1970, Senate Resolution 370 was introduced by Senator Ralph Yarborough, my distinguished predecessor as chairman of the Committee on Labor and Public Welfare. Under its authority a special panel of consultants to the committee was created. That distinguished panel consisted of 26 persons—13 eminent scientists and 13 eminent laymen. On November 25, 1970, the panel presented its report to the committee. Its conclusions were unanimous:

> A national program for the conquest of cancer is now essential if we are to exploit effectively the great opportunities which are presented as a result of recent advances in our knowledge. However, such a program will require three major ingredients that are not present today:
>
> First, effective administration with clearly defined authority and responsibility;
>
> Second, the development of a comprehensive national plan for a coherent and systematic attack on the vastly complex prob-

lems of cancer. Such a plan would include not only programmatic research where that is appropriate, but also major segments of much more loosely coordinated research where plans cannot be definitively laid out nor long-range objectives clearly specified; and

Third, the necessary financial resources.

At the present time there is no coordinated national program or program plan. The National Cancer Institute has done excellent work itself and has supported grants and contracts in the scientific community which have resulted in much outstanding work, but the overall research effort is fragmented and, for the most part, uncoordinated. The effort in cancer should now be expanded and intensified under an effective administration charged with developing and executing a comprehensive national plan for the conquest of cancer at the earliest possible time.

In response to the recommendations of the panel Senator Yarborough introduced a bill on December 4 of last year, the Conquest of Cancer Act. Although no action could be taken on this measure in the few remaining days of the last Congress my distinguished colleagues, Senators KENNEDY and JAVITS, introduced similar legislation—S. 34—on January 25, 1971. I was proud to be a cosponsor of that bill, S. 34 proposed:

First, that the prevention, diagnosis, and cure of cancer be declared of the highest national priority;

Second, that an independent Cancer Authority be established to conduct and support research on cancer, and to collect and disseminate information on cancer to the public and scientific community;

Third, that a national plan be submitted to the Congress, through the President, for the conquest of cancer which would include measures to be taken in combating cancer; a timetable for the accomplishment of the measure; and cost estimates for major portions of the plan.

Fourth, that an 18 member National Cancer Advisory Board be approved by the President with the concurrence of the Senate to advise and assist the Administrator of the Cancer Authority.

On the same day that S. 34 was introduced in the Senate, the President made clear his view of the timeliness and urgency of a major effort to conquer cancer as rapidly as possible. In his state of the Union address to the Nation, the President called for a "total national commitment" to an intensive campaign to find a cure for cancer.

After 2 days of hearings in early March, some controversy had arisen concerning the efficacy of creating an independent cancer agency. Indeed, I found it remarkable that the reasoning and thoughtful opinion of so many men showed such great merit on both sides of the issue.

Everyone agreed that cancer is a major killer and a painful, horrifying disease. Everyone agreed that the past 10 years have seen significant breakthroughs in our efforts to treat cancer. And everyone agreed that the moment is ripe for a special effort on the part of the Federal Government to provide a massive infusion of money which might assure that the conquest of cancer can become a reality in our lifetime.

The crux of the disagreement centered upon the question of how best to fashion the mechanism to reach our common objective.

The panel and many other eminent scientists, doctors, lay professionals, and legislators saw the best approach as the creation of an independent National Cancer Authority.

The administration, and many eminent scientists, doctors, lay professionals, and legislators urged that the effort remain within the National Cancer Institute of Health.

Mr. President, we are all aware that when so many of the experts find themselves in such sharp disagreement on how best to implement a new and major Federal initiative, there must be clarifications made in legislative proposals to accommodate specific needs and to overcome justifiable concerns. Thus, subsequent to the March hearings on the cancer bill I introduced amendments designed to accomplish a great many objectives.

It is important, in my judgment, to insure the present lines of communication and cross-fertilization of scientific knowledge existing among and between the various Institutes of Health be maintained. I fully agree with those who urge that cancer research and other biomedical sciences must not and cannot be fragmented or isolated. And so I introduced an amendment to assure that the director of the cancer agency must be held accountable for continuing the free and open exchange of information and ideas.

To make certain that the work of the cancer agency and the whole of NIH are coordinated at the highest administrative and working levels I proposed to put the Director of NIH as an ex officio member of the national cancer advisory board. That board has been designed to have overall control of the direction and policy of the cancer agency.

Another concern then expressed related to the question whether the cancer agency would be empowered to lend financial support to research underway in the remaining institutes of health—research which demonstrated great promise in unlocking many of the remaining mysteries about cancer. There is no question in anyone's mind that large segments of basic biomedical research are relevant to cancer. Thus I felt it important to remove any doubt that funds may be transferred from the resources of the cancer agency to other NIH programs for the added support of promising cancer-related activities.

The concerns within the scientific community that peer review procedures must be clarified were accommodated in another of my amendments. The panel expressed its view that a national cancer program should include the voluntary, productive interaction and joint planning of the scientists responsible for the research projects. I feel that this is an important aspect of any professional endeavor since one's peers so often provide insights which too frequently escape the researcher in his zeal to pursue a novel theory. Thus, I propose an amendment directing that regulations be established governing appropriate peer review procedures for research grants and other programs of the cancer agency.

