

## SENATE—Tuesday, September 14, 1971

The Senate met at 10 a.m. and was called to order by the Acting President pro tempore (Mr. METCALF).

### PRAYER

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

Dear Lord and Father of mankind,  
Forgive our foolish ways;  
Reclothe us in our rightful mind,  
In purer lives Thy service find,  
In deeper reverence, praise.

In simple trust like theirs who heard,  
Beside the Syrian Sea,  
The gracious calling of the Lord,  
Let us, like them, without a word  
Rise up and follow Thee.

Drop Thy still dews of quietness,  
Till all our strivings cease;  
Take from our souls the strain and stress,  
And let our ordered lives confess  
The beauty of Thy peace. Amen.

—John Greenleaf Whittier.

### 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.

### REPORT ON THE LOCATION OF NEW FEDERAL OFFICES AND OTHER FACILITIES—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. METCALF) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Agriculture and Forestry:

*To the Congress of the United States:*

I am transmitting today the first annual report on the location of new Federal facilities in areas of low population density.

This first report describes the beginnings of an organized effort to place more Government facilities and activities in rural areas as required by the Agricultural Act of 1970. I believe it will serve as a benchmark demonstrating this administration's commitment to a healthy and balanced revitalization of rural America.

During the period covered by this report, more than 60% of all Federal workers placed in newly located activities were employed in areas of low population density. I would emphasize, however, that the location of Federal facilities and activities in rural areas is only one part of our comprehensive program for rural development. This overall program—which also includes a variety of efforts to provide more financial assistance and better Government services to rural communities—has had a considerable impact for

good in many locales, expanding employment and training opportunities, stimulating industrial and other economic growth, and generally improving the social environment.

The potential impact of our relocation policies was dramatized recently when a new Internal Revenue Service facility was located in the low population density area of Holtsville, New York. That single facility will provide new jobs for some 2000 permanent, full-time employees and for another 2000 temporary employees as well. We expect that such examples will multiply rapidly in the future.

All of the major departments and agencies of the executive branch are now giving priority consideration to locating new facilities in areas of low population density. The heads of these agencies are committed to establishing a sound balance between rural and urban America—a commitment which they share with the Congress. This report documents many of the ways in which this commitment has recently been carried out; it provides a detailed tabulation of all new offices and other facilities located during the last seven months of Fiscal Year 1971 as well as a summary of the highlights of that tabulation.

Obviously, the social and economic impact on the host community cannot be the only consideration in placing Federal facilities. Each facility has a specific job to do and it should be located so that it can do that job in an effective manner. But the criterion of effective performance is usually met by a variety of sites—urban and rural—and it is essential that Government officials appreciate the implications of their siting decisions on the growth patterns of our country.

Of course, rural communities are not the only areas that can benefit from the stimulus of new Government activities. The location of Federal facilities can also make a major difference in development patterns within metropolitan areas—revitalizing impoverished inner city neighborhoods, for example, or stimulating the growth of new communities or satellite cities on the periphery of our urban centers. For example, a new Geological Survey facility recently located at Reston, Virginia will provide some 2600 fulltime jobs. Reston is a relatively new community—but it is only 18 miles from Washington, D.C.

The philosophy of this administration concerning the location of Federal facilities was expressed in Executive Order 11512 in February of 1970:

"Consideration shall be given in the selection of sites for Federal facilities to the need for development and redevelopment of areas and the development of new communities, and the impact a selection will have on improving social and economic conditions in that area. . . ."

We have since moved to carry out this philosophy through a wide variety of actions. The Agricultural Act of 1970 is serving as a further stimulus in this same

direction. I am confident that the result of all of these efforts will be a balanced pattern of national growth which will serve the best interests of all Americans.

RICHARD NIXON.

THE WHITE HOUSE, September 13, 1971.

### EXECUTIVE MESSAGE REFERRED

As in executive session, the Acting President pro tempore (Mr. METCALF) laid before the Senate a message from the President of the United States submitting the nomination of William J. Bauer, of Illinois, to be a U.S. district judge for the northern district of Illinois, which was referred to the Committee on the Judiciary.

### THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, September 13, 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 REDUCTION—X

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD set No. X of articles relative to the U.S. troop position in Europe in relation to NATO. Included in this insertion are a series of articles from the Washington Post written by Haynes Johnson and George C. Wilson, an article which appeared in the Rome Daily American of September 7, 1971, written by Col. Robert D. Heinl, Jr., entitled "Answer to Pentagon Woes," and an article which appeared in the National Observer of September 18, 1971 by James C. Furlong entitled "Germans Fear Loss of 'Little America'."

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

[From the Washington Post, Sept. 12, 1971]

THE U.S. ARMY: A BATTLE FOR SURVIVAL

(By Haynes Johnson and George C. Wilson)

NUREMBERG, GERMANY.—The stadium where Hitler reviewed his legions by torchlight is just down the road, all gray and ghostlike and covered with weeds. The old Nazi SS barracks still stand, a compound of massive stone pockmarked by shells, long since occupied by a conquering American Army.

Above an archway a sign proclaims the new name, "Merrell Barracks," headquarters of

the 2d Armored Cavalry Regiment, a unit that parades with battle streamers from Palo Alto in the Mexican-American War of 1848, from Gettysburg, from the Indian campaigns, from the Normandy beachhead. If Pvt. Joseph F. Merrell, a valorous young soldier who gave his life at the end of World War II, could see the compound that bears his name he would recognize those old pennants that once flew over armies confident of their purpose and certain they fought for freedom and justice.

Merrell would recognize little else. What he would find today is an Army in anguish.

The Army Merrell knew no longer exists. Today's American Army is fighting its most threatening battle, a struggle for survival as an institution. It faces what top commanders agree is the most complicated crisis in its history. The scene at Merrell Barracks contains all the elements of the chaotic conditions that afflict the contemporary United States Army wherever it is stationed, in Germany or Vietnam or at home; crime, drugs, racial conflict, rebellion against officers, boredom, and attitudes that always have been anathema to armies.

Outside the barracks, young soldiers in floppy hats, wide dark glasses, T-shirts and long hair stroll across cobblestones which 27 years ago resounded with the rhythmic stomp of storm-trooper boots. The young American GIs on work detail carry out garbage cans whose metal sides are brightly painted with peace symbols.

Inside Merrell, the atmosphere is oppressive. Many of the windows are broken. They have not been replaced. Narrow corridors are dimly lighted by naked bulbs. Plaster drops from gapping holes in the ceiling. The building itself seems to be falling apart.

The soldiers testify to something more than this physical neglect and disintegration. They speak of a breakdown in spirit, in ethics and in discipline. One of the privates who talked about it is only 17. Thin, pale and frightened, he has been at Merrell less than a month. Already, he said, he has been beaten twice by fellow soldiers in senseless acts of violence.

"Sure, I've got fear," he said as he stood in the darkened entry way of Merrell Barracks. "I'm afraid to walk around in here."

Part of his fear stems from the organized drug traffic within his barracks.

"The first thing" when a guy gets here, just arrived you know, the first thing is a pusher comes along and says he has some good stuff and wants you to use it. This happened to me on my second day here. They take you to their room, maybe to a certain spot where they've got their stuff, and they let you get a look at it.

"At first, you know, after they give you this inventory, they keep an eye on you for about a week—two weeks—three weeks. To make sure you're not either CID [Criminal Investigation Division] or an informer or something like that."

Terror, the private explained, is the pusher's weapon for achieving silence. "They sent messages to one of my friends that 'if we find out you're CID, we're going to do this or that.' Beat the s— out of me. Make me feel like if I was an informer that I'd never be able to inform anybody of the stuff again."

After he refused the offer of hashish, which he had never used before, and satisfied the pushers in his barracks that he was not an informer, the soldier said they laced one of his regular cigarettes with hash without his knowing it.

"In your mind, it's almost a force, the way they work," he says. "See here in this building we've got julkers [who drink alcohol] and heads [who take drugs]. When I came in, I was in between them. A loner. I don't drink. See, alcohol I don't like. But I did smoke grass. So when they took me to that room and offered to share a bowl [of

hashish, eight to ten times more powerful than marijuana], I says 'No thank you, I'm not familiar with what it does and doesn't do.'"

Now, he admits he smokes hash regularly. He is a customer the pushers made for themselves right there in the Army barracks.

Drugs are a key factor in barracks crime, whether assaults or robberies. Few soldiers feel safe—either inside or outside their barracks.

Another soldier interviewed at Merrell picked up a bayonet from a desk in his room and said: "The only way I'd walk around here at night is if I'm carrying this with me."

He spoke of break-ins. "Do you see my door there? It's been jimmied; completely busted through two or three times. You see, sir, the Army doesn't pay very much and people get broke and they steal things to sell. You know, for dope and stuff. And that's it right there."

His roommate talked about everyday living in the barracks on those days and nights when there are no break-ins.

"The other problem is that we've got people all around here throwing stuff out their windows. Coke bottles, beer bottles, smoke grenades—you name it. Just for the hell of it; just to raise hell because it's fun or because of some other reason. Stereos are turned up full blast. People throw stuff down the stairwells. It sure makes it miserable."

Those soldiers had been speaking in front of their own commanding officer. When they finished, the officer was asked why commanders don't enforce discipline, perhaps by calling out everyone in the middle of the night to compel order. "I could do that," he said. "And it would be fine until my relief arrived the next morning. There is no control. The word is 'don't harass the troops.'"

The problems his men had described came as no surprise to him. He referred, in despairing tones, to a break-down in unit pride and discipline. "These barracks," he said, "are a disgrace to the American people, and you can quote me on that."

"If we repaired them 100 per cent they would be only half as good as they were when Hitler's troops lived in them. Why the Nuremberg Zoo is in better shape than these barracks where my men live. This creates a fantastic morale problem. What bothers me most right now is the problem of the living conditions of my men and the problem of drugs."

Another commander in that same unit pointed to another problem—gang assaults clearly breaking down along racial lines. "This is what defeats me and is so frustrating," he said. "I haven't been able to beat it."

These problems afflicting Merrell Barracks are not an isolated Army phenomenon. They are symptomatic of the present trauma of the American Army, whether on duty here in Germany where 180,000 troops are garrisoned or in the Delta of Vietnam or the Foot-hills of Korea or in bases back in the United States. They are among the reasons why some officers express fear the Army will not change fast enough to save itself.

Nuremberg and Merrell Barracks, though, add an ironic dimension to the Army's problems. On that April day more than 26 years ago when this city fell under the combined attacks of the American 3d, 42d, and 45th Divisions, Nuremberg was the symbolic scene of one of the Army's greatest triumphs.

It was here that the Nazi leaders were tried, and some were executed, as war criminals. The Army emerged from that respected and praised. Its leaders, Dwight D. Eisenhower and George C. Marshall, were so esteemed they went on to become President and Secretary of State.

In today's Army, many young soldiers are saying openly that their own generals should

be tried as war criminals. They reject the slightest semblance of military discipline. They do not accept the rationale, mission or role of this Army. Even their songs, unlike those of a generation ago, bitterly condemn war and the men who wage it. These soldiers know no heroes, hate no Nazis or Communists and fall to subscribe to the old adage about their country, right or wrong. They live among conditions of crime, racial turmoil and drug use more intensive than anything Americans soldiers have experienced.

On top of these, they hear their commander-in-chief, President Nixon, directing the Army to make military service so attractive that today's young men will volunteer for duty and not have to be drafted. They do not see that happening.

Taken together, all these add up to probably the most difficult period since the Second Continental Congress established the Army by authorizing the enlistment of riflemen on June 14, 1775.

The generals will tell you that essentially the Army is no different from any other American institution. It is a mirror of society. Its problems are America's problems.

That is certainly true. Drugs, assaults, petty acts of extortion and intimidation, racial conflict and rejection of authority exist in America's high schools and cities as well as in its Army. In that sense, the Army is correct in saying it doesn't create the problems; it inherits them from society at large.

What the Army faces, however, is a problem of even greater magnitude. Within the last year alone a series of widely publicized events have combined to further intensify American antimilitary feeling. Mylai and the Calley court-martial and the documentation of American atrocities; scandals touching the Army's top enlisted man and the commandant of West Point; the public disciplining of generals ("God help us if we have any more of these court-martials," one Pentagon official said with passion); the scene of veterans returning home to throw the medals they earned in combat toward the United States Capitol steps; the voices of other veterans speaking bitterly about their experience with bloody body counts, useless Hamburger Hills and napalming of women and children; "fraggings," or assaults and murders, against officers and noncoms by other American soldiers, and alarming evidence of the increasing use of hard drugs—these are among them.

It is not uncommon to hear high-ranking generals refer to these incidents and say that never in their experience has public respect for the uniform been lower. To strengthen that point, they often will recall, in personal terms, how some soldier has told them he always takes off his uniform whenever possible before appearing in front of his fellow citizens. Neither is it unusual to hear such commanders say it may take 5 to 10 years to repair the damage.

All of them, everywhere, point to one factor as the principal source of their problems: Vietnam.

The longest, most unpopular war in American history "has truly stretched the Army almost to its elastic limit," Gen. William C. Westmoreland, the Army chief of staff, told The Washington Post. Here in Germany, Gen. Michael S. Davison, the new commander in chief of Army forces in Europe and the man who led the Cambodian incursion a year ago, put it another way. "The price of Vietnam has been a terrible one. A terrible one. In terms of the casualties, in terms of national treasure of both men and dollars that have been spent, it was a terrible price the Army had to pay. The 7th Army here in Europe is still suffering today as a result of Vietnam because we had to wreck the 7th Army in order to keep Vietnam going . . ."

He meant, as he explained, that the Army never had enough people to support Vietnam

without drawing on the 7th Army for replacements. As a result, the 7th Army was left with battalions led by one lieutenant colonel, one major or captain, and 18 to 20 lieutenants. Company commanders were being rotated every three or four months—with an entire company often turning over completely every nine months. The legacy was chaos in terms of morale, discipline and combat readiness.

As the Vietnam experience appears to be drawing to an end and, it is hoped, a new period of peacetime service begins, the aftermath for the Army is uncertainty and introspection. The Army in Germany reflects both moods.

It is here, as Gen. Davison says, that the Army's future lies after Vietnam becomes a page in history. And it is here that the physical and psychological damage of the past are clearly visible.

The Army in Europe, like American forces in Korea and other countries, has been desperately scraping the bottom for money and material. This has created turbulence in its ranks and resentment among careerists and recruits alike. One result is that garrisons such as those in Europe are critically short of even basic housing needs, to say nothing of money to implement ambitious new programs to deal with such problems as drugs and to reshape a modern, volunteer Army.

While the Army is trying desperately to win back the respect of American citizens, young and old alike, it no longer can count on the draft nor even on generous appropriations from Congress. Congressional debates over the draft this year hammered home that last point. The voices from Capitol Hill indicate that the Army may wither, if not die, unless it can rehabilitate itself.

These problems, specific and general, will be explored in a series of articles, of which this is the first. For the past three months these reporters have interviewed civilian leaders from the past and present and a score of generals from Westmoreland on down to officers and privates in the ranks. We traveled from the Pentagon in Washington to Ft. Dix, N.J.; Ft. Bragg, N.C.; Ft. Benning, Ga.; Ft. Carson, Colo.; Ft. Ord, Calif.; 10 Army bases in Germany and one in Italy. Other Washington Post correspondents have conducted similar interviews in the field in Vietnam. Accompanying each article will be extensive tape-recorded comment from commanders and men. The Army itself agreeing that identifying the problems is a step toward solving them, cooperated fully and urged its personnel to speak freely and candidly. They have.

Subsequent articles will deal with crime, extortion, intimidation, race, drugs, leadership problems and techniques, the views of the generals and the future.

Lest this initial report take on a doomsday air, one fact should be made clear. While a consensus of generals interviewed holds that in many ways this is the most difficult period for the Army, no sense of hopeless despair grips its leaders.

On the contrary, the commander sees the Army coming out of this crisis stronger, if smaller, more proficient and more professional.

"I would say that we are perhaps at a very difficult crossroad, and indeed this is an important benchmark in the history of the Army," Gen. Westmoreland said. Then he added: "I feel that I'm fortunate to be in the position I am and to play a part, and a key part in revitalizing and rebuilding the Army at this important part of its life."

"We're going to come out of this a stronger Army; I have absolutely no doubt about this. We have been dealing in the last two years in an exercise of introspection, realizing that we are at the crossroad, realizing that we have got to look critically at our past practices and procedures and methods . . .

"Actually, we have the most exciting future. It's a real challenge to the young officers and noncommissioned officers that we have to evolve a group of men into a team with esprit de corps and high standards of discipline, by dealing in enlightened leadership techniques which are sensitive to the feelings of others and teaching them to learn their profession and be highly proficient in it."

That may be the prescription for the future. But for the present, the Army's problems are critical.

[From the Washington Post, Sept. 12, 1971]

MAJ. GEN. GARTH: "A BIT IN REVOLT"

(NOTE. Maj. Gen. Marshall B. Garth, an officer with a reputation as a soldier's soldier, commands the 3d Infantry Division, a key element of American strength in Europe. Here he talks about the problems facing his command.)

We have some fairly tough discipline problems. I don't know whether we call it classic dissidence—maybe not. But we have some hard-core toughies, both black and white. And whether they came to us that way or whether we made 'em or not, I'm not sure.

My analysis of it is that they came to us. They came out of the bowels of the big cities and they lived by fist and knives and bludgeons, etc., and they're trying to conduct their business here pretty much the same way. Some of them are not sold on the Army—certainly the Vietnam situation. They're a bit in revolt. And they tend to affect the whole barrel of apples, as I call it.

So I put a great deal of time and attention on these men—those that cannot conform and will not soldier and continue to cause major problems in the way of breach of the peace and so forth, and then I take action to eliminate them from the service.

Drugs is a problem almost on the same level. We, however, notice a small decrease in the drug situation in the division. On the other hand, we notice a little increase in the hard drug use. Whether this is some kind of design on the part of the big operators in the business, I don't know.

I suspect a lot of this (the problem of crime) is tied in with drugs. The larceny in the barracks, of course—I think a man runs out of money and he wants another fix, another smoke—why, he takes advantage of his roommate sometimes, or somebody down the hall. Also, some of these barracks larcenies, I believe, are tied in with owing someone some money as a result of sales that have been put on the cuff. I've been able to prove a few, so this is the reason why I say this. In fact, we've just broken one here in the last couple or three weeks, and it's all tied in with drugs.

And then the others that are just outright banging each other on the head—some of these are legitimate fights that just come out of drinking down at the bar or something of this type.

There are others where I think it's just a carry-over from civil life where the black man today has a tendency to want all of these rights and privileges and so forth, maybe which the laws and systems are not providing fast enough. And he has a tendency to kind of take the situation in his own hands. But I don't think they are the larger numbers of them. But I'm afraid by seeing this that there's greater polarization rather than a growing together.

[From the Washington Post, Sept. 12, 1971]

GENERAL DAVISON: "TOUGHEST PERIOD . . . EVER"

(NOTE.—Gen. Michael S. Davison, 54, who took over command of the United States Army in Europe on June 28, is one of the youngest four-star generals and thus will play an important role in the Army's future. In World War II he commanded a battalion at the age of 28, and he commanded the

Cambodian incursion while serving in Vietnam. Of the American Army today he says: "I see this as the toughest period we've faced." In this tape-recorded talk with The Washington Post, Gen. Davison spoke about his Army career and some of the dimensions of the present crisis.)

Of course, we have had difficulty after every war. I know following World War II I thought the Army was so screwed up that I really didn't think I wanted to stay in it. I came back from World War II having been a battalion commander and Corps G-3 and was lucky and got promoted when I was 28 years old. After all this experience I came back to the United States and it took the Army three months to decide what they wanted to do with me, which was all right because I learned how to play golf and how to fly an airplane and had a pretty good time around El Paso.