On May 11, 1971, Senators DOMINICK and GRIFFIN introduced S. 1828 on behalf of the administration. This bill in large part represented the view that the cancer agency cannot be made independdent of the NIH. Among its key features:

First. The bill would establish a cancer cure program within the National Institutes of Health, which shall have as its objective the conquest of cancer at the earliest possible time.

Second. The program would be administered by a Director who will be appointed by the President with the advice and consent of the Senate, and will serve under the direction of the President.

Third. The Director would serve under the direction of the Secretary, HEW, with respect to such functions as the President may prescribe.

Fourth. The program would act in coordination with the other programs and activities of the National Institutes of Health.

Fifth. A Cancer Cure Advisory Committee would be established, consisting of the Secretary of HEW, the chairman and members of the National Advisory Cancer Council, and Director of the Office of Science and Technology—all of the preceding as ex officio members, and not to exceed 10 additional members to be appointed by the President.

After another day of hearings to consider this new proposal it became clear that a substantial increase in resources along with increased organizational efficiency will shorten the time necessary to bring a full understanding of cancer. To do this, it was the consensus of the committee that the legislation must assure that the cancer agency have the greatest amount of flexibility and independence. At the same time we thought it vital to preserve the traditional whole of biomedical research by keeping the cancer effort within the framework of the National Institutes of Health.

In sum and substance this is what S. 1828 seeks to accomplish. With its enactment we will witness a great national plan for a coherent and systematic attack on this dread disease. We will see independence in management, planning, budget presentation, and assessment of progress along with the commitment of national purpose which can only come directly from the President of the United States. We will, at the same time, assure that no violence is done to the relationship between cancer and other scientific efforts which might ultimately lead to fragmentation of the overall biomedical research effort.

I am, of course, pleased that the legislation has preserved the sense of the amendments which I proposed several months ago. We have, in the legislation, clear assurances of cross-fertilization between the agency and the other Institutes. The Director of NIH plays an important role in the cancer effort and his presence on the Board assures the greatest of cooperation among the various health research efforts. We have clarified the question of peer review with the assurance that the already ex-

cellent NIH system will be utilized but with the option for new procedures should the cancer effort so require. And the overall concept behind the legislation—independence, flexibility, adequate funds, comprehensiveness, and coordination—should give us the boost necessary to achieve the success we all so fervently seek.

Mr. President, as everyone in this chamber knows it has taken enormous energy and creativity to arrive at the legislative proposal before us today. There have been a great number of individuals who have played vital roles in helping the committee fashion a wise and workable program. Mr. Benno Schmidt, as Chairman of the Panel of Consultants, is to be highly commended for his utmost devotion to the task he set out to accomplish. And, of course, we owe a large debt of gratitude to the other members of the panel for their work. All of these men and women have had a historic impact for having helped us to realize that we can break through to find a cure for cancer.

Of equal importance, Mr. President, has been the great dedication of Senator KENNEDY—chairman of the Health Subcommittee—of Senator JAVITS—ranking minority of the full Labor Committee and of Senator DOMINICK—ranking minority member of the Health Subcommittee. If it had not been for their singleness of purpose and their conviction, that, regardless of any political consideration, this is something which must be done, it might not have been done and before us today. I am truly proud to serve with them on the Labor and Public Welfare Committee.

Mr. President, let us look to this legislation as a project which will demonstrate to ourselves and to the world that biomedical research can excel when it is reasonably free of bureaucratic and governmental restraint. Let it demonstrate that when this Nation sees particular suffering we can and we will establish a priority and reach the objective.

We in the Senate today have an opportunity seldom given in the lives of men—to turn on the power that will eventually save the lives of hundreds of thousands of men, women, and children in the United States. And we can pass on that knowledge all over the world and the name of America will be blessed.

Let the answers which are now within our reach soon be within our grasp.

Mr. BOGGS. Mr. President, as a cosponsor of S. 1828, the pending legislation to establish a cancer cure program, I wish to reaffirm my strong support for this measure and to urge my colleagues to pass on it without delay.

I am pleased that committee action on this legislation has been completed quickly and that a compromise was reached on alternative proposals. I believe this speedy action and the spirit of compromise have been prompted by the universal recognition that we must give new emphasis and financial support to efforts at conquering this disease in its many forms.

By creating within the National Institutes of Health a new cancer cure program whose Administrator will report directly to the President, we insure that new research will be built on previous efforts, but that it will not be lost in the vast HEW complex.

Again, I urge my colleagues to seize this opportunity to give new impetus to our efforts to find a cancer cure by passing this legislation today.

Mr. PELL. Mr. President, I am most happy to rise in support of S. 1828, the Conquest of Cancer Act.

As a cosponsor of this needed legislation and as a member of the Senate Health Subcommittee, I would urge my colleagues to support the passage of this legislation.

It is my hope that the Conquest of Cancer Act will represent a step forward in the readjustment of our national priorities.

I think it is important to note at this point the low priority that cancer research has had in the past years in the Federal budget. For example, in 1971, while the Federal Government spent $438 per capita for national defense and the war in Vietnam, it spent only $1.01 per capita for cancer research.

It has often seemed to me that our concern for the well-being and security of our people would be better served if the ratio between spending for national security objectives and domestic health security objectives was something less than 438 to 1. It is my hope that the Conquest of Cancer Act will result in a readjustment of that spending ratio.

At this point, I ask unanimous consent to insert an analysis of per capita selected Federal outlays for fiscal years 1969 through 1972.

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

PER CAPITA SELECTED FEDERAL OUTLAYS, FISCAL YEARS 1969–72

	Actual		Estimate	
	1969	1970	1971	1972
Cancer research	$0.85	$0.87	$1.01	$1.24
Education	45.67	52.40	61.06	64.90
Health [1]	32.95	35.71	42.23	42.86
International affairs and finance	18.20	17.16	17.24	19.38
National defense	390.58	386.03	367.51	372.65
Space research and technology	20.42	18.00	16.19	15.15
Special Southeast Asia defense operations	138.52	111.54	[2] 60.58	[2] 41.35

[1] Includes Federal funds only, does not include trust funds.
[2] Based on estimates by Charles Schultz in "Setting National Priorities, the 1972 Budget," Brookings, 1971.

Source: Budget of the United States, fiscal years 1971 and 1972.

Mr. PELL. Mr. President, I am also proud to support the passage of the Conquest of Cancer Act for another reason. Included in this proposed legislation is an amendment I offered in the committee to establish an international cancer data bank. It is my hope that this international cancer data bank will enable American citizens to enjoy the benefits of foreign medical research and to allow foreign citizens, no matter in what country they live, to enjoy the benefits of American cancer research.

Mr. GAMBRELL. Mr. President, this session of Congress should go down in history as one which, in a significant way, determined upon an adjustment of material goals and priorities, which directed our resources toward the pressing needs of the American people. This is as it should be. For too long we have neglected many of the problems which afflict us at home. The price of preeminence in international affairs has frequently been a failure to excell to the extent of our capacities in domestic affairs.

Today we will be considering the merits of S. 1828, known as the Conquest of Cancer Act, which, if enacted, will establish an independent Conquest of Cancer Agency within the National Institutes of Health, and a National Cancer Advisory Board to advise this Agency in the development and execution of its program. My decision to support this bill was an easy one to make, for here we have an opportunity in the reordering of our national priorities, to attack an affliction which directly and severely hampers our national well-being.

Mr. President, I believe that there could be found no better point of embarkation on a national effort to combat our domestic problems than to direct our available resources into such programs as are contemplated under the auspices of the Conquest of Cancer Act. There can be no more direct benefit to the people than money and human resources spent toward a concentrated effort to control a disease which will kill 335,000 Americans in 1971, which cost over a billion and half dollars for patient care in 1969, and which annually takes from our economy another $15 billion in lost wages and other indirect costs. Over 6,000 of the people of my State will die this year of cancer and 12,000 will develop the disease.

In voting affirmatively on this bill, we will be saying to the American people, "Yes; we feel your most intimate concerns, and they are our concerns as well. We intend to do something about this, and about other urgent problems you face." A survey in 1966 showed that cancer was the No. 1 health concern of Americans, that 62 percent of us feared cancer more than any other single disease. And well we should, for at the current rates, of 200 million Americans living today, 52 million will develop cancer at some time, and 34 million will die as a result.

All this is not to say that a problem of such magnitude and scope has been completely ignored. Thirty years ago, American medical science could cure one cancer case in five; today, we cure one case in three. But the fact is that if we were better able to apply the knowledge we already have, we could be curing one case in two.

Researchers have made exciting progress in some areas. Last week, Drs. Elizabeth Priori and Leon Dmochowski of the University of Texas' H. D. Anderson Hospital made public their achievement of a major goal—the isolation of a human cancer virus. This is a feat which scientists have been trying to accomplish for over half a century and, if con-

firmed, may lead to further discoveries as to the causes, and possibly the cures, of different cancers.

It should be readily apparent to all of us, however, that this accomplishment alone is of no value, that many additional millions of dollars must be spent in research, before we are able to use this building block in the construction of the apparatuses that will bring about the conquest of cancer.

The time has come that piecemeal efforts cannot be allowed to suffice, that a few dollars from this fund, or that bequest, cannot bear the major burden of fighting cancer. We must attack it from a centralized vantage point, supporting our efforts with whatever funds and manpower may be required.

The proposed bill before us provides just such a coordinated attack. It gives the conquest of cancer agency sufficient autonomy to act quickly and effectively in promising areas, to allocate its funds for their most efficient use. Placing the agency within the National Institutes of Health enables the agency and the Institutes to mutually benefit from related projects and discoveries.

This bill also enables us to continue utilizing those funds and projects already underway, and to coordinate the entire program so that no avenue or possible source of benefit to the overall goals is left unexplored. For these reasons, I urge that we immediately approve S. 1828, to put our prestige and our promise behind an effort which can be justly commended only in the most admirable of terms.