But then they sent me to Leavenworth to school and then from there I went to headquarters U.S. Army ground forces at Ft. Monroe. They put me to work designing a table of organization and equipment for a mounted infantry regiment. Now they called it a mounted infantry regiment because some old guys wanted to bring the horse back and they were afraid to use the term cavalry.

Then right after that they put me in charge of John Eisenhower's wedding which was held at Ft. Monroe, and I really didn't feel too good about the Army. I thought it was not a very good place to be. And then we had our troubles again in Korea and the aftermath of Korea; of course we're having them right now.

Nevertheless, with respect to the future I remain basically confident about the ability of the Army to overcome, or at least ameliorate, its problems. I don't think we will overcome the drug problem in the absolute sense, nor will we overcome the racial problem in the absolute sense, either, but I think we will be successful in ameliorating these two problems. In fact, I think we're way ahead of society at large right now in coping with both the problems.

This is what I tell my people in Europe: As Vietnam winds down and the Army withdraws, if there is to be an Army of the future, and I think there is a clear requirement for an Army of the future, and I think our country deserves the best that we can give to them in the way of an Army, that future is going to be determined right here in the United States Army, Europe. And this is the challenge and this is the mission, and I hope everybody's going to see it as a challenge by meeting it, through which they can render a great service to the country.

I think the toughest problem we have, and this is almost too frank to say, is the leadership problem within the Army. Whether it be drugs or whether it be race or whether it be combat readiness, fundamentally the task is getting your subordinates to work wholeheartedly toward the mission.

The only way in my opinion that you can really generate public respect is to produce the goods. And I think if we can show to the public a mission-oriented Army over here that is combat ready, that has a minimum of disciplinary problems in the racial area, in the drug area or in any other area, then I think that public respect will follow.

I think that many of our leadership failures have occurred through inability on the part of the leader, whether he be a platoon, company, battalion, brigade or even a division commander, to communicate to his subordinates his appreciation of them as individuals. And I think that once you get that line of appreciation established, you're 90 per cent of the way toward solving your problems.

I've already seen areas here in Europe where they had, for example, terribly serious racial problems a year ago. It was just on the verge of being completely riotous and out

of control. They turned that around completely. It took about a year's time, but the fundamental point was that the commander got everybody appreciating their subordinates as individuals and listening to them. It opened up the channels of communication.

I think the thing that scared me the most out of my Vietnam experience was the drug problem. When I say drugs I'm talking about one drug—I'm talking about heroin. Conservatively, I would say 10 to 15 per cent of E-5s and below were on heroin.

Now the reason this scared the hell out of me is not because there were 10 to 15 per cent of the soldiers on heroin but a couple of things behind that figure. Between the 1st of October 1970 and the end of May when I left in 1971 we had slightly over 700 patients in our rehabilitation center. And 60 per cent of these were heroin addicts before they ever entered the Army.

But the thing that is really eye-opening about it is that these kids, and they were kids, 19, 20 years old as a median age, looked like an exact cross-section of the young men coming into the Army. This business about ghetto kids and high school dropouts—that's a myth. It's a bunch of bunk. These kids are cross-section of what the Selective Service was picking up throughout America. And this is what really shatters you.

I've been told by my people that hashish is a big problem over here in Europe. Heroin is only beginning to make its appearance. Well, that's enough to scare me right there—when they say it's only beginning to make its appearance—because heroin is most insidious. It's hard to detect. A guy could be on it with light to moderate addiction and you'd never tell because he could still fly an airplane or do a complicated task. It's a very insidious thing.

We've got, and this is a generality, two distinct subgroupings in the Army now. And we've got to get across the gap. I have a 26-page letter on my desk right now that was written to me by a young sergeant E-5 who worked with me in Vietnam on the drug program. He is a fine arts major with a master's degree from the University of Florida who was a tremendous help to me. He felt so strongly about the conditions of the Army when he left that he wrote this 26-page letter about this very thing, these two sub-societies within the Army, the young soldier and the old sergeants and lifetime careerists, and this enormous communication chasm between them.

One of the myths now circulating among the younger people is that the Army is really a collection of brutalized guys who've been taught nothing but to kill, kill, kill. It's going to be difficult to break through that and present the Army as a constructive institution which is a very necessary and useful part of the overall national fabric. That's going to be very, very difficult to do.

But I think once you make that breakthrough we ought to be able to present to the young people that the Army is a profession within which there are certain ethical standards that anyone should be willing to subscribe to and live by. Indeed, it represents a set of ethical values that idealistically inclined young people can work for—the duty, honor, country thing. I think these ethical values are salable values.

I see this as the toughest period that we've ever faced. And yet I retain my confidence. I think it is a tremendous challenge, and as I indicated earlier I think it's a challenge that ought to motivate all of us to do our damndest, because if we're successful in restoring the worth and value of the Army then we've done the country a great service.

As long as we have to cope with the imperfection of man, there are going to be conflicts of one kind or another. This is everything that recorded history tells us. If we as a national society expect to endure in the

future, we should have some element of society that is devoted toward its protection.

[From the Washington Post, Sept. 13, 1971]  
GI CRIME, VIOLENCE CLIMB OVERSEAS—  
RACE, DRUGS, IDLENESS MIX TOGETHER  
IN EXPLOSIVE COMBINATION

(By George C. Wilson and Haynes Johnson)

BAMBERG, GERMANY.—Shortly before 11 p.m. on March 22, three black soldiers entered Room 312, Building 7089 at the Army's Warner Barracks here. At knifepoint, they called out to four white GIs: "Give us your dope."

As the intruders were leaving, with no dope but with all the cash the soldiers had, \$35, one of the bandits pressed his knife close to a victim and said: "You know the paper you signed? I think you're about three months behind on your insurance policy."

The policy was an agreement to pay the gang leader \$10 every payday to stay healthy—the old protection racket, right there in the Army barracks. The traditional refuge of the soldier when day is done is no longer safe.

"Crimes of violence, such as robbery are at an all-time high and climbing, said Maj. John T. Sherwood Jr., staff judge advocate at the Nuremberg Trial Center, which encompasses Bamberg. "I'd just hate to live in the barracks. The guy who just wants to be let alone isn't being let alone."

A field officer who reads Army sense reports coming in from all over Germany said that "obviously" much of the crime "is a matter of race—groups of blacks against whites."

Such views were not universal among officers interviewed in Germany, with one black major who investigates the robbery-extortion ring in Bamberg stressing that it should not be considered typical of the type of crime being committed in the Army.

However, the predominant viewpoint was that there are no longer safe firebreaks between black militancy, violence and drugs. They are all mixed together in an explosive combination. Idleness, broken-down vehicles, poor housing, German hostility, no sense of mission—all those facets of garrison life in Germany today seem to be aggravating the problem.

Terror is such that one of the distinguishing features of the Bamberg robberies last March was that they were even reported at all. The bandits evidently felt their knives would insure silence, because they hit two other rooms in the same barracks complex the next two nights. It was blacks robbing whites in those cases, too.

"I gather this has been going on for a year," Sherwood said, "and no one has ever said anything to anyone. No one has ever turned it in."

Four men were brought to trial this time, however, and two have received jail sentences. The trial record shows how they terrorized their victims. In the second ripoff at Bamberg, when a soldier was slashed with a knife across his chest, one of the assailants warned against reporting the robbery.

"Do you want to die?" he said. "Every day, people die in Germany." He is quoted as claiming that he recently killed a man and dropped his head in a wastebasket.

Bamberg, overburdened with GIs in proportion to the population, long has had race problems. But the following Army crime reports from a recent two-day period are the kind of evidence that Army commanders and legal officers cite in expressing alarm about the black vs. white aspects of much GI crime, not only in Bamberg, but also in other areas of Germany:

"Building 8002, Room 309, McPheer Barracks, Bad Hersfeld, Hesse, Germany . . . four unidentified Negro males entered Room 309, where the victims were sleeping, and

woke up the victims and threatened them with a small-caliber pistol and switchblade knife. The victims were forced to open up their wall locker and give up their wallets. The subjects took approximately \$250 in currency and \$200 worth of watches and jewelry and then fled the scene . . ." (The report said the five soldiers robbed were white.)

" . . . Outside the Ambrose Bar, 23 Block K-2, Mannheim, Baden Wuerttemberg, Germany . . . SP 5 Richard A. Mitacek, Cau., age 22 . . . was approached by seven unidentified Negroes at the above location. The Negroes asked Mitacek for five marks. Mitacek stated that he did not have any marks at which time the Negroes demanded to see his wallet. Mitacek refused to show the Negroes his wallet. Mitacek was then knocked to the ground, kicked and robbed of his wallet containing 30 dollars by the Negroes who then fled on foot . . ."

" . . . Club 49ers, Daech Caserne, Kaiserslautern, Rhineland Pfalz . . . Approximately 40 Negro and Caucasian males were involved in a verbal argument and calling each other names of a racial nature. Military police patrols were called to the scene to disperse the crowd. Bodle (white) and Walker (black), who were among the military policemen dispatched to the scene, spotted Wilcox (white), who was agitating the crowd and apprehended him. Wilcox continued to agitate the crowd after he was apprehended. The crowd turned on Bodle and Walker, took Wilcox from them and began to advance. At this time Bodle verbally requested help from any military policemen within hearing distance. When no assistance arrived, Bodle drew the 45-caliber pistol issued to him and instructed the crowd to halt.

"When the crowd continued to advance Bodle fired a warning shot into the air. Again the crowd advanced and Bodle fired another round into the air. The crowd continued to advance, but other military police patrols in the area assisted Bodle and Walker in dispersing the crowd and apprehended Wilcox . . ."

Some blacks claim that the crime reports do not reflect the true dimensions of racial conflict because, they say, many blacks feel it is futile to report to white authorities if they are attacked by whites. Instead, they say, these blacks simply recruit help from fellow blacks and then retaliate.

GI crime goes beyond racial polarization and encompasses features common to civilian lawlessness, according to commanders here.

Part of the reason for rising crime in Germany, according to Army investigators, is the influx of gangsters coming into the Army—some of them sent there by judges as the alternative to going to jail.

Another reason is rival hashish dealers attacking each other in the style of bootleggers during prohibition. And still another is militancy, sometimes taking violent expression, filling the vacuum created by relaxed discipline as the Army tries to bend to today's more rebellious and sensitive recruit.

Partly because there is a fine line between militancy and violence, if not crime, troop commanders in Germany are worried about the growing polarization between blacks and whites in the American Army in Europe.

"I am convinced there is some dedicated direction behind the hard-core group's so-called antiwhite movement," said Maj. Gen. Marshall D. Garth, commander of the 3d Infantry Division headquartered at Wurzburg.

"I'm just as convinced in my own mind," he added, "that the black soldiers would also like to see this hard-core element out" of the Army.

Col. Matthew R. Wallis, commander of the 2d Armored Cavalry Regiment at Nuremberg, said black militancy is his most frustrating problem.

"What defeats me," Wallis said, is this attitude of many black soldiers that "regardless of who is right or who is wrong, if he is black, he is right. I haven't been able to beat it."

Black soldiers, of course, don't see it that way at all. No amount of crime statistics or theories from high-ranking white officers about the possible causes begins to gauge the depth of black resentment and frustration.

Rightly or wrongly, black soldiers still believe the American Army reflects a racist society—and they are reacting against it. And while racial tensions are present in every Army command, Germany appears to be particularly acute and complex.

Early this year, the NAACP sent a team to West Germany to assess the problems of black soldiers here. The findings are far from reassuring.

"A principal cover for leadership failure is to characterize those who resist the status quo as 'militants,'" the NAACP report said. "It is important to understand the sweeping effect this label has taken in the military. It covers all aspects of black consciousness, black civil liberties, even the expectation of equal treatment."

One black GI voiced a common feeling. "These whites," he said, "think that every time colored guys get together, well he's a Panther. He's a militant."

Blacks interviewed gave bitter expression to a number of grievances. They believe that the military justice system is discriminatory and unjust; that white soldiers are not punished for behavior which, on the part of a black, would result in swift criminal action; that there are two sets of rules, one for blacks, another for whites; that blacks are discriminated against in housing—and in Army promotions.

They also believe that the social climate in Germany is hostile to blacks.

Many Army officers contended there is a definite link between crime and drugs. And many Army enlisted men in service said smoking hashish was better than doing absolutely nothing.

Consequently, a case can be made that the idleness of the American Army in Europe contributes, at least indirectly, to the crime problem.

"I can't give my men any useful work to do," complained an Army company commander in Bamberg. "We do not have any ground to maneuver on—except one training field my men are all sick of and know by heart. They go nuts doing nothing over here."

"If I could order a part on Monday and get it by Friday," said a platoon leader in an armored unit near the East German border, "90 per cent of my problems with the men would be solved. But how can I order them to pull maintenance when they can't even start the vehicle. The parts never come. I have to deadline the vehicles."

Nothing to do on or off the job, no sense of being needed—these complaints repeatedly expressed by Army troopers in Italy as well as in Germany.

"My most important job is to guard the officers' horses," said a soldier interviewed in Vicenza, Italy, home of the Southern European Task Force (SETAF).

"Tell Mansfield to come over here if he wants to get some headlines," said another trooper at SETAF, referring to Senate Majority Leader Mike Mansfield (D-Mont.), who has proposed U.S. troops cuts in Europe. "The most I ever work is two days a week."

His job is helping Italian soldiers man Nike Hercules anti-aircraft missiles—weapons considered so ineffective for guarding the continental United States, let alone the NATO front, that many have been phased out.

[From the Washington Post, Sept. 13, 1971]  
THE MILITARY REFLECTS CIVILIAN  
COMMUNITY

(NOTE.—Maj. John T. Sherwood Jr. in his job of staff judge advocate at the Nuremberg Trial Center has an overview of the crime problem within the American Army in Germany. His views were tape-recorded by The Washington Post in his Nuremberg office.)

Question: We have been hearing about soldiers being robbed right in their own barracks. Is there much of that in this area?

Sherwood: One of our big problems is how to protect the soldier in his own barracks. It's a tremendous problem.

Q. In all of Germany or just sections?

A. Mainly the 1st Armored Division area. Most of the combat troops in Europe are here (in the Nuremberg area) as opposed to the Frankfurt-Stuttgart area.

I'd just hate to live in the barracks. I wouldn't like that at all. Crimes of violence, such as robbery, are at an all-time high and climbing.

There's a serious effort underway now to provide individual locks on all doors inside—big individual security—because the soldier is at the mercy of these people. The guy who just wants to be let alone isn't being let alone.

Q. The soldiers say they're afraid to report what is happening, so I gather it is hard to gauge the extent of the problem with any precision?

A. On these cases we're having now, I gather, from what the witnesses have said, that this has been going on for a year, and no one has ever said anything to anyone. No one has ever turned it in. All it took was putting that one man in jail. [The cases he referred to were the extortion and assault cases described in the accompanying article.]

Before that conviction it was not at all uncommon to provide special protection for witnesses. We had a special court-martial involving a racial incident at the 3d Squadron at Amberg. This is just one case. And the man was told in no uncertain terms that he had better not show up on trial date to testify. So he was immediately spirited down here to work at regimental headquarters. He showed up and testified and we got a conviction. But he was petrified—with good cause.

In the past two months we have not had to provide such special protection of witnesses. On the extortion case we were just talking about at the 2d Squadron [of the 2d Armored Cavalry Regiment at Bamberg] where we had these four defendants, as soon as the first of the four people was put in pre-trial confinement—then and only then did the witnesses come out from the woodwork. And that's why the other three went to jail, because then we got the picture of the whole organization. But not until that key man was put in jail did anyone come forward.

Q. So it's terror which keeps soldiers from reporting the robberies and violence?

A. Well, often victims can't afford to report it because they're dealers themselves.

Q. Is it the money that puts so many people in this hashish dealing?

A. It's such a lucrative business that many GIs consider anybody who stays out of it an idiot. The No. 1 man can make \$100,000 a year. He goes to Munich about the 25th of the month and brings back a sizable load of hashish by car. There's a regular marketing chain. A plank of hashish is about three inches wide and one-quarter inch thick. Peshawar black is one kind. Peshawar is so proud of their brand that they put their seal on it.

When the hash comes back from Munich it goes to subdealers. There will usually be five or six subdealers per battalion of 600

men. There is a 100 per cent profit at each stop.

Q. You say the No. 1 guy makes \$100,000 a year. How about the other hash dealers down the line?

A. I really couldn't give you any figures, but I think the lowest dealer exceeds his (Army) income. I'm sure he doubles it.

I just talked to a man about 15 minutes ago who is pending German trial now. He was in one of the cavalry squadrons. I defended him once in a court-martial. He told me of a couple of people who went home with \$150,000. This is out of one squadron of six companies. (An armored cavalry squadron at full strength consists of 1,200 men.)

Q. Really. Out of one squadron a couple of guys went home with \$150,000?

A. After spending nearly three years over here.

Q. Why is Munich the center for this hashish dealing?

A. Well, your trains all come in there. It's a center, a commercial center. For some reason the Greeks and Turks are in this big. In fact, here the CID (Criminal Investigation Division of the Army) for a while were so frustrated at trying to shut off the market that they started independently setting up arrests and handing the people over to the Germans so the Germans could do something about it. You know, instead of fooling around with the petty user they wanted to go to the source and cut off the supply.

Q. The Germans themselves apparently are not really involved with using hash to any great extent?

A. They are where we were about five years ago right now. Their college students are all beginning to use it now and it's . . .

Q. Beginning to move up?

A. Yes. And they're getting a little worried, but they haven't been worried up till now.

Q. Do you have some specific instances where a young soldier was forced to smoke hash when he had no interest in doing so?

A. Well, no (documented cases). This is talk, you know. It's the type of thing you hear over and over again.

I heard about a soldier in Bad Kissingen who, before he even put his suitcase down, was confronted by a guy who came up to him and said, "Do you smoke?" This peer pressure, backed up by muscle, makes it terribly hard. One of our big problems is how to protect the soldier in his own barracks. It's a tremendous problem. And those dudes who have been smoking hash are never going to smoke grass (marijuana). Many of those studies on drug abuse are irrelevant because they don't take in hashish.

Q. Do you see a linkage between the violence in the barracks and hash? Is the soldier who holds a gun to another soldier's head in the middle of the night trying to get money to buy hash for himself or is he trying to take over the distribution—fighting for the dealership, so to speak?

A. Well, the mass stuff with gangs is concerned with the distribution end of it.

Q. Is that one gang knocking off another gang?

A. Trying to get them out of the distribution picture altogether.

Q. This four-on-one or ten-on-one type of violence in the Army. Is this a Mafia type action—beating up a user who didn't pay his hash bill? Or is it beating up a dealer who tried to cut in on their action?

A. It's hard to make a generalization. A lot of the armed robbery—where there are three or four people together—is taking hashish away from dealers.

Q. But then they're robbing their own boys—their own distributors, aren't they?

A. No, not their own. It is the other guy's. See, a lot of the robberies are black-white situations. In fact, I saw some statistics in a meeting with the commanding general of the 7th Corps recently—you know, everybody is statistic happy; they have a racially oriented chart on all of the assaults. Aggravated assaults. And the trend is very obvious. It's blacks assaulting whites, and the blacks are in groups. There are very few one-on-one situations. It's usually three-to-five-on-one.

Q. Well, when the assaults are against hash dealers, is that also black against white or whites against blacks?

A. There are two chains. It is usually one black chain and one white chain.

Q. Beyond those kind of robberies—one chain trying to close up the dealers in the other chain—how do you explain all this violence—are we hearing about right in barracks?

A. Well, the military just reflects what's going on in the civilian community. We're getting a lot of the blacks who are militants coming right from the ghetto, so it's not really surprising. There is a more violent—how should I put it—violent reaction to authority than there used to be.