Mr. President, I will also take this opportunity to urge the Congress to proceed rapidly to the consideration of other pressing problems in the area of national health. We will have made a very good beginning by passing the Conquest of Cancer Act, but medical science has no more than scratched the surface of a myriad of other problems equally devastating. We see at hand the opportunity to decisively attack a feared and dangerous killer, but perhaps run the risk of neglecting other health problems of equal urgency. We must go forward at once with our Conquest of Cancer, but at the same time, we must keep in the forepart of our minds that in 1969, cardiovascular—heart—diseases killed over a million Americans—three times as many as cancer; strokes took another 100,000, and influenza and pneumonia, 70,000 more. Such things as mental diseases, muscular dystrophy, birth defects, and arthritis afflict millions of Americans each year and are more than deserving of our attention and efforts.

In evaluating the importance which we place upon various claims to our national treasury, surely the claims for war against cancer and other diseases which every year take such a heavy toll of lives and directly affect every American family, must receive the highest priority.

In our 200 year history, we have never yet failed to find within ourselves the resources to overcome a deadly enemy of the American people. Let us today identify cancer as such an enemy, and set about to conquer it as we have other enemies in the past.

Mr. KENNEDY. Mr. President, I ask unanimous consent to have printed in the RECORD a statement and insertion by the distinguished Senator from Washington (Mr. MAGNUSON).

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

STATEMENT AND INSERTION BY SENATOR MAGNUSON

Mr. MAGNUSON. Mr. President, it is not without some very personal feelings and emotion that I wish to associate myself with those supporting S. 1828 and the Conquest of Cancer Act of 1971.

In 1937, when the Congress established the National Cancer Institute it was by a unanimous vote in both the House and Senate. For the first time, the Federal government helped to support biomedical research and cast some light into the darkness surrounding that dread disease, cancer. It is one of the pleasures of my legislative career to have sponsored that legislation, along with my senior colleague from the State of Washington, and my close friend, Senator Homer T. Bone.

At that time, as a House member, I extended my remarks, and although somewhat dated after 34 years, I would like to have them inserted at this point in the Record.

[August 2, 1937, Extension of Remarks]

CAUSE, TREATMENT, AND PREVENTION OF CANCER

Mr. MAGNUSON. Mr. Speaker, leave was granted me to extend my remarks in the RECORD on S. 2067, introduced in the Senate by the senior Senator from the State of Washington, and H.R. 6100, introduced in the House of Representatives by myself, being bills authorizing the Surgeon General to study the cause, treatment, and prevention of cancer and to cooperate with the States in the eradication of that disease, and providing for an annual appropriation to be expended for these purposes under the Surgeon General's direction. This measure, with sundry amendments, has passed the Senate, and on July 23 passed the House of Representatives. I wish to submit the following supplemental observations to my own remarks in the debate before the House today.

The subject of cancer is one which transcends all question of politics, color, or creed. It may seem a shameless exhibition of insolent presumptiousness for a layman, such as myself, to attempt to speak on a subject about which scientists admittedly have so much to learn. You may describe my so speaking as extremely audacious, but, Mr. Speaker, no one can say that there is anything audacious about my insisting that it is high time that the Government of the United States of America did something about "that great darkness" called cancer.

Mr. Speaker, during the year 1936, 710 people in my home city of Seattle, Wash., died of cancer. During that same year over 60,000 people in 187 large American cities died of cancer. Mr. Speaker, the New York Times of December 15, 1936, reported that cancer's death toll mounted in the year 1935 to 153,000. Cancer is the modern menace of civilized nations. It kills more of our American citizens than all our wars combined. The menace is growing each year. The Members of the House who have aided me in the passage of this bill have joined forces in one of the most impressive movements of modern times.

Let word arise at any time of a new pest attacking the fruit industry, or let a scourge of insect life invade the cotton fields, and legislatures of the State and Nation stand ready to smite the rocks of finance and pour forth rivers of revenue to repel the dangerous invaders. Let there be news of an unknown disease of cattle, and scientists march to the battlefield bulwarked with millions of good American dollars, to overcome the foe. In 1936 this Congress appropriated $1,715,000 for the eradication of tuberculosis in cattle. In the same year over half a million dollars was granted by this Congress to remove ticks from cattle, while $125,00 was employed in the destruction of the disease of hog cholera. For other diseases of animals not specified we appropriated $335,000. These totals are impressive. These figures do not include the millions of dollars spent by States themselves for like purposes. I have no quarrel with the appropriation for these funds. I have no objection to the sound economic reasons back of these grants. But it is a sad commentary on our civilization when we realize that not more than $700,000 a year is spent in the entire United States on cancer research. The pitiful truth is that our National Government spends only $100,000 a year in such research work.

Since the introduction of this bill my office has been flooded with letters from medical men throughout the United States commending its purpose. Editorially, this measure has been the subject of laudatory comments throughout the length and breadth of our land. Sufferers from this scourge, and their loved ones as well, have written me with a prayer on their lips for its passage. Anyone who has ever witnessed the silent, helpless anguish of a cancer patient cannot but cry aloud, "Why have we been so tardy?"

Modern scientists know now that the Byzantine Empress Theodora, wife of Justinian the Lawgiver, succumbed to a breast cancer in the year 548 A.D. Down through the centuries since man wrote his records in books we find that phantom specter stalking across the pages of history, leaving behind his trail of misery and pain. Queen Anne, the daughter of Philip the Third of Spain; Mary Tudor, daughter of King Henry the Eighth, and first of his six wives, Catherine of Aragon; the Bonapartes; and the Hohenzollerns are further proof of the fact that cancer is no respector of persons or personages. And yet, I repeat, with all the advances made by medical science, 153,000 people a year die in the United States alone from this disease, and we, in the past, have been interested enough to appropriate $100,000 a year to find out what it is all about!

Another horror which riddles our land is the cancer quack who thrives on the ignorant and unfortunate who hope for surcease from their cancer-induced woes. This measure and the publicity being given its passage should go a long way toward convincing cancer sufferers of the necessity of early medical attention and diagnosis upon the first appearance of what might seem to be cancer symptoms. Those with lack of knowledge have been ready prey for the jackals who travel along the medical border line. "Benign and malignant tumors", are the distinguishing definitions used by scientists, but the quack is never benign, and his malignancy is exceeded only by his success in plying his frightful trade.

Knowledge is needed in this fight. We know that cancer always begins in a small localized area and is curable if treated before it has time to spread into inaccessible parts. Its very danger is its insidiousness. Its early symptoms are not frightening. Like a thief in the night it worms its way into the body. Pain does not accompany its early growth. Science knows a great deal about cancer. Science knows that it is not infectious. Science knows that certain kinds of irritation can cause cancer and that it is not a germ dis-

ease. Cancer has been described by some as "cell development gone wild."

In closing, I want to quote from a letter which I received from Dr. William J. Mayo, in which he says:

My brother, Dr. Charles H. Mayo, and I, and our associates in the clinic are very glad that you have introduced this bill, the purpose of which is of the greatest importance to the welfare of the people of this country and to the world. Too much cannot be said in favor of proper means and measures to learn the cause of cancer and to cure and prevent the disease.

Mr. Speaker, this amended bill provides for an annual exepnditure of $700,000 in this great work. I feel that we here this afternoon have made a real contribution to those noble scientists who have labored so long and hard in their endless search for truth. If no other major legislation comes out of this Congress, we can go home to our people and point with pride to the passage of this bill. The altars of experiment can now be warmed by the fuel which you gentlemen have today provided. I thank you.

Mr. MAGNUSON. In 34 years, our population has more than doubled. In 1935 the cancer death toll was estimated to be 153,000 and for 1969 it was estimated to be 323,000 in the United States. In 1936, the cancer death toll in my home city was estimated at 710 and in 1969 it was possibly 1,350 for Seattle and over 5,000 for the State of Washington.

Those statistics do not indicate a great deal of progress over the years, but figures are often deceptive, especially in areas like this where even today accurate statistics are difficult to secure. Back in 1937, of those known to be suffering from cancer, only about one in five had any chance for survival. Today, that figure is about one in every three, and if we could just get adequate care and early treatment to everyone who might have cancer it could possibly be one in every two.

Since that modest beginning in 1937, the National Cancer Institute has expended over $2,281,000,000 in a continuing search for the causes of cancers, the development of treatments and cures. Much has been learned and a great deal accomplished. Many of those accomplishments are detailed in the Report of the National Program for the Conquest of Cancer, and most of them were supported in whole or in part through programs of the National Cancer Institute and the National Institutes of Health.

Perhaps because it was the first "institute" created, certainly because it was held to be the first among equals, the Cancer Institute has always received the largest appropriation and the greatest public recognition. Since 1946, over $960 million in cancer research grants have been awarded by NCI and that accounts for over 15% of the total NIH grant support for biomedical research. The altars of biomedical research have truly been fueled over the years by the funds provided through NCI and NIH.

Today the situation is far different from that in 1937. The Congress established the Cancer Institute in what was almost a scientific, biomedical research vacuum. This was certainly the case with the Federal government where support of biomedical research was almost nonexistent.

Appropriations for NCI have grown from $400,000 in 1937 to over $230 million for Fiscal 1971. The National Institutes of Health now encompasses eleven separate "institutes" and divisions, and their appropriation for Fiscal 1971 exceeded $1,166 billion, and the total NIH research grant support program exceeded $666 million.

Today, the Cancer Institute is an integral part of NIH where collectively we conduct and support research into the whole spectrum of diseases that plague mankind. Heart, lung, arthritis, infectious diseases, neurological, kidney, eye—all of these individual, yet interrelated illnesses are studied and researched in the most professional manner possible by the most competent people available.

The National Institutes of Health is many things, but above all it symbolizes a set of processes for the governance of the orderly growth and development of biomedical science. It is trusted and respected by the only people here, or in the entire world, who can solve the problems facing mankind in biomedical science.

The NIH approach to the solution of those problems is truly comprehensive and coordinated, and most importantly it has been effective. Their approrach has facilitated the interchange of information about all diseases of man that are as interrelated as the human body itself.

NIH may be less than perfect, their procedures and processes might be improved, but we should tread cautiously in changing what is and has been successful. I am delighted that S. 1828 recognizes the merits of retaining cancer research within the overall NIH structure. Although I would not claim to know what structure is best, I did fear that separation of those activities out of NIH might well prove to be counter productive.

The major intent of this bill to increase the authority and visibility of the conduct of cancer research is something I support wholeheartedly so long as this is achieved without fragmenting biomedical research activities.