Q. Could many of these robberies simply be soldiers getting money to buy hash for themselves?

A. I doubt, really, whether there's a great deal of crime involving motivation to get money to buy hash, as a user. It's so cheap that it's no real problem.

But there is so much money in the hash distribution racket that unprecedented numbers of soldiers are getting European outs—the are staying here to get discharged [so they can remain in the illegal drug business].

#### WE NEED TO MAKE CHANGES IN . . . ARMY

(NOTE.—The following taped interview was with an Army field grade officer who declined to be identified. His jobs—past and present—have brought him into direct contact with the problems of black militancy and crime, both as a commander in an airborne division and now in a high staff job in Europe.)

Officer: In the Army we do have a problem, a race problem. And it's almost one in reverse. In the Division back in the States, I found that I could never get—no matter what I tried to do—I couldn't get the 17, 18 and 19-year-old black soldiers. I couldn't surface what was bothering them—why in the Army that they felt that way. They just wouldn't really say what was bothering them. So I set up special councils with the blessing of the division commander, in hopes of penetrating into the problems.

One day the division commander—a general—called in some blacks to discuss their problems. One of them was a young, radical Black Panther. He said right to the general that all white people were pigs and that the general was a pig. And the general said: "That's O.K. Fine. Just tell me what the situation is." And the soldier replied: "I burned buildings in Chicago and shot whitey, and it doesn't bother me one bit. And I'd just as soon shoot at whitey as the VC." That's quote—unquote what the soldier said to his general.

How do you get to a young fellow like this and say, "We recognize the problems in society, but we don't have the same philosophy in the Army that they do in society or in some places. We have no feelings of prejudice aboard, no policies of it and anyone who does show any tendency this way is relieved immediately."

Q. How did you and the general deal with this type of man?

A. The general listened, and he found that the problems really on the minds of these blacks were really the same as those of any young soldier—black or white. They needed better leadership, from the non-

commissioned level on up to perhaps my own.

After they listed the usual complaints—too many court-martials, Article 15 punishments and no promotions—the general laid out everything from the unit right in front of these blacks: Court-martial figures, Article 15s, promotion rates. The blacks found out that they had been 100 per cent incorrect.

So the militant black brigade disbanded, right on their own. They said: "The division is taking care of us. Cool it."

I built on this idea of getting the problems on top where everybody could see them and grapple with them. I let each company elect two of their own from grade E-2 and below, but they had to be elected by their own people. They met with the battalion commanders twice a month and they just said whatever they wanted to say, whatever the problems were.

The key to all of this was the fact that once the problem was surfaced, it had to go back to the leader closest to the man, and that man then was given all of the assistance to resolve the problem . . .

A. All right. That was back in the States. You said there were special, severe problems in Germany as hard or harder to solve. What are they?

A. Looking at the reports coming into staff, the problem here in Germany is that groups of blacks are roaming with the aim of terrorizing the whites. There will be groups walking down the street and for some unknown reason will stop a couple of outnumbered whites, hold them up and rob them. Right on the street.

It's mostly at night. There's quite a bit of it. Much too much. And they always seem to go unpunished. I don't condone this. No one would—black, white or anything else. But I think it's a pretty serious business.

The crime in the barracks is the same sort—black against white; fights; muggings; robberies. Armed robberies in the barracks, although not as widespread as that in the streets.

I think there's a downgrading of discipline, and that perhaps comes from our society. We do need to make many changes in our Army—we can't go down the old traditional roads. I'm not a harsh disciplinarian myself and I wasn't as a commander. But when you make a regulation, I think it should be obeyed. A man—whether it's long haircuts or something else—should be made to live within the regulation. And I don't think this is being done.

#### GI SOLIDARITY: "IF HE IS BLACK HE IS RIGHT"

(NOTE.—Col. Matthew R. Wallis commands the 4,000-man 2d Armored Cavalry Regiment in West Germany as well as Merrell Barracks complex in Nuremberg, the regimental headquarters. Wallis is Georgia born, a West Point graduate and a Vietnam veteran. Here he talks about problems confronting his command.)

One thing, in all candor, I must point out to you. If we could just get it so that when two soldiers have a fight, and one is black and one is white, that everyone would stand around and cheer on their man, this would be a return to the old Army.

But now, if a fight exists between one black and one white, within minutes there will be three to 15 blacks who will join it without even knowing what the fight is about. They will literally beat that white soldier to a pulp—without even knowing what it's about.

It happened recently in one of the training areas. One of my squadrons was there, and two soldiers had a little altercation at the club—drinking, both of them. They came back to the barracks area where my unit was. And right behind it, within 50 feet, was

another unit from a different part of Germany.

The two men proceeded to argue again. They started to fight again. And do you know that from out of that other barracks—where the other people didn't even know them—black soldiers turned out and started to get into the fight to support this unknown black? Just because he was fighting a white.

Now this gets back to this emphasis of the black soldier on brotherhood and togetherness, and "we've got to stick together." The black soldier, I assume, feels that other people—people like me—are not sticking up for him and protecting his rights, and therefore the only way to protect the black man is black solidarity. Therefore, they've gone to this extreme of, "Right or wrong, he is black; get in there and pitch with him."

And that is what defeats me. And it's so frustrating—that regardless of who is right or who is wrong, if he is a black, he is right. And therefore all these blacks immediately join the fracas.

If we could get over that, and treat people as individuals, then we've got it licked. But I haven't been able to beat it.

#### LIKE ORDERS TO MISSISSIPPI

(NOTE.—A group of black GIs who served in Germany responded in a tape-recorded session to the complaints about blacks gang-ing up on whites there.)

"If the brothers are ganging up on them (the whites), they're taking revenge. This is what they're doing . . ."

"I've been to Vietnam, I've been to Korea and I've been to Germany. OK. I don't want any more orders to Germany. It's just like me getting orders to go to Mississippi.

"Those white commanders when they get over in Germany turn 180 degrees. Once they get in Germany they consider that this is their home and here you (the blacks) are walking on my carpet with mud on your boots, and we're going to treat you accordingly.

"Say, for instance, that you go for help to a white platoon sergeant. There is only one in a million that will really help you. He's surrounded by whites.

I had a black platoon leader—excuse me, I had a colored platoon leader—and everyone around him was white; the battalion commander; the company commander. So he was not about to help me . . ."

"In the stockades in Germany, the MPs do what they want to do to the brothers. We had guys who went to the Nuremberg stockade and other stockades and when they got there the MPs told them to lay down their bags. By the time the brothers had laid down their bags, the MPs had kicked their ass. But when the Army survey about this stuff came down it said, "Naw, everything is lovely."

"They have white guys in clubs who said we couldn't come in. And then they turn around and tell you that we are ganging up on them . . ."

"You got to consider something about those crime reports they showed you. The brothers got a lot of pride in a lot of things, see. If I went outside and three white guys jumped on me, I'm not going up there and tell the desk sergeant. I'm going to go and get some brothers together and coming back.

"A white guy, if some brothers jump on him, now he is going to report it because all his life he has been used to running to the authorities—to the police. If a brother goes to the police, he knows he isn't going to do anything for you no way. So what's the use of going to him? The brothers don't even bother with the police.

"Blacks have nothing else going for them but their solidarity. If you go down by your-

self to one of the guest houses where the whites hang out, you can rest assured you're going to get your head bashed in. The only threat that the blacks have, especially if it is a small caserne, is that they have to return back. This way the whites know that if they jump a brother, the brother is going to a black guest house and get some others and this is going to cause a riot. . . ."

"There are no black girls in Germany to fool with. The blacks have no other women to fool with but the Germans.

"O.K. Say, for instance, that a black guy runs into a nice German family and they introduce him to a nice German girl and he happens to bring her on post. He's marked. They're all after him: the platoon sergeant, the company commander—everyone is after him until he leaves. . . ."

"The German women won't speak to you for the simple reason that their mind has been poisoned against you. The whites tell the girls that if they fool around with one of the brothers, then they're not going to fool with you. The girls are afraid to go with us."

[From the Washington Post, Sept. 14, 1971]  
OUR STRUNG-OUT TROOPS AND THE BIG O  
(By Haynes Johnson and George C. Willson)

SCHWEINFURT, GERMANY.—He set up his charts and diagrams at the back of the stage and then stepped to the microphone.

"The reason I'm here is very simple. The reason is because every day our hospitals here in West Germany are admitting people who are having bad reactions from drugs and people who are dying and have died—right here in this caserne, as a matter of fact—from drugs, and I can assure you that you'll continue, here in the Army, to hear about drugs as long as people continue to get sick and continue to die from these problems. It's as simple as that."

While he was speaking, his enlisted assistants walked through the auditorium passing out the "flash" comics with the groovy drawings and hip language about pot, acid, speed, hash, opium, bummers, trips and flashbacks. Most of the soldiers remained slumped in their chairs, dozing or asleep. A few—and only a few—picked up the papers casually and read:

"June was really awful—like terrible month in the drug scene. Check these reports. . . ."

The drug incidents reported were from Army installations throughout this area of Germany and they were listed in the argot of the user: Harvey Barracks, dude with hepatitis from brown morphine injection, been in Germany only three weeks, his first hit, morphine contaminated. . . . Another dude in hospital vomiting his guts out from bad opium, black type, lots of junk in it; Hindenberg, freakouts from hash and wine; Giebelstadt: freakout from "blue cheer"; Bad Kissingen, Auburg, Wildflecken: bad freakouts from mixing hash, acid, dude tore up stomach with ANI juice and. . . .

After the enlisted men, former junkies all, had put on their drug education skits, the officer again stepped to the microphone. This time, his tone was sharper.

"Now, I'll tell you why I'm really here this morning," he said. "I'm here because of opium. The big O. I'm here because sitting right out there, in this battalion, are pushers who are dealing in opium. You know who you are and I want you to know I know you're out there. I know because two GIs from this unit wound up in my hospital from opium overdoses, and one of them nearly died, and he told me where he got it.

"Now I'm here to tell you I'm going to be back every morning, and every night, until you understand how dangerous opium is and until we stop this thing. I'm here to tell you this Army is not going to get strung out on

opium the way the Army in Vietnam is strung out on heroin."

His enlisted assistants again circulated throughout the auditorium, passing out drug use questionnaires. When the soldiers turned them in, the battalion was dismissed. "That's the scruffiest bunch I've seen yet," said Major Forest S. Tennant Jr., a surgeon attached to headquarters of the 3d Infantry Division at Wurzburg. "You could tell that some of them were on it right out there. Take a look at these returns. They'll show you some of the dimensions of the problem."

He handed over the sheaf of questionnaires with check marks beside the use of various drugs. At the end, the soldiers had been asked to offer personal comments. They spoke for themselves.

"Man, I am spaced out to the limit. . . ."  
"Tell Captain—to get off his high horse and talk to the troops."

"Help me get out of. . . ." (The sentence was uncompleted).

"The truth has been said."

"They're all freaks."

One soldier who said he uses hashish more than three times a week merely commented: "It's my thing." Another, in answer to a question about what specific means can be employed in his unit to decrease drug abuse, replied: "None."

Day after day, Dr. Tennant has been conducting these drug education seminars for American troops stationed here. From the data he has gathered in nine separate Army communities, he has reached some arresting conclusions.

His studies indicate that 46 per cent of all Army personnel in Europe have tried an illegal drug at least once. Sixteen per cent are using illegal drugs more than three times a week. Thirty per cent of that last group have used drugs more potent than hashish, itself eight to 10 times as powerful as marijuana.

Two other figures show another side of the drug problem: 78 per cent of the soldiers now using drugs first started before coming to Germany; and 65 per cent began before entering the Army. That means 22 per cent of the drug users first began in Germany.

The European drug situation is unique in one respect. Hashish, relatively uncommon in the United States and Vietnam, is used by the vast majority of soldiers. Hashish, a resin extract from the hemp plant *Cannabis sativa*, is imported from the Middle East and Mediterranean areas. It is easily available in every Army installation. The soldiers buy it in small, compressed brickettes that are named according to their color and source—Turkish green, Afghanistan black, Lebanese red. They pay from \$1.25 to \$2.50 a gram for it (in the United States, prices would be from \$5 to \$30 a gram). It is smoked in pipes. In their terminology, they "break a bowl."

"It makes you feel real funny," one user said. "Like I'm numb and floating. That's about the only thing it does for you; it makes you relax."

The doctors think otherwise. They say the use of hashish, or hash, can produce marked personality changes. It instills apathy, confusion, fatigue, passivity and paranoia. Hardly the ingredients for an effective Army. And it is related to serious bronchial disorders.

As Dr. Tennant says:

"The overwhelming observation regarding hashish in West Germany is the tremendous abuse rendered it by some American soldiers. Some soldiers report the spending of the majority of their monthly paycheck on hashish and the smoking of the drug on an hour-to-hour habitual basis, just as tobacco is smoked. The smoking of 150 to 200 grams of hashish per month—that's the equivalent of many hundred marijuana cigarettes—is frequently described by soldiers."

Dr. Tennant is probably the leading expert on drug usage among American troops

in Germany. He has been conducting virtually a one-man drug education crusade. It was Tennant who set up the first drug abuse center, called the Now House, for soldiers in Europe. How the Now House was established at Wurzburg says a great deal about the Army's initial steps to handle its drug problem.

"I didn't ask permission to do it," he says, "I just did it and told them about it later. If I had put in to do it they'd still be agonizing about it."

He not only established the clinic under the Army's drug amnesty program, where a soldier is promised judicial immunity from what he tells his doctor, chaplain or commander. He also provided his own money for it.

With his own \$500, Tennant began paying for the drug education charts, the drug newsletter in the form of comic strips, and for the gasoline and meals for the six volunteer workers who travel with him from base to base. When two of President Nixon's closest White House advisors, Robert Finch and Donald Rumsfeld, were in Germany, Tennant briefed them on the drug situation by using his charts. They didn't know those charts were prepared by private donations, including money raised from a drug abuse booth at a German carnival. Even today, Tennant is still paying expenses from private sources.

What worries him most about the drug scene today is new evidence about one of the deadliest narcotics—opium. "Our opium drug usage rate has almost tripled in the last three months," he says.

His alarm is reflected at the highest levels. As Gen. Michael S. Davison, newly arrived from Vietnam as the top American Army commander in Europe, says: "A drug addict is a walking suicide." He also says: "Heroin is only beginning to make its appearance over here. Well, that's enough to scare me right there—when they say it's only beginning to make its appearance—because it's most insidious. It's hard to detect. A guy could be on it with light to moderate addiction and you'd never tell because he could still fly an airplane or do a complicated task. It's a very insidious thing."

Gen. Davison was speaking from personal knowledge. He knows from his experience in Vietnam what heroin can do to the Army. "Conservatively, I would say 10 to 15 per cent of E-5s and below in Vietnam were on heroin," he says. That figure is even more alarming because the heroin used in Vietnam is infinitely more powerful than that available elsewhere. One drug expert, for instance, estimates that good quality Southeast Asia heroin is 20 times stronger than what a user could get in the District of Columbia.

At this writing, there is no way to estimate accurately the extent of heroin usage at Army posts in the United States. There is no question it is widespread. Like hash in Germany, it is easy to get—everywhere. At Ft. Dix, N.J., you can buy it for \$5 a bag. At Ft. Bragg, N.C., you can get it for \$10 a hit. At all bases the story is the same: American soldiers, deeply involved in the hard drug culture, either willingly or through gang coercion or group pressure, forced to find money to support an expensive and destructive habit.

For the pusher, the rewards are immense. Some soldiers are earning from \$500 to \$600 a week dealing in drugs. "One week ago," said a medic working in the drug program at Ft. Bragg, "a guy told me he had just made \$2,000 from one trip to Miami where he gets his stuff. And he was bragging about using Army gasoline for the trip."

For the addict, the tragedy is immeasurable. There are American soldiers at Army bases in the United States earning \$280 a month who are spending from \$100 to \$200 a week for heroin. And where do they get the money? The answer is simple. They steal.

Or, as a psychiatrist at Ft. Bragg put it: "They have to steal."

"Look at this way," he said. "Let's say you have just a hundred soldiers spending \$3,000 a month for heroin. You're talking about \$300,000 a month from just that one small group. It adds up to millions and millions of dollars. They steal from the Army, and they steal from their fellow soldiers. They steal anything from shoes to T-shirts, but stereo tape decks, record players and Army blankets are the most common items."

The soldier then pawns the items, and uses the money to buy more drugs.

Serious as the resulting crime is, it pales into insignificance beside the human wreckage. Take the sight these reporters encountered on their first night on an Army base as research for this series began.

The base was Ft. Dix. Walking back to the post from a motel, we noticed a group of young soldiers in uniform sitting on the grass, literally outside the main gate. They were sniffing cocaine out of cellophane bags, and they were incoherent. One of the soldiers suddenly jumped up and began flapping his arms like a bird in flight. Then he ran to a pine tree several feet away, first trying to climb it, and then simulating making love to it. All the time, he uttered squawking sounds.

It was a scene straight out of Dostoevsky.

Later a colonel at Ft. Bragg told this story. On a Sunday in one of the barracks in his battalion, he said, a soldier began to go into convulsions from drugs. Four other soldiers were in the barracks at that time. They sat and watched the soldier thrashing on his bunk, but did nothing to help him. A sergeant happened to walk into the barracks at that moment. He immediately called for help, took the soldier to the hospital, and saved his life.

"I called in those four soldiers, one by one, after that happened," the colonel said. "Two of them were the best soldiers in that group. And I asked them why they hadn't done anything."

"Basically, the answer that came back was that soldier on drugs had been causing a lot of problems in the barracks. They had tried to do something about him, and had failed. They had given up on him. So when he went into convulsions they felt it was his own decision, and his own funeral."

Such incidents do not answer, of course, the harder question: why the soldiers turn to drugs. Dr. George F. Solomon, associate professor of clinical psychiatry at Stanford University's School of Medicine, offered one opinion when he testified in mid-June before the Senate Subcommittee on Veterans Affairs, Alcoholism and Drug Abuse. He cited the example of a pilot whom he called "X."

"X" was considered a 'gung-ho' soldier," he testified. "He deeply resented antiwar demonstrations at home. After Vietnamization of the Delta, he was involved in ferrying ARVN (South Vietnamese) troops by helicopter to areas of operations in the Delta. Frequently the South Vietnamese soldiers were reluctant to land and had to be forced from the 'choppers,' sometimes by beating their hands as they clung to the runners. Two of X's friends were killed by bullets from U.S. M16 rifles shot by resentful ARVN troops after they had been landed. 'X' turned to heroin in order to be able to keep flying, while many of his friends refused flying status. He is now militantly antiwar."

Obviously, there are other factors. Not only the Army but American society is attempting to understand them all.

But understanding the problem is a long way from solving it. Only in recent months has the Army even conceded it has a major drug problem. It wasn't until May 11, for instance, that Ft. Dix initiated a drug abuse program. A drug educational center at Ft.

Ord, California, didn't open until last January.

"When we started we had no guidance from anybody," said an officer at the Ft. Ord center.

That isn't to fault the Army for a lack of effort, will or good intentions. What comes over after visiting a number of drug abuse center programs both here in Europe and in the United States, however, is the multitude of problems associated with them. Everywhere, there is confusion among those running the programs about what they can and cannot do; about whether their mission is to treat and rehabilitate, or treat and discharge; about following up the patients after they are sent back to their units; about how to stop the ubiquitous pushers and dealers. Money and trained personnel are critically short, and at this stage the Army is only barely beginning to penetrate the layers of the drug culture in its ranks.

More important are the attitudes of some noncommissioned officers and unit commanders. No matter what Army policy may be, in reality these men all too often regard the drug user as a criminal to be punished.

The officer in charge of one of the Army's major American drug centers, at Ft. Benning, Ga., spoke candidly about the drug amnesty program as it is preached—and practiced.