Any expansion of our cancer research programs must be organized in such a way that we will be assured of the closest possible links with all other basic biological research, and we must minimize any bureaucratic barriers between researchers and research organizations.

As the human body itself is indivisible, there is an indivisibility of biomedical research, the whole spectrum of health activities and the entire health community. Any tinkering or adjustments to a part has effects upon the whole and each of the constituent parts. We don't need any greater separation or isolation of efforts, we need more intimate interchange of ideas and inter-action among investigators in all scientific fields throughout the United States and the world.

On that basis, I am convinced that more adequate funding of all NIH activities will assure us of success in achieving the promise contained here in this measure—a promise that indeed all men of goodwill everywhere support and applaud.

Any change that Congress might legislate today for NIH or cancer or any of the other institutes must avoid what I believe to be certain pitfalls. Foremost is that of raising false hopes. Especially the false hope of immediate successes and a simple cure on an early tomorrow.

The horror of the cancer quack who thrives on the ignorant and unfortunate who hope for surcease from their cancer-induced woes continues to riddle our land. We must not become just as cruel by falsely raising the hopes of cancer victims in any way.

The problems of biomedical science, of cancer and other dread diseases can't be compared with our technological problems. To call upon qualified experts to build a better mousetrap, grant them the necessary funds and set a deadline for the delivery of a prototype is a reasonable undertaking.

In biomedical science, many of the key factors are unknown. If we've failed to achieve already what might have been achieved—in cancer or any dread disease—the reason is the inadequacy of the scientific base. Our knowledge about cells and the basic building blocks of human life, and even all the real functions of various organs within the human body is still too meager. If there is a latchkey to that knowledge, it is people who are especially trained and competent in their fields of expertise who are given adequate support to probe the unkown. This takes both time and treasure, and regrettably time cannot be simply purchased.

NCI and NIH have helped through the years to produce greater numbers of men and women needed to engage in biomedical science, and they have helped to support the research activities of competent investigators. They have accomplish this without preempting the field. Other public and private resources contribute substantially to these endeavors and share in the successes that have been achieved.

The National Institutes of Health is very much the weathervane, and this is a fact many have failed to comprehend. When NIH and their programs, intra- and extramural are thriving, all of American biomedicine, by a multiplier effect, thrives too. But whenever NIH shivers from fiscal constraints, all of American biomedicine throughout the nation sneezes and soon suffers a bad cold!

Most of us in the Congress have tried to maintain funding levels for NIH, all of the institutes and all of their activities, at a pace that would allow for a well tempered and graduated acceleration of efforts across the board. When breakthroughs appeared imminent, we have not hestitated to grant additional funds. I would cite our action last year in providing an additional $10 million for the special genetics task force. Those funds went to the Institute of General Medical sciences, but almost every expert in cancer research acknowledges the intimate relationship of genetics to cancers, and the results of these grants will surely prove beneficial to cancer research efforts.

NIH has not allowed breakthroughs in one area to distract them from other opportunities for conquests in other fields of biomedicine as they might emerge. This has been vital to overall biomedical research and it has been vital to bringing about solutions to particular problems in cancer and other dread diseases.

Again, I would stress that this measure recognizes these interrelationships and has provided for the continuation of cancer research along with all the other research activities of NIH within the framework of the National Institutes of Health.

S. 1828 recognizes that promise and performance are equally dependent upon funding that is adequate and reliable. I applaud the Committee and the sponsors for what they have proposed in funding. The universal complaint of all who served on the National Panel that initially proposed this legislation was the lack of adequate funding and the competition created for whatever funds did exist.

Frankly, I would not deplore that competition and it is probably a very healthy factor in biomedicine as it is upon the playing fields or even here in the Congress. But too often the funding for these programs has not been adequate. This bill would provide a far more adequate fiscal base for cancer research and I hope it is enacted.

I would also hope that all concerned, present and future Presidents, Administrations and Congresses, will be equally responsive to these fiscal needs for cancer and all of NIH, and provide whatever means prove necessary during annual deliberations over appropriations. I know the record will show that I have not been parsimonious in the past with NIH, and so long as I have any influence upon

these decisions I will continue to do what I can to see that they are all adequately funded.

Mr. President, in conclusion let me recall again that it was almost 34 years ago that Congress enacted my bill creating the National Cancer Institute measure. On July 22, 1937, the United States Senate passed that bill by a unanimous vote. A bill that would dedicate our nation to the conquest of cancer merits similar support. May history be repeated here today in the Senate.

CONGRESS FACES MAJOR RESPONSIBILITY TO PASS, CONQUEST OF CANCER BILL

Mr. RANDOLPH. Mr. President, I speak on a subject of major importance, both to America and to the world. That subject is the prevention, diagnosis, and cure of man's most terrible disease, cancer. Our concern is expressed in the Senate today in the form of a most urgently needed bill, S. 1828, the Conquest of Cancer Act.

This dreaded, implacable killer of men, women, and children took 323,000 American lives in 1969. This figure, staggering in itself, is even more horrifying when contrasted with other grim statistics. Deaths from cancer in just that 1 year were:

Greater than all U.S. battle deaths in the 4 years of World War II; four times the combined total of battle deaths in the 3-year Korean war and the 6 years of U.S. participation in Vietnam; and more than six times the number of deaths caused by automobile accidents in the same year.