"By and large, the drug amnesty program is bull—" he said. "It's a step in the right direction, but when it comes to the implementation of the amnesty regulation, it's just so much crap. It serves to con a kid into surfacing. It con him into identifying himself as a drug abuser, but in asking for help he's said, 'Look, I'm one. I have a big X on my chest—you'll know me from here on in.' Well, from that point they won't say 'Take him down and throw him in the stockade immediately' for having said this. Again, they comply to the letter of the regulation. But the spirit of the regulation says to help the man to help himself. Instead, the reality is this guy winds up on a host of unpleasant tasks."

"He's being ostracized by the hierarchy of his particular unit. There are a lot of adverse things happening to him that add to his problem. They make life a hell of a lot more frustrating for him. Finally, he throws up his hands and says, 'To hell with it. Why should I do this?'"

The officer gave two personal examples that came to his attention recently. A young soldier on drugs who had sought help from the amnesty program was held for two hours after his company was released from duty for the day. Another soldier from an infantry unit was placed on what he called "dum-dum duty"—permanent telephone duty in the orderly room.

"And I can't use this example too clearly because it might identify him," he went on, "but we've had a high-ranking officer taken from a fairly effective position to a noneffective position like cleaning out the commodes."

The soldiers know these situations all too well. Consequently, only a handful of actual drug users seek help through the amnesty program. They also know that some officers are more interested in protecting their fitness reports—and their chances of promotion—than to concede they have a serious problem.

A commanding general illustrates that attitude by telling of the time he visited a captain. "What's your drug problem like, captain?" the general asked.

"No problem, sir," the captain replied briskly.

The general looked hard at the captain, and said: "Captain, you've got your head up your ass."

Like the problem of crime in the barracks already described in these articles, the one of drugs cannot be overstated. In the long

run, it is probably the most vexing of all—not only for what it does to the soldier's ability to function, but for what it says about his mental outlook.

"About 90 per cent of the people I deal with say they take hard drugs because it helps them to forget the Army," said a medic working with drug patients at Ft. Bragg.

Then, in a reflecting moment, he added: "I go back to the barracks at night and feel very contemplative. I wonder how many people are using it, and I wonder why I haven't. At times, it gets a little depressing."

He also confessed to another emotion. "Futility. Not futility at the Army, but futility at the task to be done."

#### KEY TO GI DRUG TAKING: CAUSE, NOT TREATMENT

(NOTE.—Capt. Dean M. (Mike) Steffy, a Ph.D. in anthropology from Penn State, has been working for a year with the Army's drug education program at Ft. Bragg, N.C., one of the Army's showcase drug center operations. Here he gives his personal—and candid—observations of that program, and how it works within the Army.)

The general had just started his drug program and the deputy G-1, Col. Nelson, talked to me and he said, "We need somebody to work in education. Do you have any ideas?" And I said, "Do I have ideas?"

I was a little bit snowed at the beginning because I know the Army has the potential to be much more efficient than civilian life because it has a more clearly defined structure. Civilians are messed up because there's no responsibility and you can't ever find anybody to say, "why did you do it?" But in the Army at least you don't have that, I thought. And here was a general that looked like he was trying to do something about the problems and in the beginning I was snowed. I said, "This is fantastic. I never dreamed I could get involved in something like this."

So I began to work, but then I began to realize that they knew they had a problem but they just weren't sure what the problem was.

They were at this very naive stage of saying "these young people just don't understand what drugs are and don't know how they can hurt themselves. If we just tell them everything will be all right, then they'll understand." You and I know it's much more complex than that.

So I realized I had to put together an education program which looked like the one I was supposed to be doing, and that's educating the troops, but my program actually was going to have to be to educate the people I was working for first—before we could get to a point where we could talk to the troops.

One of the things that bothered me was the main thrust of the drug program here was to put people into the hospital. They emphasized treatment of the individual drug user.

It isn't really a medical problem. It isn't really a psychiatric problem, although it might be a community health problem. It's a cultural problem; it's got to be looked at in a much broader perspective than simply treatment. If we attempted to solve the drug problem by treating each individual through psychiatric evaluation and inner-action we would have to turn half this nation into psychiatrists to deal with the other half that are using drugs. It just does not work that way.

A young person today is ripe to get involved with drugs because the whole cultural context of the drugs in the beginning was that these will put your head in the right place. They'll show you where it's at; they'll tell you what to do.

What this requires is some cultural under-

standing. And what has been happening in the last 20 years has not been understanding. Communications have broken down. People are not communicating. That scares me to death.

The people up in headquarters, the general: he doesn't know or begin to understand what's going on out there. And it destroys me because his leaders don't tell him. I always thought one of the principles of leadership was to tell your boss what the hell was going on. And I've tried to follow that principle, but I've discovered that it's gotten to my boss and hasn't gone any further.

I'm not really concerned about turning people on or off drugs. People work out their understanding about drugs themselves. Personally, I don't think there's too much we can do to turn people off them. You just can't convince anyone that drugs are bad.

The simple fact is that there is overwhelming evidence that cigarettes are bad. People know this, but they still say, "All right, I'll risk it. I'll still smoke cigarettes." And I happen to believe that they have a right to decide.

We're suffering from the fact right now that we have a bunch of young people in the military who, having been prepared by all the institutions in society—the family, the church, the schools, everything—haven't been prepared for what's going on here in the military. They hate the Army. They just hate it. It blows their minds. And some of them use drugs to rebel. There are a number of reasons why individuals use drugs. Lots of guys do drugs because they're bored. There's nothing better to do.

Here at Bragg the major emphasis on drugs is heroin and psychedelics.

It's cool to be a junkie, you know. You're doing illegal, underground activities that are sort of anti-society, which a lot of young people are anyway. And they're excited about it. And it gives you something to do you think is valuable and worthwhile while you're waiting to get out of the Army.

We have guys who come into the rehabilitation program who say, "Will you help me get off drugs?" We say, sure, why do you want to get off? And they say, "Because I'm going to leave the Army." Then you ask: "If you were going to stay in the Army would you get off?" And they say, "Hell, no, I'd stay on."

It's impossible to estimate how many are on it, but there's a lot of drug use here. I think we ought to put this Bragg drug situation in perspective. There is certainly much more heroin in New York, Washington, Baltimore, even Richmond. But I think the per capita use of heroin in this area is probably larger.

What's it do to the Army? It worries a lot of people. But I don't think that drugs in themselves have done very much to the Army, frankly. Everybody would like to point to drugs as a major cause, but it's merely a symptom of some problems that were happening to the Army long before drugs ever became popular.

Now, there's an economic factor to all this. The guy can't get \$200 a day to sustain his habit, but he might get \$60 or \$80. To get that kind of money, he deals drugs. He's a hustler. He cons people. He probably owes 6,000 different people money. Another way is to steal. He steals from the Army and from the other soldiers. He takes the stuff downtown and sells it. He gets money from a businessman to buy his own drugs. That guy is in business to make money and he makes it by helping the drug trade.

The Army is just beginning to become aware of how complex and inter-related its problems are. One of the things I'm pushing for the general here to do is to create a council on human resources in command that advises him directly on his human resources

problems. Right now they have recognized two problem areas that are related to the big problems—drugs and racial issues.

These are part of the big problem in the Army. And so they've created two programs that they've sort of stuck into the headquarters structure up there. The programs are less than they should be because they are being coordinated by a guy who's also supposed to be doing 6,000 other things at the same time.

The end result is nothing gets done. There are very few full-time people working on developing programs.

[From the Rome (Italy) Daily American, Sept. 7, 1971]

#### ANSWER TO PENTAGON WOES (By Col. Robert D. Heintz, Jr.)

WASHINGTON, Sept. 7.—In 1780 after Horatio Gate's disastrous rout at Camden, George Washington despairingly wrote Congress, "what we need is a good army, not a large one."

By its summer paralysis of the draft, Congress may be doing the national defense an unintended service.

Conceivably, this dog-days deadlock may even have compelled the Pentagon to relearn what George Washington so succinctly stated: in war it is quality that counts.

Even now, after only a few weeks of congressional cold turkey, military manpower planners already appear to be experiencing withdrawal symptoms and are looking harder and sooner at the stern implications of a no-draft situation that Congress seems in no hurry to remedy.

The death's head that grins at Defense Secretary Melvin Laird, at the Joint Chiefs of Staff and, of course, the manpower people is that, without the draft, we may simply be unable to raise anything like the number of soldiers required to maintain 13½ divisions and, as they say, "meet our commitments."

Meet our commitments. The phrase is a portentous one.

Under current contingency plans we have to be ready to fight at least one-and-a-half wars (until recently it was two-and-a-half). We have to keep eight divisions earmarked for NATO (four actually in position in West Germany). We have to maintain a strategic reserve. X plus Y plus Z equals 13½ divisions.

Yet the hard reality, given the present collapse of their morale, discipline, self-esteem, and battleworthiness, is that the armed forces, by private admission of numerous senior officers, are today not fit to fight half a war, let alone one-and-a-half—even if we had 33½ divisions and a thousand percent military pay-raise, too.

In the recent uproar over Montana's Democratic Sen. Mike Mansfield's proposal to cut U.S. forces in Europe—again, a controversy over commitments—what nobody seemed to recognize is that an American division in West Germany right now virtually amounts to a gap disguised as a combat division.

If the Russians were to march next week, the true state of affairs would become quickly evident, just as the condition of our division in the Far East became quickly apparent in July 1950 when we tried to stem the North Korean onslaught.

#### GAP DISGUISED AS GI

Moving from the macroscopic to the microscopic, an unwilling, demoralized draftee is, under today's conditions, a gap disguised as a soldier.

To test that proposition we have only to look at our remaining forces in Vietnam: seditious, near-mutinuous, avoiding combat, drug-ridden, murdering their officers, racially tormented, and unfit and unwilling (save among such brave exceptions as the chopper pilots and the advisers) to fight.

In Europe (according to senior commanders who will speak frankly) disintegration

and loss of military control, though less dramatic, are nearly as appalling.

Given these awful givens, certain facts have to be faced, and Congress, by stalling the draft, may be forcing the public and the Pentagon to face them.

—The armed forces, with some exceptions, need to be rebuilt from the ground up. Nothing less will do.

—The only serviceable building materials for the new armed forces will be men who want to be soldiers, sailors, or airmen. "True volunteers" is what the Gates Commission called them, and true volunteers alone will serve the purpose.

[From the National Observer, Sept. 18, 1971]  
GERMANS FEAR LOSS OF "LITTLE AMERICA"

FROM KIRCH-GOENS, GERMANY.—WILHELM "Willy" Brauner is making a commercial desert bloom here with the aid of a monetary irrigation system controlled from Washington, D.C., but he's nervous in his prosperity. Herr Brauner worries that the tap will be turned off, either by U.S. Sen. Mike Mansfield or by East-West moves toward *detente*.

Herr Brauner's combination clothing store, laundry, and dry cleaners is on the edge of Kirch-Goens, a tiny farming village 25 miles north of Frankfurt. It's hardly an ideal location—except that the U.S. Army's Ayers Kaserne (barracks) is smack across the street. The 4,000 clothes-conscious GIs of the 1st Brigade of the 3rd Armored Division provide Herr Brauner with what he terms a "good business."

How long it will stay good is problematical. Senator Mansfield was defeated last May when he attempted to get Congress unilaterally to have the 300,000-man U.S. garrison in Europe. But two later developments—the floating of the German mark and the Sept. 3 Big Four accords on Berlin—could significantly affect the U.S. Community in Germany.

The German mark has risen about 8.3 per cent in value against the dollar since Germany began floating its currency last May. Last week U.S. Army authorities in Heidelberg said that this rise, an effective devaluation of the dollar, will increase the Army's European operating expenses \$31,500,000 this fiscal year. Heidelberg asked for supplemental funds to cover the increase.

Senator Mansfield's aides said last week that he will reintroduce troop-reduction legislation in Congress, but that the form and timing of his planned bill are still undecided. He lost his first battle partly because the Nixon Administration adamantly opposed him, partly because Russia surprised everyone by announcing its readiness to negotiate mutual East-West troop withdrawals from Central Europe.

Individual members of the North Atlantic Treaty Organization (NATO) have been discussing these withdrawals with the Soviets. Their progress will be reviewed at a high-level NATO meeting in Brussels next month.

A NATO spokesman said last week that there is no direct connection between the Berlin accords and the Brussels meeting. However, the accords certainly can't hurt the discussions of mutual reductions. And if the East-West talks make no progress, Senator Mansfield will still be in the wings, ready to push for unilateral U.S. cutbacks. If so, he might find many more backers than before in a nation made acutely aware of its balance-of-payments problems by the sudden flotation of the dollar.

Either way, things don't look too good for Willy Brauner. "If they pull out, I'll open a shop in Frankfurt," he says. "I speak German, English, French, and Italian. I have studied commercial science. Besides," says the dapper, silver-haired Herr Brauner, "I didn't think it [his business] would last this

long. I thought when I started, maybe 10 years. And now it's 15."

That's how it is with the peacetime U.S. military community in Germany. No one has ever known how long it would last; now it's 26 years old. Along the way it has become a highly developed, permanent-looking little America. And it has acquired a corps of men and women who have grown old in its service.

The community occupies huge tracts of land and hundreds of millions of square feet of building space. Its population, outnumbering Wyoming's, is served by American schools, hospitals, newspapers, AM and FM radio, a limited TV network, garages, shops, department stores, banks, and several Alpine resorts in such chic locations as Garmisch-Partenkirchen and the site of Hitler's "Eagle Nest" retreat, Berchtesgaden.

#### THE COMFORTS OF HOME

A large cut in force could so alter the U.S. military community in Germany that it would become more of an encampment than the state-within-a-state that it is today.

Consider first its vital statistics:

Although down from its peak, the community's population of 375,000 is greater than Wyoming's by about 47,000, according to Government statistics. It includes 220,000 military personnel, mostly Army, 15,000 U.S. civilian employes; and 140,000 dependents. In fiscal 1970 there were 12,363 births and 391 deaths in the Army's 15 hospitals in Germany.

Land used by the Army alone (excluding the Air Force) totals 460 square miles, or more than one-third the area of Rhode Island. The Army occupies 254,000,000 square feet of building floor space.

The community is served by 779 installations of the Army and Air Force European Exchange Services (EES), a higher-powered relative of the American PX. At EES stores military men can buy, tax-free, such items as refrigerators, furs, TV sets, groceries, automobiles, and furniture. EES service stations sell gasoline to the community for as little as 21 cents a gallon, about one-third of the local price. Sixty-five American Express offices on military installations provide banking and travel services.

Some 2,500 teachers instruct American dependents in military-run U.S. schools. The Nuremberg stadium where Hitler conducted rallies in the 1930s now is used for American high-school football games.

The Armed Forces Network, with European headquarters in Frankfurt, broadcasts 24 hours daily, bringing to the community (and to millions of Europeans) news, sports, platter-chatter shows, and such golden oldies as *Suspense*, *Fort Laramie*, *Our Miss Brooks*, *Dragnet*, and *Gunsmoke*. AFN also has a separate FM-music service. Television (which isn't receivable throughout the community) is run by the Air Force. Print media are numerous. Stars and Stripes, the authorized military daily, is supplemented by other publications, best known of which is the racy, muck-raking tabloid, *Overseas Weekly*. American books and magazines are sold at Stars and Stripes-run newsstands.

#### THE COMMUNITY'S THREE LAYERS

Viewed broadly, the community has three main layers. The outer layer consists of German businessmen such as Willy Brauner who sell to the community; retired U.S. soldiers who shop at EES; and former GIs now in military-related businesses. The community's foreign and American civilian employes comprise its middle layer. At the center are the military men.

Surrounding and intermingling with the community are German citizens. One measure of this interaction: Between 1945 and 1969, the German Federal Statistics Office says, 120,000 to 130,000 German women married U.S. soldiers.

James Carter, 25, a slim, bearded, black Chicagoan, works in the community's outer layer. An assistant in Willy Brauner's shop, Mr. Carter was an Army data processor in Giessen and served in Frankfurt before being "separated" last January. He returned to Chicago—for two weeks. Disillusioned by race prejudice and black unemployment, he says, he "called Pan Am and said, 'Get me out of here.'" Over his family's protestations he flew back to Germany and got a job with Herr Brauner.

#### BLACKS FIND ACCEPTANCE

"The whole feeling [in America] is, 'I'm for me and to hell with you,'" says Mr. Carter. "It's a rat race. It's all, 'Get that dollar.' People may look at me over here, but that's just curiosity. In the states, they try to push you into a corner because you're black." Mr. Carter intends to stay in Europe even if the troops leave.

Just down the road, near the Kirch-Goens railroad station, another black former GI, Alfonzo Kennedy, 32, runs a bar. He first came to Germany in 1962 and was assigned to the Army Fire Department at Friedberg. In 1967 he also began managing a civilian club for GIs, and he decided to get a European separation. "I intended to stay just one year," he says. "But business was going good, I was having a lot of fun, so I'm here right now."

That's not unusual. Each month some 300 soldiers elect to take their separations in Europe (mostly in Germany). They're guaranteed a Government-paid trip home for one year. Many don't take the free ride. Some never go back.

A year ago Mr. Kennedy and a German partner took over the Gasthaus Winter, a languishing GI bar in Kirch-Goens, renamed it the Playboy Club, and added a strobe-lighted discotheque. Mr. Kennedy says he gets 150 to 250 customers nightly when the troops aren't in the field.

#### WHETHER GI BUSINESSES?

The bar's customers are 95 per cent American, most of them black. But Mr. Kennedy is convinced that if the troops should leave Kirch-Goens, he'd be able to find new customers. "Once you know the business," he says expansively, "you can shift people. I get people from Berlin, Denmark, Munich. . . . The people come here because of the way I live. I know how to do it."

By no means all the GIs who stay behind are black.

Outside the large U.S. Army base at Fuerth, near Nuremberg, Ronald Price, 33, a soft-spoken, reflective former Oklahoman, runs a combined Volvo dealership and auto-financing and insuring agency.

The community is a good market. Army personnel in Germany own some 80,000 private cars, trailers, and motorcycles, and insurance is compulsory. Studies have shown that the average Army man in Europe spends \$1,000 a year locally. For the 220,000 military men in Germany, that totals \$220,000,000.

#### AN UNCERTAIN LIFE

Mr. Price took an overseas Army separation in 1961 after serving in Bamberg. "I wanted to do a little traveling and, as it usually happens, I didn't have the money, so I started working," he says. He hasn't been back to the states since. His German-born wife and his children, ages 5 and 11, have vacationed with his parents in Oklahoma, and his parents have visited him in Germany. But for himself, "I don't really miss anything—put it that way."

The possibility of troop cuts maintains uncertainty in his life, Mr. Price concedes. "It doesn't do anything, of course, for the family's settling down into a permanent groove sort of thing." His children, who have dual citizenship, go to German schools. His wife would like to move to America.

Mr. Price isn't sure he'd go back if a substantial troop cut came. A former printer, he's fluent in German and believes that if necessary he could reorient his business to a German clientele. "But the competition would be fierce," he says. "I'd have to start all over again."

#### THE ARMY'S GERMAN ('DEPENDENTS')

The community's middle layer is the 70,000 foreign civilians and the 15,000 U.S. Government civilians working for the military. A big troop cut would substantially alter their lives too.

Government statistics show that 16 per cent of the Army's foreign employes in Germany have worked in Uncle Sam's vineyards for more than 21 years. Hundreds have celebrated 25 years' service in the last two years.

Similar statistics aren't available for U.S. civilian employes, but many have been in Germany since World War II ended. Although they probably could get Government jobs in the U.S. if their positions here were wiped out by a reduction in forces, some are so deeply involved in Germany that they might never leave.

"More German than American" is a comment frequently heard about them. A 58-year-old former Army captain, an Army civilian employe in Germany since 1946, says he "might or might not" go back if he lost his job. "My wife [a Viennese] and I have no children, so I have no family in the states. I'm not a worrier. I've been reading for a long time about possible troop cuts. I'll wait and see."

#### PRIDE, STATUS AT STAKE

A high-ranking, German-civilian Army employe, in the Nuremberg area—call him Herbert Reich—is less tranquil. A middle-aged man who slightly resembles West German Chancellor Willy Brandt, he says of himself and his fellow workers: "These people have developed a certain status in their community. They have their pride, they have had their job for many, many years. And everything centers around it: their house, their children, their futures."

A reduction in forces "will be a definite cut in their lives," no matter what compensation the Army gave dismissed employes, he says. Forty per cent of the Army's German employes in his area are over 50 years old. Herr Reich says that Germany's low unemployment rate (less than 1 per cent) and the demand for workers that has built up a 2,200,000-member foreign-labor force in the country don't guarantee a job for Germans whom troop cuts would leave unemployed. "Our jobs don't necessarily match those in the economy," he explains. "We don't manufacture a product that has to be sold."

#### WHY DID THEY STAY?

Why have some Germans stayed for 25 years in jobs they knew might not last? An American colleague of Herr Reich's who also prefers anonymity observes: "After the war the country was absolutely devastated and the occupation forces provided the only real work. These jobs started putting people back on their feet. These were only temporary jobs. Who knew how long the occupation forces would stay? Five, six, seven years? Everybody was only a temporary employe. And here they are, 26 years later."

German employes don't get any special retirement benefits from the U.S. Army. They get a German-government social-security pension from a fund to which the Army, like other employers, must contribute.

Strategic implications of a U.S. troop reduction weigh as heavily as economics on many Germans' minds. Herr Reich, emphasizing that he is now speaking as a German citizen and not an Army employe, voices the worry of many Germans: "From a strategic point of view, if the Russian armies are re-

duced 50 per cent, what has anyone gained except them? If they move back entirely from East Germany, they still are in Poland. If the Americans [reciprocally] leave Germany, well, they have left Europe."

West German Defense Minister Helmut Schmidt wrote in the U.S. quarterly Foreign Affairs last fall: "An opinion poll recently conducted in Germany [showed that] 66 per cent of those polled—and 79 per cent of all *Bundeswehr* [German armed forces] soldiers—felt that without American troops, Germany would be overrun in the event of Communist aggression. Thus [a hasty or premature] American pull-out might indeed cause a psychological landslide and impel a despondent Western Europe toward its first major reorientation since the end of World War II."

#### WILL IVAN REPLACE JOE?

This is the view too of Klaus Ronge, 32, a police first sergeant in Butzbach, a town of 17,000 near here. At Butzbach is Schloss Kaserne, a 1,000-man U.S. communications and artillery garrison. From the ground floor of Butzbach's Seventeenth Century town hall, Sergeant Ronge gazes out the window at the fountain in the main square, where young men and women are rendezvousing on a Saturday night. He doesn't mention it, but before the night is out he may have to deal with an incident involving one of the numerous drunken U.S. soldiers who will be roving the streets. Nevertheless, he says, "If the U.S. left, the Russians would be here within half a year."

Sergeant Ronge notes philosophically that foreign troops are nothing new to Butzbach. Workers digging foundations for the Army's housing area there found relics left by a Roman garrison.

German opinion about U.S. troops divides along generational lines, says an officer at headquarters, U.S. Army Europe (USAREUR) in Heidelberg. "Older people fear invasion if we left. The younger people want everyone to withdraw and think everybody would love each other then."

#### THE YOUNG SPEAK

Hans ter Wolbeek, an 18-year-old student from Baden-Baden, says: "I don't think troops are the way to keep peace in Europe. We should have mutual withdrawals by East and West."

His companion, Heinz-Juergen Hininger, 19, adds: "It is too expensive for Germany to keep the troops here. Yes Germany is rich. The capitalists are rich, but many of the people live under poor conditions."

The cost he refers to arises largely from arrangements under which the Germans "offset" the balance-of-payments strain on other governments arising from maintaining troops in Germany. It costs the U.S. \$1.2 billion in foreign exchange annually to support its German garrison, but the German government takes steps to return a large part of that amount to the United States. The Germans have said, however, that they won't increase their "offset" payments to cover U.S. deficits caused by their currency's higher value in relation to the dollar.

At the core of Germany's Little America—and the reason for its existence—are the U.S. soldiers. In Heidelberg a USAREUR spokesman maintains that it is for America's statesmen, not its soldiers, to determine the level of U.S. troop strength in Germany.

#### INFLUENCE AT STAKE

But the spokesman also adds: "The fact is that there is a threat here. The Navy, I guess, is scared to death in the Mediterranean. The Russians have got a whole lot of divisions in East Germany and Czechoslovakia. They've got them equipped with the most modern equipment. They're training hard. One of the factors you've got to

weigh is, do you want to have any influence in this part of the world?"

"If national objectives deem that we should remain here as part of NATO, then we'd better take care of our soldiers," the spokesman continues. He says many of the barracks, some predating World War I, are "deplorable" and that military police consider poor living conditions a prime factor behind crime in the military. USAREUR confirms as "substantially correct" an estimate that crime by U.S. soldiers in Germany rose 24 per cent in 1970 over 1969. Racial clashes, drug use, and disciplinary problems abound.

#### EYES ON THE PENDULUM

USAREUR officers say a basic problem has been Vietnam, which has drained money, soldiers, and officers from Germany, but these officers (and some in the field too) assert that things are looking up. "For a long time we suffered from a drawdown for Vietnam," a spokesman says. "Justifiably so, top-rate equipment and top priority went to Vietnam." With demands from Vietnam dropping, "the pendulum is starting to swing, and in the last year we're getting modern, up-to-date equipment like the M-16 rifle, which has been the standard combat infantryman's weapon in Vietnam for years."

The spokesman adds that past manpower needs of Vietnam meant that "we were turning over people at a very fast rate. Now we've stabilized. Company commanders will have companies for a year and battalion commanders have been stabilized for 18 months." These changes should help control drug and race problems, he says.

The whole Vietnam experience may have heightened the possibility that Americans may seek major troop withdrawals from here. But meanwhile, most Germans, at least, seem to want their "Little America."

#### QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

#### ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Montana (Mr. MANSFIELD) is now recognized for not to exceed 15 minutes.

#### THE NEW ECONOMIC PROGRAM AND WESTERN EUROPE

##### I. INTRODUCTORY

Mr. MANSFIELD. Mr. President, this statement to the Senate is in the nature of a summary of my impressions of reactions in Western Europe to the administration's new economic program. In due course, I shall file with the Committee on Foreign Relations a formal report on this subject. The observations which I make now and others which will be contained in my subsequent report flow from a recent visit to various European states and, briefly, to Morocco. Some of

these states are members of the European Economic Community and others are on the verge of membership. All of them are affected directly or indirectly by the new economic policy.

I held direct exchanges with U.S. Embassy personnel and government leaders in seven countries. These conversations were supplemented, under my direction, by staff reports from still other areas. The journey culminated in Paris at the 59th Interparliamentary Union which I attended for 2 days. The focus of the study was the new economic program although in Morocco and elsewhere other subjects were raised. In Paris, I made it a point to eschew discussions of Vietnam with the various delegations to the Paris Peace Conference.

My principal concern was to weigh European reactions to the new economic program for communication to the Senate. Wherever I went, however, I also took occasion to emphasize to European leaders the urgency of the economic problems at home which had led to the promulgation of the program. I pressed for their understanding of our situation even as the people of the United States have shown understanding to theirs on many occasions in the past. Invariably these exchanges were frank and friendly and, at the same time, reassuring of the continuance of a high degree of mutual consideration between Western Europe and the United States.

##### II. EUROPEAN REACTIONS TO THE NEW ECONOMIC PROGRAM

The European nations have been aware of the economic difficulties which have been gathering for the past several years in the United States. They have watched the unchecked inflation, the persistent high level of unemployment, and the shifting trade flow with deep interest and concern. Indeed, a number of major European countries have long been pressing the United States to take strong measures to correct its payments deficits.

The alarms which had been rung in the Senate and elsewhere had reached Europe. Closer at hand, European governments also had evidence of the ineffectiveness of the initial remedies for this Nation's difficulties. European central banks were witness to gyrations in gold prices, periodic speculative rushes of dollars from one currency to another and other manipulations in the European financial markets.

Notwithstanding these harbingers, the first reaction to the new economic program was one of stunned surprise. European nations groped for a proper response to the administration's new course and for new footholds for their monetary policies. Under EEC leadership, an effort was made to find a common European approach. It was not successful, largely in consequence of the great divergencies between the positions of France and Germany. For the present, therefore, the European nations are acting individually and with a variety of responses. All of the reactions, however, to one degree or another, involve some degree of free market determination of the present value of the dollar. Nor are the forth-

coming monetary conferences expected to make much difference in the situation.

There was a certain inevitability in the initial European shock. The administration's course was a drastic change in direction which for three decades, had assigned to a stable dollar-gold relationship the central role in the commerce of the North Atlantic nations and much of the rest of the world. Moreover, the impact was intensified by the suddenness of the announcement as well as by the nature of certain of the specific remedies which the administration chose to pursue.

The first wave of reaction has now passed. In a calmer aftermath the Europeans tend to acknowledge that the need to shore up this Nation's financial position was long past due. If there ever was any tendency to gloat over our economic difficulties, as some earlier press reports indicated, it has long since passed. The fact is, that the European stake in the outcome of the President's program is very great. The stability of the U.S. economy still lies at the base of North Atlantic commercial relationships. In turn, the well-being of all of Western Europe is still intimately woven into those relationships.

That the European governments are understanding does not mean that they concur in every aspect of the administration's new program. On the contrary, they are articulate in setting forth differences. Certain European nations, for example, would have preferred that the currency readjustments take the form of a revaluation in the price of gold rather than the suspension of the relationship between the metal and the dollar. The preference for what might be termed gold levitation over dollar floatation is not too difficult to understand. As the Europeans see it, a rise in the fixed price of gold would not only have forestalled the necessity for revaluations of their currencies but it would also have increased greatly European exchange reserves which are now held extensively in gold.

There is also concern that the proposed investment-tax credit is to apply exclusively to purchases of U.S. origin. From the point of view of European self-interest, a tax incentive for U.S. industries to "buy American" can only serve to reduce the competitive effectiveness of many European manufacturers—notably of machinery—in the U.S. market. The proposed repeal of the excise tax on automobiles is similarly regarded as a blow on a blow to European exports in most of those nations which are heavily committed to the sale of vehicles in the U.S. market.

### III. THE TEMPORARY 10-PERCENT ADDITIONAL IMPORT DUTY

The most universal reaction to the new economic program, however, is reserved for the general 10-percent add-on, or surcharge, with regard to U.S. import duties. All of the European governments oppose the provision although certain countries are hit more directly and painfully than others. Recession and unemployment are now anticipated among certain European exporters of highly competitive commodities such as shoes,

jewelry, and watches. On the whole, however, the European economies do have alternative sources of trading strength—notably the inner market of the European Economic Community and they appear sufficiently stable to be able to absorb the increase in duty without widespread disruption.

There is little disposition to challenge this increase under the General Agreement on Tariffs and Trade. Nor is there any inclination to engage in or to threaten reprisals. The fact is that there are unchallenged European precedents for the action which has now been taken by the United States.

Objections to the increase in duty are expressed largely on philosophical grounds. It is described as a step back from freer international trade which, to call a spade a spade, is what it is even on a temporary basis. As noted, however, it is not the first happening of that kind in the Western trading community. Other nations have made similar retrogressions. That the step now looms as a giant one in European eyes is because it has been taken by the largest nation and over the past several decades one of the most consistent advocates of freer trade.

Hence, great stress is laid on the "temporary" tag which has been attached to the provision. The word is, at once, both reassuring and disturbing in Europe. On the one hand, the Europeans find themselves able to adjust to a "temporary" increase and they can also appreciate that a "temporary" lapse in the economic philosophy which has fueled U.S. trade policy for decades need not be permanently disruptive of the economic relationships in which they have invested so heavily. On the other hand what troubles them is the possibility that "temporary" may become permanent. The fact is that the Europeans are far more heavily dependent on international trade than is the United States.

In the circumstances, the question weighs heavily; what if the add-on is only the opening breach? The European nations do not dismiss the possibility that the breach may be widened by subsequent unilateral U.S. measures should the new economic program prove inadequate in showing us the way out of the economic doldrums. The President has taken the lead in offering the reassurances of his administration on that score. During the course of my visit I emphasized that both the administration and the Congress were not predisposed to retreat to the days of Smoot-Hawley and the Great Depression. There is no gain-saying the fact, however, that a doubt persists in Europe as to our course in the future. The fear is real.

If developments were to bear out this fear of further restrictive measures, the consequences would be portentous for both Europe and the United States. For two decades, the people of both regions have profited greatly from a vigorous economic interflow. The growing movement of goods and capital and, increasingly, skills and people across national borders has done much to raise living levels and enrich the mutual human experiences of Europeans and Americans.

A reversal of that pattern on a temporary basis may have been unavoidable but it is nonetheless regrettable. Should there be further retrogression, the most serious damage could be done to the well-being of both the European nations and the United States. In the end, both might well be cut loose from the moorings of a commonly sustained stability which has contributed so much to the evolution of peace in Europe and the North Atlantic.

In the circumstances, too much stress cannot be laid on the significance of the word "temporary" as it is applied to the increase in duty. The increase in the import duty is, at best, an awkward and dubious remedy for the Nation's economic difficulties. It does not combat inflationary pressures; it accommodates to them and, hence, contributes to higher prices at home. It serves as a relief for inefficiency rather than as an incentive to more efficient production. To be sure, the add-on may provide a breather for the dollar abroad but, in any durable sense, it will do nothing to pump new breath into the international financial position of the United States.

### IV. NATO AND THE NEW ECONOMIC PROGRAM

A more pointed correction of the weakness in that position would involve ending excessive governmental expenditures and especially those which are made in other nations. Many of these expenditures seem to persist out of resistance to change rather than out of any significant relationship to the Nation's current needs or interests.

It is only too obvious, for example, what damage has been done to the Nation's economic position by an outflow in the range of \$130 billions of dollars for the tragic and wasting war in Indochina. Yet the war goes on; so, too, do the expenditures, not to speak of the tragic waste of life and resources.

On a smaller scale, the expense of military bases abroad and of foreign aid illustrates the same point. With regard to the latter, year in and year out, billions have poured abroad. In many cases, constructive results have been scarcely perceptible and, sometimes, as in the India-Pakistan situation, the consequences have been downright deplorable. Yet the indiscriminate outflow for aid continues and even spreads further afield.

The cut of 10 percent in aid which has been proposed this year by the administration is to be welcomed even though it seems to me that it is far too meager. Moreover, no distinction is drawn in the proposed cut between what might be constructive and what is ineffective or worse in aid.

For the purposes of this report, the most pertinent example of the kind of excessive government expenditure which tends to erode the financial position of the United States is the outlay for NATO at the present level. Clearly, the billions which are spent every year, directly and indirectly, for this enterprise bear a significant relationship to the weakness of the dollar abroad. In my judgment, these expenditures come from the hand of an outdated policy. It is a heavy hand

which, fixed on the Treasury, diminishes the capability of the United States for dealing with contemporary economic realities.

That is not to say that expenditures for NATO should be eschewed for reasons of economy if they are required to meet urgent security needs in accordance with the North Atlantic Treaty. However, there is nothing in that treaty which constitutes a commitment to make expenditures at the present level. The phrase "at the present level" is emphasized because what we do in the way of contribution to NATO is the consequence of our own national decision. Consultation with NATO allies may be desirable but the question of a reduction in U.S. Forces from their present level, however, is not one of international consent but of unilateral determination.

This question was reviewed by the Senate a few months ago and a cut in the U.S. contingency in Europe on the basis of legislative initiative was rejected at that time. However, the fact that the administration has now found it necessary to resort to urgent economic salvage operations underscores the necessity for further consideration of this question. It is to be hoped that a cut might now be brought about by Executive action. If it is not, the question of a legislative initiative may be raised once again in the Senate this session.

#### V. OBSERVATIONS ON NATO

For the present, however, I would only set forth certain observations on the status of NATO which derive from my recent study abroad. It seems to me that—

First. The Western European nations remain firmly wedded to joint defense of the West under the North Atlantic Treaty. May I add, it is my hope that such will also be the case with regard to the policies of the United States because the mutual stake in the North Atlantic Treaty is very high.

Second. When it comes to material support of NATO, the European nations are prepared to urge the United States not to make reductions in its contribution. There is no indication, however, that any NATO nation is ready to make a substantial increase in its support of NATO. On the contrary, it is not far-fetched to anticipate further reductions in the present European effort under the organization. Even now what the Western Europeans are doing in the name of NATO probably differs very little from what they would be doing, in any event, for their national defense establishments in the absence of NATO.

Third. The reluctance of the European nations to take over any major part of the heavy U.S. burden in NATO is part and parcel of the present mood of Europe. The mood is one of detente and peace not of confrontation and war. It may be that this mood derives from a dangerously deceptive sense of security. It may be that the NATO command is still well-advised to think and plan in terms of imminent military conflict between East and West. That is not, however, the contemporary idiom of either

peoples or governments on the European continent. Quite the contrary, the talk in Europe is of peace and so is the action. Words of reconciliation flow across the line of separation accompanied by accelerating trade, technological exchange, and travel. Indeed, Communist workers from the East form a part of this flow as they move on contract into labor-short Western Europe even as European private enterprise operates in Eastern Europe.

The detente has been gaining momentum in Europe for several years. Even the Czechoslovakian intervention in 1968 slowed it only momentarily. Now it is extending rapidly from the cultural and economic realms into the political. The SALT talks, for example, were reported to me in Helsinki as making very good progress. I spent a whole day going over the progress being made. Moreover, while I was in Europe, an agreement was reached by the Soviet Union, the United States, France, and the United Kingdom which is designed to defuse the Berlin situation—incidentally, President Nixon played a very significant and important part in this—Germans of East and West are now engaged in itemizing this accord. Thereafter should come the formalizing of the Soviet-West German and Polish-West German pacts which have already been negotiated and which will settle, for all practical purposes, the border questions carried over from World War II.

To be sure, the unexpected could intervene to rewrite this diplomatic scenario. For the present, however, developments in Europe underscore the antiquation of NATO in its present form. That is not to deprecate its past contribution nor the continuing value of the Western Alliance in order to meet unforeseen contingencies. The problem is not with the desirability of the North Atlantic Treaty; it is desirable and, perhaps, vital to all concerned. The problem, rather, is the form and content of a NATO two decades old. Despite its so-called policy of "flexible response," NATO has remained rigid in its design for conventional warfare even as the confrontation which might give rise to that warfare has been receding for many years. Moreover, NATO has continued to be overstaffed, overmanned, and overfinanced by the United States long after the Western Europeans have gained the capacity to play the preponderant part in whatever conventional defense they may deem necessary for their security.

In the circumstances, NATO engages in exercises designed for an era of cold war while the climate in Europe warms to the prospect of an all-European peace settlement. In the circumstances, an enormous effort in manpower and funds disappears from the coffers of the United States, at the expense of the national economy and the international strength of the dollar. All the while, Europe uses its resources more pointedly for the economic well-being and progress of its people. This situation highlights the need, in my judgment, to face up to the anachronism of the current consignment of U.S. military forces in Europe. The presence of over

half a million American servicemen and dependents in Europe is irrelevant to the political situation on the continent. The great cost of maintaining the consignment is damaging to this Nation's interests both in Europe and at home.