One out of four Americans now alive, or 50 million people, will contract cancer during their lifetimes, and of those 50 million, 34 million will die unless a concerted, priority effort is made to wipe out the dread disease.

And yet cold, hard statistics, regardless of the horror they generate, cannot begin to plumb the depths of misery and heartache and despair of the millions of cancer victims and their families. Their silent desperation and their cries of suffering must be heard. And hearing, we must act.

The American people and their Congress, prodded by the magnitude of the cancer epidemic and also by recent encouraging developments in cancer research, have resolved to end this blight on humanity. A concurrent resolution passed both Senate and House in 1970 which expressed the unanimous sense of Congress that "the conquest of cancer is a national crusade," and that "Congress should appropriate the necessary funds so that the citizens of this land and all other lands may be delivered from the greatest medical scourge in history."

Pursuant to a Senate resolution last year, a committee of consultants was appointed to report to the Senate on, first the current scientific knowledge of the causes, treatment, cure and elimination of cancer; second, the prospects for success in conquering the disease; and third, measures necessary or desirable to facilitate success at the earliest possible time. The panel of consultants completed its work, and its report to Congress was published April 14, 1971. As a result of the distinguished panel's recommendations, the able chairman (Mr. KENNEDY) of the Health Subcommittee of the Committee on Labor and Public Welfare and its able ranking minority member (Mr. DOMINICK) introduced at the beginning of this session of Congress S. 34, a bill to establish a National Cancer Authority, which I cosponsor.

After careful consideration, both in the Health Subcommittee and in the full Committee on Labor and Public Welfare, Senator DOMINICK's proposal, S. 1828, was amended and was reported to the Senate. This bill is the result of painstaking effort by many people. I offer special praise to the consultants, to the chairman of the Health Subcommittee, Senator KENNEDY, whose guidance and involvement in bringing forth this legislation earned him the appreciation and respect of his colleagues on the committee, notably, Senator DOMINICK.

S. 1828 is a good bill. It is a vitally important measure. It will establish a beacon of hope to many who now live only with despair. It is a written testimonial to the firm commitment of the President and the Congress to end the scourge of cancer. It was my responsibility to join in sponsorship of the agreed on version, S. 1828.

And yet the American people must be cautioned. The conquest of cancer is not simply a matter of applying money to existing technology, as it was in the case of the successful lunar landing mission. There are many forms of cancer and much about the disease is yet unknown. Breakthroughs in medical science are not alone achieved through additional funds, though more funds can always be used. Cancer research over the last decade has convinced people of medicine and citizens generally, that a new focus and a priority program can achieve exciting and revolutionary results on many fronts.

If lives can be saved, if pain and suffering can be eased, if progress can be made toward creating a better life for all mankind, how can such a program be rejected?

This Congress has an overriding obligation to do what it can to rid us of death-dealing cancer. Congress has already expressed its commitment. Let us now translate our words into affirmative action.

Mr. DOMINICK. Mr. President, I am willing to yield back the remainder of my time, if the Senator from Wisconsin is willing to do so.

Mr. NELSON. Mr. President, unless someone else desires time, I yield back the remainder of my time.

Mr. DOMINICK. Mr. President, I am willing to yield back the remainder of my time, if the Senator from Wisconsin is willing to do so.

Mr. NELSON. Mr. President, unless someone else desires time, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the bill is open to amendment. If there be no amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

ORDER FOR ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate adjourns today, it stand in adjournment until 12 o'clock noon tomorrow.

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

ORDER FOR ADJOURNMENT FROM TOMORROW TO MONDAY, JULY 12, 1971

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate adjourns tomorrow, it stand in adjournment until 12 o'clock noon on Monday next.

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

CONQUEST OF CANCER ACT

The Senate continued with the consideration of the bill (S. 1828) to amend the Public Health Service Act so as to promote the public health by strengthening the national effort to conquer cancer.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. BIBLE), the Senator from North Dakota (Mr. BURDICK), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senator from North Carolina (Mr. ERVIN), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Iowa (Mr. HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. MAGNUSON), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Utah (Mr. Moss) are necessarily absent.

I further announce that, if present and voting, the Senator from North Dakota (Mr. BURDICK), the Senator from North Carolina (Mr. ERVIN), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. MAGNUSON), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. Moss), the Senator from Mississippi (Mr. EASTLAND), the Senator from Oklahoma (Mr. HARRIS), and the Senator from Indiana (Mr. HARTKE) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON) and the Senator from Oregon (Mr. HATFIELD) are absent on official business.

The Senator from Kentucky (Mr. COOK), the Senator from New Hampshire (Mr. COTTON), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

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

If present and voting, the Senator from Kentucky (Mr. COOK), the Senator from Oregon (Mr. HATFIELD), the Senator from South Dakota (Mr. MUNDT), and the Senator from Oregon (Mr. PACKWOOD) would each vote "yea."

The result was announced—yeas 79, nays 1, as follows:

[No. 136 Leg.]