#### VI. INDICATED CHANGES IN NATO POLICIES

With or without mutual force reductions, it seems to me highly necessary that there be a substantial and graduated reduction in U.S. forces in Europe. Indeed, what value in any negotiations is the debilitating waste of our financial resources? To follow the line of reasoning that suggests we should keep U.S. forces in Europe in order to increase our bargaining power with the Soviet Union is to argue that if the present forces were doubled in size our bargaining power would be doubled.

It should be noted that there have been some administrative reductions in U.S. force levels in NATO below the maximum of several years ago. However welcome, these limited economies are not to be confused with the financial benefit to the Nation which could be derived from an updating of the policies which govern present troop-numbers in Europe. A realistic reading of the current situation, in my judgment, indicates possible changes which should contribute effectively to the recovery of the Nation's financial health without in any way impairing its security. Specifically, the following measures may be practicable:

First. A reduction in the U.S. military contingent in Western Europe on a graduated basis within the near future. The critical factor in maintaining the North Atlantic Treaty in present circumstances is not the size of the U.S. military contingent but the reliability of the total U.S. commitment. In my judgment, two divisions or less of U.S. forces would be as effective in the latter connection as four or more.

Second. A substantial cut in U.S. command participation in NATO. It would seem most appropriate, in particular, that a European be designated as the next Commander in Chief of the organization and for the United States to take the initiative in encouraging such a selection.

Third. A substitution of multinaul NATO forces in the Mediterranean for the conspicuous and overwhelming presence of the 6th Fleet.

Fourth. A development of effective techniques for keeping alive the vital concept of the North Atlantic Treaty while at the same time NATO, as it presently exists, is cut to streamlined essentials, ready for prompt remobilization in the event of emergencies. If present political trends in Europe continue, this conversion of NATO to standby status might well be possible within 5 years.

#### VII. ADJUSTMENTS IN U.S. POLICY AND ADMINISTRATION

As already noted, the trends in Europe are toward detente. In this Nation's economic interest, and in the interest of maintaining a constructive diplomatic role in the evolution of peace in Europe, we should adjust our policies, in all re-

spects, to those trends and do whatever we can to encourage them. To that end, it seems to me that—

First. All parts of the Federal machinery, involving the administration of U.S. policies regarding Europe should be reexamined by the President and the appropriate congressional committees in order to update procedures which may be still out of harmony with present trends.

Second. Our policies with regard to Germany should be redesigned to stabilize the existing situation. To that end, these policies should accept the permanence of the two Germanies for the foreseeable future and encourage peaceful and developing contacts between them. They should provide affirmative support for ratification of the West German-Polish Non-Aggression Pact and for the West German-Soviet Union Non-Aggression Pact.

Third. Finally, our policies should endorse, without reluctance, an all-European choosing for the purpose of seeking among other things, a non-aggression treaty between the NATO and Warsaw Pact nations. And this meeting should be attended by both Canada and the United States.

#### VIII. CONCLUDING COMMENTS

To give the direction which has been outlined to U.S. policy, as I see it, would be to point it by the compass of the Nixon doctrine. It would be a direction in accord with the mood in Europe, in accord with the Nation's domestic and international economic interests, and in accord with the needs of a stable peace.

Europe may well be at a most decisive moment in intra-European relations and in relations with the United States. It is a moment which contains promise along with pitfalls. It would be tragic if we were to turn away from this moment which may offer us an opportunity to cement the peace of Europe either because of a delayed and faulty reaction to the financial difficulties of years of diplomatic and military overextension or because a topheavy and aging machinery for the conduct of our European policy continues to flail at the ghosts of the past.

If we fail to grasp this moment, the possibilities loom large for the rapid growth of economic sniping and intrigue. From that point, it is a short distance to a militant economic nationalism and blocism and the crumbling of Western political unity in a general fit of recrimination and reprisals.

There need not be this slide in the Western community into what, in the end, may well be self-destructive. It should be possible to move out of that era which since World War II has had the United States at the core of responsibility and burden without these consequences. We should be able to move into a new and fruitful age of mutuality with Western Europe, within a peaceful Europe, if we will set aside the fears of the past and act in timely fashion on the facts of the present.

The ACTING PRESIDENT pro tempore. Under the previous order the Sen-

ator from South Carolina (Mr. HOLLINGS) is recognized for 15 minutes.

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

Mr. HOLLINGS. Mr. President, I yield at this time to the distinguished Senator from Arkansas.

Mr. FULBRIGHT. Mr. President, I wish to join with the Senator from Montana and express my agreement with what he has just said. I think what he has said has been dramatically highlighted and fortified by the articles which have recently been published in the Washington Post with respect to our Army in Europe.

I would hope that the Senator from Montana would and I urge him again to offer his well-directed and well-known amendment for the reduction of our troops in Western Europe.

I congratulate the Senator on his preliminary report, and I agree that it is high time in our own interest to reduce our presence there and approve of these various moves that have taken place.

I certainly agree with the Senator from Montana and I congratulate him on a very fine statement.

I wish to ask the Senator a question. I ask the Senator, in view of his observations and the reports on the military regarding the demoralizing effect on our troops in occupation, if it would not perhaps be proper to again raise this question for a vote in the Senate?

Mr. MANSFIELD. I would agree with the distinguished chairman of the Committee on Foreign Relations, and I wish to say to him that it is my intention to do so at an appropriate time in connection with an appropriate bill. There are a number of measures to which the amendment seeking to bring about a substantial reduction of U.S. forces in Western Europe on a graduated basis could be attached.

Mr. FULBRIGHT. I hope the Senator will do so. To me the reports coming out about the demoralization of our forces are absolutely horrible. I can think of nothing more serious with regard to our own military defenses and, in addition to that, to our reputation, to our influence generally in Europe and over the world. I hope the Senator will do so. I assure the Senator my support and I think he has a great deal of other support. I thank the Senator for his report.

Mr. MANSFIELD. I have inserted in the RECORD the three articles by Haynes Johnson and George Wilson, which were published in the Washington Post over the past 3 days. If everyone will take the time to read them the articles will be found to be eye-opening. I am disturbed at the lack of morale of our troops in Europe. I am disturbed greatly about the drug traffic, the crime increase, and the shabby conditions under which our enlisted men live, and I emphasize the word "enlisted." I think something should be done because what I want there is an effective and lean army and not the kind of army we have there at the present time, which I think is far from lean. It is quite to the contrary. Certainly, in view of the race problem,

the drug problem, the crime problem, and the slackness of morale, it is not efficient at this time.

Mr. FULBRIGHT. I thank the Senator.

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

Mr. HOLLINGS. I yield to the Senator from Missouri.

Mr. SYMINGTON. Mr. President, I would also congratulate the distinguished majority leader for one of his typically wise and constructive observations to the Senate, this one based on his recent trip.

On the floor of the Senate it has been stated and restated that we have over 7,000 nuclear warheads in Europe. With that type and character of defense in Europe it still seems incredible to me that we have to continue to keep these hundreds of thousands of our conventional military over there. Surely these countries can handle more of this problem of military bodies.

I would join the chairman of the Committee on Foreign Relations in hoping that, as soon as he considers it proper, the majority leader will again introduce the resolution for a reduction of our troops in Europe.

A prominent physician only this morning told me that once a person is really "hooked"—that was his expression—on heroin, there is no out from his standpoint except suicide.

In reading these three articles referred to it would seem that the Army, not contributing in a real sense, is creating the probability of additional Atticas. Regardless of who is wrong or right in the dreadful situation that developed in that town in the State of New York—a sad business, indeed—all this is something in which every American as well as every Member of the Senate should be, and I am sure is, deeply interested.

Putting it mildly, the drug problem in the most recent article in question was verified to Senator PASTORE and me by officers and enlisted men of the Army when we visited Europe last April.

I would hope, therefore, again inasmuch as I believe in Germany we are creating additional Atticas, that we would look further into these articles entitled "Army in Anguish," published in the Washington Post and written by two responsible newspapermen.

With that in mind I have requested the chairman of the Committee on Armed Services to establish a subcommittee to investigate thoroughly the allegations in these articles. It is about time, from the standpoint of our military posture, that we begin to look at the vital problem of morale in the services, a characteristic of military preparedness that is just as important as any weapons system or group of weapons systems.

So again I congratulate the distinguished majority leader for the thoughtful position he has presented this morning.

Mr. MANSFIELD. Mr. President, I wish to thank the distinguished Senator and to say that I believe we have to have an

army based not on numbers but effectiveness. There is a job to be done in rebuilding the Army, and I am sure the Congress as a whole stands ready and willing to participate in that effort, which must be undertaken for the security of the United States.

Mr. SYMINGTON. Mr. President, of course, I agree. We should have a mighty fine Army. I would hope this matter could be cleared up, not only in the Armed Services Committee but also, from the standpoint of commitment, in the Foreign Relations Committee, of which the majority leader is a member.

Mr. AIKEN. Mr. President, will the Senator from South Carolina yield to me without losing his right to the floor?

Mr. HOLLINGS. Mr. President, I am glad to yield to the Senator from Vermont.

Mr. AIKEN. Mr. President, the remarks of the majority leader, the Senator from Montana, are very timely and should be heeded and will be heeded, not only in this body but in the rest of the country as a whole.

I was at home on August 15 when the President made his unexpected and startling announcement relative to our national economy and the action he proposed to take. I think that, with very few exceptions the President's statement and proposed plan were very well received even by those who disagree with him on many, many other things. But there is also a feeling that this statement must be followed up by action without much delay. That action must not be a party issue, it must not be an issue between the Congress and the White House, it must not be an issue between industry and labor, because the stakes are too high and the situation is too serious to indulge in that kind of play.

It was only natural that other countries showed resentment at this statement. It came unexpectedly. They were surprised. Many of them thought it was directed at them, so they were not very happy. They do not feel very happy at having anyone in authority in the United States telling them how much they should revalue their own currency, which runs from 15 percent in Japan down to almost nothing in some of the other countries. But these other countries have a share in this responsibility themselves. They forced the President to take the action he did, in a way. They have in the past subsidized their own products through dumping them on the rest of the world, particularly the United States.

They have made internal restrictions against products imported from the United States which have been very costly to us and are largely responsible for the imbalance of our economic situation. Many of them have failed to observe the mandates of the United Nations while expecting the United States to fully observe those mandates.

Finally, I think Western Europe has to bear a great deal of the responsibility for forcing the hand of the President in doing what he did, because the time has now come, as the Senator from Montana has said, for Western Europe to assume the responsibility for their own defenses.

I agree with him that the next commander of the NATO forces should be a European.

The situation now calls for consultation and cooperation, not confrontation. There can be no delay if the damaging conditions of the 1930's are to be avoided, because what hurts the United States hurts these other countries as well, and even more. Reverting to fortress America is not in the interest of the United States. It could be popular at first. It is not in the interest of the rest of the world.

I am very, very hopeful that all nations, we share responsibility too, for the present situation and threatening situation in the world will be able to sit down together and work out fair and equitable trade agreements.

I do not want to see this country slide back into isolation, although there are people in this great Nation of ours who are advocating steps that would have that very result.

I think the Senator from Montana performed a real service, and I thank the Senator from South Carolina for yielding me time to say so.

Mr. MANSFIELD. Mr. President, I want to express my thanks to the distinguished senior Senator from Vermont and to assure him I appreciate what he had to say. I agree with him. There is much more I would like to say in view of the interest generated, but I do not want to intrude myself further on the generosity of the Senator from South Carolina.

#### RECENT TRIP BY SENATOR MANSFIELD AND SENATOR HOLLINGS TO EUROPE

Mr. HOLLINGS. Mr. President, I wish to join in the distinguished leader's report to the Senate on our recent trip to Europe. I should say at the outset that the majority leader appeared in several of the capitals of Europe just as I appeared—an individual Senator expressing individual views and learning from the experience gained. However, the man from Montana is too well known and too highly regarded to appear as an individual Senator. Whether it be the President of the country in Finland or Italy, whether it be the King of Morocco or the Prime Minister or Foreign Minister in Sweden, Norway, Denmark, or France, the majority leader appeared as the leader of the U.S. Senate. And I should emphasize, having participated in each conference, that MIKE MANSFIELD left his politics at home. At no time did he speak in a partisan way. The regard for Senator MANSFIELD as the true leader of the Senate rather than party leader was completely justified. Of course, my major role was to listen. I enjoyed listening and returned from the trip effusing pride in Senator MANSFIELD and in our United States.

My main concern for the Appropriations and Commerce Committees was to test the reactions to President Nixon's economic and trade policy; to study closely our troop commitment in Europe; to test the Nixon initiative toward

the Peoples Republic of China; and to gauge the reaction to the Nixon policy in the Middle East.

I find our European partners sophisticated, knowledgeable, and understanding. Contrary to the clamoring headlines of the European press in late August, their government officials quietly expressed understanding of our economic plight here in the United States. They know that you should not kill the goose that laid the golden egg. They realize that they have been the beneficiaries of the golden egg Marshall plan, and they know full well the economic strains of our defense, aid, and domestic policies. Those policies had just about cooked our goose here at home. European leaders realize that President Nixon had to do something. They did not quite understand, however, why the policy reversal had to be announced so dramatically. I have the feeling that the test of the American Government abroad is the same as it is here at home. It is a test of credibility. While we wonder at home whether or not Government can respond, they wonder abroad whether or not we can be relied upon.

France and Great Britain were stung at the time of the Suez crisis. Eastern Europeans were misled by American talk of "captive nations" and the liberation of Europe. When the Hungarian revolution came along, however, our performance did not bear out our rhetoric. The recent sudden moves on mainland China caught Europe off balance just as much as it caught Washington off balance. The sudden move to impose a 10-percent surcharge, in light of our present mood of withdrawal, raises a red flag in their mind of "What is next?"

It was good, then, to be with Senator MANSFIELD to assure the various leaders that the United States had no intention to withdraw into its own shell. Senator MANSFIELD and I both emphasized President Nixon's statement in Springfield, Ill., that we were not going to build a wall around the United States; that we were not escaping into isolationism or neoisolationism; and that we were not reverting to protectionism in the Congress of the United States. In trade matters, I emphasized that since the economies of Europe had been revived and are fully competitive, we in the United States want to compete fairly. In order to do so, our economy must be viable. Our exports have to be brought more in line with our imports. I stressed that we did not wish to impose a unilateral solution. Senator MANSFIELD stated that America was not looking so much for leaders in the world as for equals—that nations should be able to meet on the same level and deal freely as equals. And, of course, the burdens of freedom must be borne more equally.

Here I would emphasize Senator MANSFIELD's support of the North Atlantic Treaty Organization. The Senator, of course, needs no one to explain or elaborate for him, as we all know. But as a third party I can emphasize that the author of the Mansfield amendment is no opponent of NATO. Nor does he advocate a complete withdrawal of American troops from Europe. He so stated in each

of the European capitals we visited. He stands firm for a graduated and orderly withdrawal, for a substantial cutback of troops and dependents. He wants to adapt NATO to the needs of the 1970's, not the antiquated needs of the 1940's and 1950's. He repeatedly stated his personal view of the value of NATO and his belief that we give it support sufficient to leave no doubt about the American commitment.

I did find apprehension on this point from the leaders of the nations we visited. And I also discovered a certain myopia on their part. They enthusiastically support the Nixon doctrine insofar as it applies to the East, to the Orient. But they still seem to want a Marshall plan for the West, for Europe. Norway is proud, for example, that no foreign troops are on her soil, but she does not want any withdrawn from the German soil.

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

Mr. PROXMIRE. How much additional time does the Senator wish?

Mr. HOLLINGS. Three minutes.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin is now recognized.

Mr. PROXMIRE. I yield 3 minutes to the Senator from South Carolina.

Mr. HOLLINGS. I am grateful to my friend from Wisconsin.

Senator MANSFIELD and I both talked in support of President Nixon's initiative toward the Peoples Republic of China, and in support of the Nixon policy in the Middle East. We found general approval for these policies in the capitals we visited. I will have a more detailed report on the troops in a later statement to the Senate, and I will also join in the general report of the delegation as Secretary to the International Parliamentary Union. To me this was one of the most meaningful of Parliamentary Union sessions, with some 900 delegates representing 65 countries. We tackled the knotty problems of refugees from Pakistan and of aid to the underdeveloped countries. These and other issues can best be described by the resolutions adopted by the conference.

In the many conversations I had with either President or Prime Minister or Foreign Minister or other leader, I attempted to give an accurate appraisal of America as she finds herself. I pointed out that in the 1950's our role was rebuilding the world as it rose from the ruins of the Second World War. In the 1960's, rightfully or wrongfully, we tried to act as the policeman of the world. But now in the 1970's, we find our largess depleted and our resources called into question. The issue of the 1970's is how do we govern here at home. No longer can we afford to act as policeman of the world, or as a global Santa Claus. Generally, in each of the European countries that I visited, they had no unemployment problem. We have. They had no crime problem. We have. They had no pollution problem, no health problem, no constant fiscal crisis. We have them all. They had no urban problem. We have. They have no race problem. We have. They have no welfare problem. We have. They have no drug problem. We have. They had no

maritime or shipping problems. We have. And, they had no war problem. We have.

Our task, then, is to put our own house in order. Until we do that, we will be unable to make our maximum contribution toward the making of a better world for all mankind. And unless we do that, we will betray the hope and the promise that have always been America.

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

Mr. HOLLINGS. I yield.

Mr. MANSFIELD. Mr. President, let me say it was a distinct privilege and honor for me to have the opportunity to travel in the company of the distinguished Senator from South Carolina. I wish to state for the RECORD that he did a great deal of intensive work, especially in the Scandinavian countries, on the matters of health, medical care, hunger, and employment and other social questions. I look forward with anticipation to what he will have to report. May I say that I was tremendously impressed with the way the Governments of Finland, Norway, Denmark, and Sweden took care of the medical needs of their old people at such little cost, in some instances without charges. The services were paid for in taxes, but the disparity was striking between the care given to the people in Scandinavia and the lack of care which is too often the case with people in this country.

Mr. HOLLINGS. I appreciate the Senator's statement, and I would respond that I shall report further, but I am now on the graciously tendered time of the Senator from Wisconsin, so I conclude by thanking him.

Mr. PROXMIRE. I thank the Senator.

#### WHY WE DO NOT NEED THE F-14 FIGHTER

Mr. PROXMIRE. Mr. President, the bill which was pending and has been set aside is the military authorization bill. One of the most controversial programs in that bill, and certainly one of the most expensive in the long run, is the F-14, the fighter aircraft carrier plane, which will be the subject of considerable debate, and I should like to speak on that for the next few minutes.

Mr. President, there are many issues to be resolved in deciding whether to buy the F-14, but they reduce themselves essentially to two.

First, how reasonable is it to build an airplane, equip it with a terribly complicated and expensive air-to-air missile, and then stick it on an attack aircraft carrier to protect that carrier and its task force from the spectrum of threats which the Soviets can throw against them?

Second, how reasonable is it to rely on that airplane, with all the performance compromises caused by carriage of that missile, as our next generation Navy fighter?

These are the questions I want to answer. I will talk today about the Phoenix missile and the fleet air defense mission of the F-14. I will then address myself in a few days to the dogfighting capabilities of the F-14 and several of its competitors.

#### SUMMARY

These are the points I hope to make today:

First, the vulnerability of the attack carrier has reached the point where it is as obsolete today for a war at sea with the Soviet Union as the battleship proved to be for World War II. The carrier could not stand up to a concentrated Soviet attack against it. Even if it could, it could not be resupplied to carry out its offensive operations.

Second, there is no substantial evidence that the more than 10-year-old, yet still untested, Phoenix missile system could give it a new lease on life. The Phoenix probably could not handle the Soviet bomber threat against which it was designed, let alone those facets of the overall Soviet anticarrier capability which have been expanding in recent years.

Third, only the Soviet Union has the power to neutralize our carriers. China does not, nor do the lesser powers against which we might be involved. Therefore, we should plan now on a force level of nine attack carriers and the systems needed to defend them in conflicts where Soviet naval forces are not involved.

Finally, I will add a caveat: If these arguments are not accepted—if we do want to provide fleet air defense against the Soviet anticarrier threat—we do not need the F-14 to do it. There are other equally effective yet much less expensive alternatives available. We could put the new Sparrow missile on either a modified F-14 or the F-15, or we could put the Phoenix itself on a modified A-6. In addition to saving money, these approaches would give us what the F-14 does not—a chance of getting the first-rate Navy fighter which our national security may require.

#### I. THE BASIC VULNERABILITY PROBLEM

The main function of attack carriers is to serve as floating air bases, which can be used to provide tactical air support to deployed land forces. No respectable defense expert has ever questioned the need to maintain some aircraft carriers for this purpose. The carrier debate has focused instead on important subsidiary issues: how many carriers do we need and in what kinds of conflicts do we plan to use them?

The relative costs of land-based and sea-based tactical air forces and the uncertain availability of land bases in other countries are important factors to be considered in answering this question. But the most critical factor of all is the growing vulnerability of our carriers. It goes without saying that we should not employ our carriers in situations where they and the aircraft on them are certain to be neutralized or destroyed.

The Navy argues correctly that it is very difficult to sink an aircraft carrier and that no modern carrier—*Essex* class or later—was sunk in the Second World War. But the significance of this admitted truth should be placed in context at the outset. It is true as far as it goes, but it does not go very far.

The fact is that it is comparatively easy to damage a carrier enough to make flight operations impossible and force the

ship to return to port for a long period of time for repairs. In anything but a very protracted conflict, to force a carrier out of action for 3 months or more would be almost as good, from the enemy's point of view, as sinking it.

#### WORLD WAR II EXPERIENCE

It is against this background that World War II experience should be evaluated. As one former defense analyst has noted:

In the Second World War, 60 percent of the carriers that took one hit by a Kamikaze and all the carriers that were hit more than once were forced to return to port for repairs. New carriers with improved damage control features that came into action toward the latter part of the war—Essex class and later—did not fare any better.

The anticarrier weapons available today to the Soviet Union are a lot more sophisticated than the Kamikaze tactics of World War II. In testimony last year during the joint hearings on the CVAN-70 aircraft carrier, the Navy listed the following threats to the carrier in the following alleged order of their severity today: nuclear weapons, submarines with cruise missiles, long-range bombers with cruise missiles, cruise missile-equipped surface ships, tactical aircraft, long-range bombers with conventional weapons, gun equipped ships, and ballistic missiles.

Granted that we must size all our conventional forces on the assumption that nuclear weapons will not be employed at the outset of a conflict and granted that some of the latter threats can probably be defeated, the list is nonetheless impressive.

#### SUBMARINE TORPEDOES

Interestingly enough, one threat not included in the Navy's list is submarine torpedoes, one of the oldest and surest forms of enemy attack against any surface shipping. Submarine torpedoes were used with devastating effect by the Germans in World War II, as indicated in more detail later. The Russian submarine force today is about seven times as large as the force with which the Germans entered World War II. Moreover, these submarines are a great deal quieter and more difficult to detect than the German subs. Using wolfpack tactics they would have a significant chance of penetrating close enough to our much more detectable carriers to launch their torpedoes against it. These torpedoes, now of the acoustic homing variety, will still wreak substantial damage. The Navy's devotion to its own Mark 48 torpedo program itself makes the point rather well.

Moreover, these advances in anti-carrier weaponry have been accompanied by advances in the surveillance capabilities needed to bring these weapons to bear. Satellite and long-range aircraft reconnaissance have greatly reduced the ability of naval task forces to hide in the broad expanses of the oceans. More sensitive submarine sonars and higher speed submarines make it much easier for submarines to find and attack the carriers.

For all these reasons it is virtually impossible today to find a single defense expert outside the Navy who believes that our carriers could effectively survive a

determined onslaught by the Soviet Union even with nonnuclear weapons.

Many observers have noted, for example, that four or five hits by Soviet cruise missiles—whether from aircraft, surface ships, or submarines—would force a carrier to retire. Similarly it has been suggested that a few hits on the carrier's four screws by submarine-launched acoustic homing torpedoes would cause enough loss of propulsion power to make normal flight operations impossible and to greatly reduce the carrier's ability to avoid further damage.

#### ANTISUBMARINE LIMITATIONS

The problems of defending against this limited number of hits has also been pointed out. The effectiveness of anti-submarine warfare—ASW—measures in any particular engagement is limited by the inherent variability of the underwater acoustic environment and the unreliability of sophisticated sonars. Anti-air warfare—AAW—improvements are likely to be overwhelmed by improvements in offense, such as higher speed and lower altitude missiles. The net effect is that both types of defense can cause substantial enemy attrition over a long period of time but cannot provide strong assurances that a carrier could survive a determined attack.

And that is precisely the kind of attack which the Soviets would throw against them. Testimony to Congress by Navy spokesmen in recent years has stressed the Soviets' growing anticarrier capability. Attempts have also been made to calculate the effects of a concentrated attack against the two or three carriers we could hope to have deployed somewhere at any one time.

One such calculation is set forth in the Brookings Institution analysis of the fiscal 1972 defense budget. It suggests that the modest Soviet bomber force alone could completely neutralize our carriers:

This fundamental point is worth elaborating by a purely illustrative and highly simplified model. Suppose the USSR is willing to expend twenty-five bombers, each capable of carrying one air-to-surface missile, and their fighter escorts, in order to disable one carrier. (The Soviets have in their naval aviation force some three hundred ASM-capable bombers, whose primary mission would be to attack U.S. carriers.) Suppose also that the ASMs have 80 percent reliability and, very optimistically, that our fighter defense would have a 40 percent chance of shooting down a bomber in a single engagement and our surface-to-air missile systems (SAMs) an 80 percent probability of shooting down an incoming ASM. With these assumptions, the bombers would get six hits on the carrier, more than enough to force it to retire. Less optimistic assumptions on defense would sharply reduce the number of bombs needed to put a carrier out of action.

If anyone thinks this is an exaggerated analysis, let me stress its assumption that each Soviet bomber is capable of carrying but one ASM. According to testimony last year in the CVAN-70 hearings, some of these Soviet aircraft have a multi-missile capability.

Another calculation, by former defense official Leslie H. Gelb in testimony before the Senate Defense Appropriations Subcommittee this year, reached even more

pessimistic conclusions. Gelb's calculations were based on the realistic assumption that the Soviets would not rely on their bomber force alone but use submarine cruise missiles and surface-to-surface antiship missiles as well:

The Soviet Union would, in all probability, launch a large number and variety of missiles against our carriers. Assuming the carrier defenses against this attack could destroy as many as 80 percent of the incoming missiles (and this is a very optimistic assumption), the probabilities amount to a virtual certainty that our carrier would take about a dozen hits. . . . Recent tragic experience with the Forrestal and Enterprise—where in each case an accidental firing of one of our rockets led to many deaths and extensive damage by fire and explosion—indicate how little it might take to put a carrier out of operation and force it to retire.

And some analysts suggest that these calculations are conservative, that even one well-placed hit might put a carrier out of action. They note that carriers have to be moving into the wind at a fast clip to permit normal flight operations and that one hit alone might prevent this. They also note that the Soviets might use incendiary cluster bombs as the warheads of their cruise missiles and that one such missile could wipe out most of the aircraft sitting on the carrier's deck. Even more conservative is the complete omission of the torpedo threat.

#### NAVY INITIATIVE TO CRITICISM

None of these arguments are new, however. The carrier debate has raged for years, with little apparent effect within the Navy itself. The Navy admits the increasing vulnerability of its carrier force, but refuses to admit that the danger point has been reached. It cites the defenses of the carrier against possible attack. It notes that all carriers present mobile targets, and that nuclear carriers have unlimited endurance at high speed. And it cites the extensive protection features, such as armor flight decks and torpedo side protection systems, designed into our latest carriers.

I am simply not persuaded by these arguments. Little confidence should be placed in a carrier's 30-knot speed as a means of preventing detection of its position—particularly in view of the tremendous increase in underwater noise generated at this speed. Moreover, the carrier can maintain this speed for extended periods only if it foregoes the protection of its slower escorts and while not conducting flight operations. As far as carrier protection features are concerned, great progress was made during the course of World War II, but developments since have been much slower, since there was really little more left to do.

I am firmly convinced that our carriers are already sitting ducks for the kinds of multiple attacks the Soviets could mount against them. And whatever the situation which exists today, it will clearly be worse yet when the new nuclear carriers already under construction finally enter the fleet.

#### II. THE PROBLEM OF RESUPPLY

Nonetheless, I would like to turn briefly at this time to one element of the carrier vulnerability problem which has received too little attention to date. The vulnerability of carriers on station

against the Soviets is bad enough. But the vulnerability of their logistics systems and the carriers themselves in the process of being supplied is actually a good deal worse.

The Navy itself has recognized as much.

First, Admiral Holloway on the comparative aspects of the problem: During the CVAN-70 hearings last year—

All ships are vulnerable to the anti-ship missile. Most vulnerable are the unarmored tankers, ammunition ships, and troop carriers which support our overseas allies and our own deployed forces. Also vulnerable are our attack carriers, but due to their high speed, protective armor, and self-defense capability, attack carriers are the least vulnerable of any of our forces at sea.

Next, Admiral Rickover on the actual magnitude of the supply ships' problems, in testimony earlier this year to the Joint Committee on Atomic Energy:

*The World War II experience.* "I am sure you remember the large number of tankers sunk in World War II by German U-boats—submarines that were much slower and far less capable than those the Soviets have today. Moreover, Germany started the war with only 57 submarines. The United States lost over 130 tankers in the Atlantic Campaign, mostly to German submarines. By mid-1942 the situation was desperate. So many tankers were being sunk that the supply of military fuel to Europe and the Pacific was threatened. Then, too, the deciding factor in our defeat of Japan—also an island empire—was the ability of United States submarine and air forces to interdict the flow of oil from overseas to the Home Islands; this strangled Japan's industrial and military effort and brought about her collapse.

*Tankers then and now.* "During World War II we had a large number of small tankers. Most tankers were of 10,000 to 15,000 tons full load, with the largest about 25,000 tons. Therefore sinking a tanker at that time did not have anywhere near the impact as would be the case if one of the large tankers we have today were sunk. Presently, many tankers are over 100,000 tons, and plans are being made to build tankers of 500,000 tons and larger. One such tanker carries many times the oil of the World War II tankers; also they offer a much larger target and so can be sunk more easily.

*Present military implications.* "The great vulnerability of surface warships results from operating restrictions required to conserve propulsion fuel and to supply the propulsion fuel. The refueling ships must steam at slow speeds and on fixed courses. They would be "sitting duck" targets for attack by torpedo or missile firing submarines. Further, the fuel oil must be brought to the warships by tankers which themselves are slow targets vulnerable to enemy submarines and air attack.

"As I see it, in a war the Russians would immediately sink the tankers, which would immediately shut off oil supplies to Western Europe and to our oil-powered forces at sea. It would then make no difference what supplies we tried to get across. Without propulsion fuel modern armies are powerless. In a short time prepositioned fuel would be used up and we would be facing overpowering odds. . . . Ships with short cruising radius will not survive a war with the Soviets."

These are rather forthright statements and it is important to recognize the purpose for which they were made. Actually, they form the backbone of the Navy's argument that any future carriers we build—and their escort ships as well—

should be nuclear-powered rather than conventional models.

#### NUCLEAR SHIP LIMITATIONS

Nuclear ships, the Navy argues, are not dependent on external fuel for their own propulsion. They can transit the oceans to a new station at high speed and without refueling. They can hold these stations without the periodic reductions in a task group's readiness which would be occasioned by refueling. Tanks otherwise used to store carrier and escort fuel can carry aircraft fuel instead. And the higher speeds of nuclear ships reduce vulnerability and increase target coverage.

But while the Navy points out the great difficulties of resupply operations at sea in order to shore up its case for more nuclear-powered surface ships, it fails to call any attention to another implication of these difficulties.

Nuclear-powered carriers may not need refueling to propel themselves, but they must be supplied with aircraft fuel and ammunition if they are to provide any punch in the first place. And the supply problems here are every bit as grave as the tanker problems to which the Navy admits.

There is no single answer to the question of how long a carrier can go without being resupplied with aircraft fuel and ammunition. Nuclear carriers have twice the capacity for aircraft fuel and 50 percent more for ammunition compared with conventional carriers. And any carrier's consumption rates are obviously going to depend on the intensity of the operations conducted.

But in conflicts involving the Soviet Union the operations would be intense, perhaps approaching one sortie per day at maximum gross weight of ammunition and fuel for each aircraft on the carrier. Even granting the differences between carriers, the simple fact of the matter is that no carrier could hope to keep operations going under these conditions for more than a few days at a time.

The precise time involved is not important, but its relative shortness is critical. After only a very short time, the carrier would be in need of resupply, and its logistics system—composed of underway replenishment ships, tankers, and ammunition boats—would be subject to all the difficulties of other surface shipping. These supply vessels would move slowly, having to be refueled, and without the many defensive systems protecting the carriers themselves.

#### HOW DO WE GET SUPPLIES THROUGH

The implications are devastating. Even if we could succeed in protecting our carriers through multibillion-dollar investments in sophisticated defensive gear, we would still be unable to get through to them the supplies needed to permit continuation of the offensive operations they provide. The front door might be guarded, but the back door would still be ajar.

Suppose that a few supply ships did get through, Navy statements above notwithstanding. Our carriers would have to reduce their own readiness in order to be supplied. They would have to leave

their stations, move to a replenishment area out of range of land-based enemy aircraft, and then slow down for the actual transfer.

At this point they would still be in range of Soviet submarines, with both their acoustic homing torpedoes and their cruise missiles. It is clear from published sources that these missiles, touted by the Navy as the most serious threat to the carriers, can be launched from a submerged position, many miles away, on the basis of intelligence received. With the missile traveling at the speed of sound, probably undetected before launch—we cannot have ASW planes everywhere at the same time—it poses a formidable threat indeed.

#### III. FLEET DEFENSE AND THE F-14

Much more could be said about the vulnerability of attack carriers. But where does the F-14 fit into this basic picture?

The Navy's interest in providing its carriers with a means of defense which would permit their use in high intensity—even nuclear—conflicts with the Soviet Union dates back a good many years. In the 1950's the main concern was Soviet employment of their new nuclear capability against the carriers.

It was clear even then that a single nuclear weapon delivered anywhere in the vicinity of a carrier would wipe out an entire task force. The Navy desperately wanted a weapon that would destroy 100 percent of the Soviet's missile launching bombers—then the chief nuclear threat—in a massed attack against the task force. The original proposal was called Eagle-Missileer and work was started on it in 1958. The F-14 is a rather straightforward outgrowth of that work.

The Missileer was a low performance, long loiter aircraft capable of functioning as a missile platform, and its objective was the simultaneous tracking and firing of six missiles against the postulated threat of massed Soviet naval bombers. The Eagle was the missile it would launch.

Eagle-Missileer was canceled in 1961 due to technical infeasibility, and a similar verdict was soon pronounced on the use of carriers in any future nuclear wars. But the Navy never abandoned its basic concept for the missile. As our conventional forces were beefed up in the early 1960's, the Navy resubmitted its requirement for an antibomber fleet air defense missile to protect the fleet against the new threat of nonnuclear bomber attack in the performance of its tactical air support role.

#### THE PHOENIX

Appropriately enough, the new missile was named the Phoenix, and until 1968 it remained tied to the ill-fated F-111B airplane. This is neither the time nor the place for a complete analysis and apportionment of blame for the TFX fiasco, but a few words are necessary to place in context the decision to proceed with the F-14.

Whatever the wisdom of Secretary McNamara's insistence on a single plane to meet the Air Force's desire for a deep interdiction bomber and the Navy's de-

sire for a fleet air defense interceptor, the Navy was opposed to the F-111B from the outset. One of the initial concessions it extracted in return for participation in the program was the right to incorporate in the new plane both a new version of the canceled Eagle missile and the canceled TF-30 engines which had been developed for the Missileer.

Little consideration was given by anyone at the time to the dogfighting capabilities of the new plane. The F-111B was regarded simply as an interceptor. The main advantage it offered over the Missileer was a significantly increased speed and acceleration capability which was intended to enable it to get into its intercept position more quickly than the old plane. The Phoenix itself could shoot everything out of the sky, the Navy said, so forget maneuverability.

It would not be unfair to say that the Navy first became concerned with the dogfighting capability of the F-111B when it saw this as an opportunity to kill the plane and get a true Navy aircraft of its own. Working together with several aerospace companies, such as Grumman Aircraft Co.—then a subcontractor to General Dynamics on the F-111B—it encouraged the design of new airplanes which would still carry the Phoenix missile but also be better dogfighters than the F-4 Phantom, then and now our first-line Navy fighter.

The improved capabilities of alternative planes—and the technical problems with the F-111B—were argued vigorously in testimony on Capitol Hill, and in 1968 both the Senate and House Armed Services Committees deleted all funds for the F-111B from the budget. Working feverishly, the Navy then saw to it that a contract with Grumman for the F-14 was rushed through before the Nixon administration could carefully review if after taking office.

#### STILL AIR DEFENSE INTERCEPTOR

The F-14 is thus the third Navy plane to carry the Eagle-Phoenix missile and to be powered by a version of the TF-30 engine. And it is still primarily a fleet air defense interceptor. After the F-111B was killed, the Navy never seriously evaluated the possibility of incorporating a Phoenix fleet air defense missile capability in a first-rate fighter aircraft. But this was then and remains now a technical impossibility, as I hope to explain in a few days. Unfortunately, our need for a first-line carrier-based fighter to replace the F-4 is a good deal greater today than in either 1958—when the F-4 was itself in development—or 1968.

Another thing which has changed since 1958 is the nature of the Russian threat to our carriers. What was envisaged then was a dramatic increase in the number of Russian naval bombers, the threat against which the Phoenix was designed. While there is extreme doubt whether the Phoenix could handle the Russian bomber threat which exists today, that threat has never expanded as predicted for the past 10 years. As House Appropriations Committee Chairman GEORGE MAHON noted in 1968:

The bomber threat against the fleet, as you know, has been predicted by Navy officials for some time. It has, of course, not developed to date.

What has developed is the many faceted threat described earlier. It is worth evaluating the role of the Phoenix in the spectrum of defenses we have now erected against this threat to see why it would almost surely be ineffective.

Let me explain what is wrong with the Phoenix. The Phoenix is a long-range air-to-air defensive missile, which the Navy claims will be capable of destroying "multiple targets in a heavy electronic countermeasures environment in all weather conditions." It will be guided by the F-14's AWG-9 fire control system, which is also designed to handle six single-shot Sparrow missiles.

According to the Navy, the Phoenix already has an enviable test record on which to stand, with a success record of approximately 70 percent in the 40 or so firings to date. This claim deserves some rather careful scrutiny.

In the first place, Navy statistics do not include the substantial number of unsuccessful firings in which the missile never left the launch rail because the launch system failed prior to the actual launch. These failures, which should obviously be included on any realistic score sheet, must be carefully distinguished from the much smaller number of recorded "no test" firings—firings in which the missile was launched but failed to hit its target due to defects in the test conditions not related to the missile system itself.

#### ARTIFICIAL TESTING

Moreover, all the tests conducted to date have been engineering tests, held in a laboratory-controlled environment, and almost all have been against single targets with artificially augmented radar signals and little or no maneuvering capability. Operational tests, under conditions representative of actual combat experience, have yet to begin. Due to the incredible amount of concurrency in the whole F-14 program, these operational tests are not scheduled to be completed for another several years, by which time any decision on the F-14 will long since have been made.