YEAS—79

Aiken	Gambrell	Pell
Allen	Goldwater	Percy
Allott	Gravel	Prouty
Anderson	Griffin	Proxmire
Baker	Gurney	Randolph
Bayh	Hansen	Ribicoff
Beall	Hart	Roth
Bennett	Hruska	Saxbe
Boggs	Humphrey	Schweiker
Brock	Jackson	Scott
Brooke	Javits	Smith
Buckley	Jordan, N.C.	Sparkman
Byrd, Va.	Jordan, Idaho	Spong
Byrd, W. Va.	Kennedy	Stennis
Cannon	Long	Stevens
Case	Mansfield	Stevenson
Chiles	Mathias	Symington
Cooper	McClellan	Taft
Cranston	McGee	Talmadge
Curtis	McGovern	Thurmond
Dole	McIntyre	Tower
Dominick	Metcalf	Tunney
Eagleton	Miller	Weicker
Ellender	Mondale	Williams
Fannin	Muskie	Young
Fong	Pastore	
Fulbright	Pearson	

NAYS—1

Nelson

NOT VOTING—20

Bellmon	Eastland	Inouye
Bentsen	Ervin	Magnuson
Bible	Harris	Montoya
Burdick	Hartke	Moss
Church	Hatfield	Mundt
Cook	Hollings	Packwood
Cotton	Hughes	

So the bill (S. 1828) was passed.

The title was amended, so as to read: "A bill to amend the Public Health Service Act so as to establish a Conquest of Cancer Agency in order to conquer cancer at the earliest possible date."

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. KENNEDY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER FOR STAR PRINT OF SENATE DOCUMENT 92–25

Mr. McGEE. Mr. President, I ask unanimous consent that, in order to make certain technical corrections, a star print be authorized for Senate Document 92–25 entitled "Study Mission to Central and East Africa, February 1971."

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

ORDER TO HOLD H.R. 8629 AND H.R. 8630, HEALTH MANPOWER PROPOSALS, AT DESK

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that H.R. 8629 and H.R. 8630, the so-called health manpower proposals, received today by the Senate from the House, be held at the desk pending the report of companion Senate bills anticipated in the next 2 or 3 days.

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 on tomorrow, immediately following the recognition of the two leaders under the standing order, there be a period for the transaction of routine morning business, with statements therein limited to 3 minutes, for not to exceed 30 minutes.

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

Mr. BYRD of West Virginia. Mr. President, I suggest what I assume will be the final quorum call of the day. 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.

ORDER FOR JOINT COMMITTEE REFERRAL OF A NOMINATION

Mr. BYRD of West Virginia. Mr. President, as in executive session, I ask unanimous consent that the nomination of Joseph H. Blatchford, of California, to be Director of Action, be jointly referred to the Committee on Foreign Relations and the Committee on Labor and Public Welfare.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

There is not really much to be said. There are only three measures on the legislative calendar, so the leadership does not anticipate any controversies tomorrow as to legislation.

It is hoped that committees will act as expeditiously as possible to report measures to the Senate for floor action. The majority leader, I am sure, would want to emphasize and underscore the urgency for committee action, so that the Senate can complete as much business as possible before the August 6 recess begins, that being a little less than a month away.

On tomorrow, the Senate will convene at 12 o'clock noon. Immediately following the recognition of the two leaders under the standing order, there will be a period for the transaction of routine morning business of not to exceed 30 minutes, with statements therein limited to 3 minutes.

No rollcall votes are anticipated tomorrow, and when the Senate completes its business tomorrow, it will stand in adjournment until 12 o'clock noon on Monday next.

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 5 o'clock and 44 minutes p.m.) the Senate adjourned until tomorrow, Thursday, July 8, 1971, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate July 7, 1971:

IN THE ARMY

The U.S. Army Reserve officers named herein for promotion as Reserve commissioned officers of the Army, under provisions of title 10, United States Code, sections 593(a) and 3384:

To be brigadier general

Col. Willie E. Dixon, Jr., SSAN [redacted], Infantry.

Col. Carlos K. Hayden, SSAN [redacted], Field Artillery.

Col. Marvin H. Knoll, SSAN [redacted], Field Artillery.

Col. William B. Pendlebury, SSAN [redacted], Field Artillery.

Col. Aureliano Rivas-Flores, Jr., SSAN [redacted], Medical Corps.

Col. Lawrence B. Rohde, SSAN [redacted], Civil Affairs.

Col. Frederick A. Welsh, SSAN [redacted], Infantry.

The Army National Guard of the United States officers named herein for appointment as Reserve commissioned officers of the Army, under provisions of title 10, United States Code, sections 593(a) and 3385:

To be major general

Brig. Gen. Vahan Vartanian, SSAN [redacted].

To be brigadier general

Col. Paul P. Foran, SSAN [redacted] Infantry.

Col. James T. Keltner, SSAN [redacted], Air Defense Artillery.

Col. Thomas J. Kennedy, SSAN [redacted], Infantry.

The Army National Guard of the United States officers named herein for appointment as Reserve commissioned officers of the Army, under provisions of title 10, United States Code, sections 593(a) and 3392:

To be brigadier general

Col. Cunningham C. Bryant, SSAN [redacted], Military Police Corps.

Col. Lauris D. Graves, SSAN [redacted], Medical Corps.

Col. Leigh R. Wilson, SSAN [redacted], Field Artillery.