Finally, this terribly artificial test program has itself been very limited in scope. Virtually all of the test firings to date have been tests of the old AWG-9 Phoenix system developed for the F-111B. The new version for the F-14 has more than one-third less weight and has been completely redesigned for tandem seating and to accommodate the Sparrow missile.

And despite the Navy's claim that the system will be capable of near simultaneous launch against up to six widely separated targets, no more than two simultaneous firings—even of the old version—have been attempted at any time to date. Thus it is difficult to evaluate the argument of some critics that the AWG-9 tracking capacity would be swamped if it ever attempted to fire six missiles simultaneously in the presence of one or two dozen targets on the radar scope. Yet even in the last multi-shot test, one of the two missiles missed its target.

#### THE SPARROW EXPERIENCE

But one need not dwell on the scarcity of test data on the Phoenix. It is really quite similar to other air-to-air missiles which have entered our inventory in the

past several years. Some of these missiles had initial test records every bit as promising as the Phoenix but exhibited serious deficiencies when used in Vietnam. Our experience with the Sparrow missile is instructive in this regard. It is a radar guided missile like the Phoenix, but somewhat less sophisticated and expensive. The present version of the Sparrow costs \$40,000\*per shot, the Phoenix \$400,000.

One problem the Sparrow has had has been its inability to distinguish between friendly and enemy targets. It has been designed for launch at a range of roughly 15 miles, well beyond the range of visual contact. Unfortunately, its radar system can pick up aircraft blips at this distance, but cannot tell who the blips belong to.

This has had a significant effect on use of the Sparrow in Southeast Asia. Despite the fact that it was designed for stand-off launch, orders have been in effect prohibiting its standoff use at times when friendly aircraft might be present. Until billions of dollars had been spent, nobody realized that we would not be able to fire at will on nonresponding radar blips—because they might be Laotian airliners flying to Hanoi or Air Force planes not tied in to the Navy's communications system. And part of the reason for the Sparrow's poor record under visual launch conditions has been the fact that many of these launches were from inside its minimum effective range.

Another problem of the Sparrow has been its poor reliability—its failure to even launch and fly. The artificial nature of its initial test program has been only partly responsible. More important has been the fundamental complexity of design which made it unable to withstand rigorous combat handling procedures.

When conditions did permit its use and it was able to be fired, the Sparrow and its radar search system may have scared away as many enemy aircraft as they found. The explanation is simple. One of the problems of all airborne search radars and active radar missiles is that they broadcast their position for miles around, thus alerting enemy aircraft to their presence.

#### LIMITATION OF AIRBORNE RADARS

Moreover, these airborne radars have an effective search pattern only in a very narrow cone directly in front of the airplane and cannot locate more dangerous and undetectable targets flying elsewhere. As a result, enemy aircraft guided from the ground have been able to avoid this narrow search pattern and pop up unsuspected and undetected on the tails of our aircraft.

When we have in fact acquired enemy aircraft—almost always visually—they have often been able to outmaneuver the Sparrow by hard turns at normal combat g's. This has been the result of inherent physical limitations in the maneuverability and response times of the missiles themselves.

Finally, the Sparrow has shown itself susceptible to simple electronic countermeasures which degrade its performance.

The actual performance record of the Sparrow in terms of targets killed per firing remains classified, but this much can be said. Due to the target differentia-

tion problem, it simply has not been used much of the time under the conditions for which it was designed. When it has been used, its demonstrated performance has been only 10 percent as good as the performance originally expected.

#### PHOENIX NO IMPROVEMENT

There is every reason to believe that the Phoenix will fare no better and might fare worse. Much of what has just been said is directly applicable, but let me cite a few particulars.

First, one of the advertised advantages of the Phoenix is its significantly longer range than the Sparrow. According to the DMS Market Intelligence Report:

Phoenix was initially intended to have a range of more than 200 nautical miles, but has since been scaled down to an estimated 80 n.m. range.

Yet tests conducted by Hughes Aircraft Corp., manufacturer of the Phoenix system, confirm that it has no capability against maneuvering targets over the shorter stretches of its range. Beyond a certain point, the tests showed, the Phoenix rocket motor burns out and it cannot get the maneuver energy needed to keep up with a target which can quickly change directions.

Second, hardware tests at the Naval Weapons Center's Corona Laboratory have shown that the Phoenix can be effectively countermeasured by simple low-power techniques.

Third, a study has been conducted which indicates that the Phoenix will have severe reliability problems due to many of the same complexity of design features which have made the Sparrow unable to withstand rigorous combat handling procedures.

Fourth, the very nature of the F-14's dual role as fighter aircraft and fleet defense interceptor aggravates the target discrimination problem; that is, distinguishing friendly aircraft from foes. About the only time a long-range Phoenix launch could be used to protect the carrier is when there are no friendly attack aircraft or F-14 escorts carrying out tactical air operations from the carrier. But one of the main reasons for having and protecting carriers in the first place is to conduct such operations.

Opinions differ as to whether a solution to this identification problem will be found, but there is no demonstrated solution yet in sight. And even if a secure and reliable communications system were established between our own airplanes, it would still be very risky to fire at will against unresponding radar blips in all theaters. Crowded areas like the Mediterranean, for example, would still contain friendly aircraft not tied in to our communications system. The E-2C—essentially a Navy AWACS—might keep track of some of their movements, but it is far from foolproof and terribly vulnerable.

#### EXPANDING U.S.S.R. CRUISE MISSILE THREAT

These deficiencies would be serious enough if the Phoenix had nothing but Russian bombers to defend against. But they would be magnified if it were pitted against the expanding Soviet cruise missile threat, to say nothing of the highly

maneuverable fighter aircraft which would be well within range of a carrier in the Mediterranean.

As far as cruise missiles are concerned, there must be doubt in the first place whether the Phoenix would have the maneuverability to correct for errors in its estimates of their direction and velocity. Even if it were successful in meeting its design specifications against high speed, low flying targets with small radar cross sections, the F-14 would have to be in a narrow cone directly ahead of the missiles if it were to see them at all. The search patterns of airborne radars, it should be noted, is especially limited in the look-down mode. It is also significant that the more clutter suppression one designs into such a radar, the more vulnerable it will be to countermeasures.

But let us suppose that these problems were solved. The Russian bombers might still be able to defeat the system by a simple choice of tactics. A simple example, without specific numbers, will suffice to demonstrate the point.

#### LIMITED F-14'S

We will have only a limited number of F-14's aboard a carrier and only a handful—with a maximum of six Phoenix missiles each—will be in the air at one time. Against these F-14's the Soviets could concentrate a significantly larger number of naval bombers, since the bombers could strike at a time of their choosing and would not be on serial airborne alert. These bombers could then be deployed in waves, the first bombers exhausting the limited number of missiles in the air and the next wave moving in on the carrier before reinforcements reached the scene. These tactics would be aided, moreover, if the bombers were able to maneuver out of the way when warned that a Phoenix was coming, if they were preceded by more maneuverable fighters, if they carried the jamming equipment we already know works, or if a few submarine-launched missiles were used to create a diversion.

There is one other related point. If a war at sea ever did break out between the Soviet Union and the United States, it would probably be initiated by a surprise Soviet attack on our carriers, at a time when their defenses were low. We have worked very hard since the dawn of the nuclear age to minimize the chances of any direct engagements with the Soviets, and it is very unlikely that we would initiate one. Such an engagement would probably come, therefore, only if we miscalculated the Soviet response to one of our actions or if the Soviets made an irrational and unprovoked move of their own. Under these surprise-attack conditions we could expect only a small fraction of the F-14's aboard a carrier to be either in the air or serviced for immediate use.

#### STAGGERING COSTS OF PHOENIX

I have purposely saved until last a discussion of the staggering costs of the Phoenix and its fire-control system. When the missile first rose from the ashes in 1962 and became a part of the F-111B program, total development costs, according to DMS Market Intelligence report, were estimated at \$175 million.

They have now risen, the report says, to well over \$500 million and development is far from complete.

More worrisome are the likely production costs of the Phoenix, already estimated at \$400,000 per shot, without any allowance for deficiency correcting modification costs. Another factor which could drive costs upward is a smaller than anticipated Phoenix buy. Published estimates of the buy have ranged from a low of 1,400 to a 3,700 high, with the lower part of the range associated with the small F-14 buy which is probably inevitable even if the program continues.

It cannot be stressed too much that the cost of one F-14's six Phoenix missiles, even at the \$400,000 price, would be \$2.4 million. That is the approximate price for three Mig-21's and for one of our own F-4 fighters. And this would be in addition to the \$16 million price tag on the F-14 itself.

Actually, the high costs of the Phoenix would do more than affect our pocket-books. They would also have an adverse impact on the already poor effectiveness of the missile.

For one thing, these high costs would inevitably affect Navy training programs for the Phoenix, just as training programs for the Sparrow have been affected by its comparatively cheaper costs. With the costs of each Phoenix firing approaching a half million dollars, very few Navy aviators would be allowed even one training shot. Most of their training would consist of dry runs, where they locked on targets with the AWG-9 system and then pressed the button which in battle would launch the Phoenix. There would be some value in this limited training, but it would not inspire confidence for combat use.

#### ENORMOUS MISSILE REQUIREMENT

Moreover, it is doubtful whether any purchase within the 1,400 to 3,700 range now contemplated would provide us with the number of missiles combat could realistically require. A buy of 2,000 missiles, for example, would give us only one full load for 300 F-14's, with 200 extra for training and spares. One full sortie per plane is not a very comfortable margin. Looked at another way, these 2,000 missiles would be wholly expended if 12 planes a day flew fully loaded sorties in a 30-day conflict with the Soviets—even if all the missiles somehow could be rushed to the scene.

I recognize that these calculations make no allowance for the fact that on many sorties some or all of the missiles would not have to be fired. It is highly unlikely, however, that all unfired missiles would actually be brought back on board the carrier. There are two aspects to this problem.

The first aspect concerns the degradation of its already limited dogfighting capability which the F-14 would suffer if it attempted to engage in aerial combat carrying a full load of Phoenix missiles. Navy planning for the F-14 fully recognizes that the extra weight and drag of these missiles would significantly degrade the plane's maneuverability. Accordingly, the Phoenix is designed to be carried in readily removable pallets, attached to the plane's fuselage. When

programed for a dogfighting mission, neither these pallets nor the missiles would be carried. And when they were carried for fleet defense purposes and a dogfight situation arose, they could be dropped in the ocean to maximize fighter capability.

This last prospect is rather disturbing. In the Mediterranean, for example, it would not be possible to operate out of range of land-based fighter aircraft when configured for the fleet defense mission. Under these circumstances, the F-14 could be set upon by enemy fighters at any time. When this occurred, the prospect is that \$2.4 million worth of missiles—more than the likely cost of the enemy aircraft itself—would be quickly released to the ocean depths.

#### CAN FLY LOADED—LAND ON CARRIER

The second aspect of the problem is more serious. Notwithstanding Navy statements that F-14 "design specifications require that any combination of fuel and unexpected ordnance up to a total of 10,000 pounds can be brought back aboard the carrier, "there remain serious doubts about the ability of the F-14 to land on a carrier with a full Phoenix load."

For one thing, Navy pilots have an understandable aversion to landing on a carrier with a dangerous ordnance load, especially in bad weather conditions, and might be tempted to lighten up.

Moreover, the weight of six Phoenixes and their pallets has been publicly estimated at between 6,000 to 7,000 pounds, which reduces to 3,000 to 4,000 pounds the margin of error remaining. This margin is reduced even further if allowance is made for necessary fuel landing reserves, dogfight missiles, and the cannon pallet, and it could be estimated altogether by weight increases on the plane. It is worth noting in this regard that the Navy is already projecting a 700-pound weight increase for the F-14, an increase which will be slightly more significant without the "B" engine, given its own lesser weight than the "A." Any further weight increases, perhaps necessitated by modifications work, could easily break the camel's back.

#### III. THE POLICY IMPLICATIONS

Mr. President, the vulnerability of the attack carrier has reached the point where it is as obsolete today for a war at sea with the Soviet Union as the battleship proved to be for World War II. The carrier could not stand up to a concentrated Soviet attack against it. Even if it could, it could not be resupplied to carry out its offensive operations.

Nor is there any evidence that the more than 10 years old yet still untested Phoenix missile system could give it a new lease on life. The Phoenix probably cannot handle the limited threat against which it was designed, let alone those facets of the overall anticarrier capability of the Soviets which have been expanding in recent years.

These considerations do not mean that we should retire all our carriers from the force. Only the Soviet Union possesses the spectrum of threats capable of jeopardizing the carriers. China could not do so, nor could the lesser powers against

which we might be involved. All these countries have is a small and obsolete bomber threat, a few old and noisy submarines—about 30 in the case of China—and possibly some new Soviet-provided patrol boats with their Styx missiles. They would also have some new fighters exported by the Soviets, but these could best be defended against by a new light-weight fighter of our own.

If we made the needed decision to size our carrier force for use in conflicts involving these countries, it would reduce to nine the force level required. This force level would allow one carrier to be continuously on station in the Mediterranean and two in the Pacific, or vice versa. Each of these deployed carriers could be reinforced during a crisis by one or two of the back-up carriers. In a war-time situation, an even larger number could be rushed to the scene.

#### BIG SAVINGS AVAILABLE

Such a decision would also permit a drastic reduction in the large number of programs now underway to protect the carrier, programs which make no sense except in terms of the Soviet anticarrier threat. Consider for a moment some of the presently ongoing programs designed to provide carrier protection against the Russian cruise missile threat alone:

The Condor missile, which can be fired from attack aircraft at long range against ships, patrol boats, or surfaced submarines;

The Harpoon missile, which is being developed to do the same job from our surface warships and from aircraft.

The E-2C long-range detection aircraft;

The S-3A carrier-based antisubmarine warfare aircraft;

The LAMPS helicopter which will operate from escort ships;

The AEGIS surface-to-air missile system;

The improved point defense missile system;

The close-in weapon system;

Advanced electronic warfare systems such as SHORTSTOP; and of course

The F-14 and the Phoenix.

Many of these programs—some with problems of their own—would not be needed to protect our carriers in non-Soviet engagements. In other potential conflicts, we could rely on a much less complex but probably more reliable set of defenses. The primary elements of these defenses would be simple electronic countermeasures, antiaircraft guns, and existing shipboard surface-to-air missiles. We might also want to keep reliable modifications of a few other systems in which we have invested so heavily.

#### ADVANTAGE OF SHIPBOARD MISSILES

As far as defensive missiles are concerned, it is important to recognize that any reasonably reliable shipboard missiles have a significant advantage over their airborne counterparts. They would not be chasing elusive aircraft and missiles on their way to other targets, but would instead be located with the targets themselves and have the much easier task of intercepting directly incoming missiles. We could complement these ship-

board missiles with a fleet air defense capability, but we would not need the F-14 or Phoenix. We could if we wanted to use the F-4 and the Sparrow. But all we would need against the few obsolete bombers of other countries is a good new fighter with antiaircraft guns and reliable missiles like the Sidewinder.

If steps of this kind were taken, significant economies could be realized and funds made available for other high priority Navy programs, such as submarine fleet expansion and programs to reduce the carrier dependence of our surface Navy itself. It makes little sense and is highly dangerous to keep concentrating our surface forces around an increasingly vulnerable focal point. Some means must be found to disperse those forces if their abilities are to be preserved.

#### IV. A FINAL CAVEAT

I have discussed the problem of carrier vulnerability and the failings of the Phoenix in such detail for three reasons.

First, the fleet defense mission is central to the basic rationale of the F-14. What the Navy has wanted for almost 15 years is an airplane from which to launch the Eagle-Phoenix to protect its carriers. The Missileer, the F-111B, and the F-14—all have been fleet defense interceptors above all else. Just how poor a fighter the F-14 is I shall explain in a few days. Its fleet defense syndrome is why.

Second, I wanted to explain in full what I think is a basic truth—that any money spent on air-to-air missile defense against the Soviet anticarrier threat will be money down the drain. It will be money diverted not only from important domestic programs, but from other defense programs which could serve our interests better.

Third, the fleet defense emphasis in the F-14 program is symptomatic of a far more pervasive problem in the Navy today. There are many other items in the Navy budget at this time which make no sense at all except in terms of the Soviet anticarrier threat. Money spent on them may be wasted too. We should keep this in mind as other carrier-related issues keep coming before us.

#### F-14 NO ANSWER IN ANY EVENT

But I would like now to make a final caveat. If, despite all the evidence of its futility, we still want to provide air-to-air missile defense of our carriers against the Soviets, we do not need the F-14 to do it. There are other ways which would be equally effective or ineffective, far less expensive, and which would not rob us of the first-rate Navy fighter our security may require at this time.

One approach would be to put the Phoenix itself on the A-6, one of the Navy's interdiction aircraft. This option was seriously considered by the Navy during the dying days of the F-111B. It might well have been chosen if so much emphasis had not been placed on the F-111B's own inability to carry the Phoenix and still be a fighter in the attempt to finish it off.

The A-6 would be similar to, but an improvement over, the old Missileer. It has all the range, loiter, and payload capabilities needed in a fleet air defense interceptor. It would be able, in all probability, to

loiter longer and to carry even more than the six Phoenix missiles carried by an F-14. The only possible advantage of the F-14 would be the greater acceleration it could provide. It is supersonic, while the A-6 is subsonic, so it would get into its intercept position faster. It is doubtful, however, that this advantage would ever matter. The F-14 itself would have poor acceleration with a full external Phoenix load, poor enough that it is highly doubtful that an F-14 not already on station could be brought to bear in defense against a fast bomber raid. The key to such a defense would be loiter time on station and here the A-6 would get the nod.

We already have a great many A-6's. We have been buying them for almost 10 years and 12 of the latest version, the A-6E, are included in this year's budget. The basic cost of an A-6 inframe, without avionics, is under \$3 million.

We could buy more A-6's for the fleet air defense role. With the AWG-9 avionics system substituted for the avionics now on board, the cost would be about \$6 to \$7 million per plane.

Or we could change avionics packages on some of the planes we now have. Another thing the Navy does not need is more interdiction aircraft. It already has about twice as many aircraft supporting the interdiction mission as it has fighters aboard its carriers, despite the limited payoffs of interdiction.

#### SOLVE DECK CROWDING PROBLEM

This restructuring of its aircraft mix would also solve any deck crowding problem which might result if we were to add both A-6 interceptors and a new fighter to the carrier air group. The real source of the crowding problem in any event is no longer the aircraft deck space available, but an inability to house the large number of maintenance personnel needed to handle the increasingly complex and difficult to maintain expensive new aircraft we like to buy.

Another approach would be to rely on the Sparrow missile for fleet air defense. It might actually be better for the job than the Phoenix.

I spoke earlier about the performance record of the Sparrow in Vietnam. It should now be noted that Raytheon Corp., manufacturer of the Sparrow, is at work on a completely new version—the AIM-7F—which hopefully will solve some of its problems. The new version is expected to have fully twice the maximum range of the old, as well as a shorter minimum range to permit use under conditions when the presence of friendly aircraft prevent its standoff launch. It will be solid state and will fly dormant until activated just prior to launch in an attempt at better reliability—its ability at least to launch and fly. It is hoped it will have much greater capability against maneuvering or high-speed enemy targets. These points should be kept in mind in comparing the capabilities of the two missiles.

#### PHOENIX ADVANTAGES

The Phoenix would appear to have two advantages.

The first is its significantly longer

range. This advantage is greatly minimized, however, by the fact that the Phoenix has poor capability against maneuvering targets, especially over those stretches of its range which are beyond the maximum of the new Sparrow.

The Phoenix also has a simultaneous multiple-shot capability which the new Sparrow lacks. But here too the advantage may be small. The AWG-9 fire control system, by the Navy's own admission, cannot launch six Phoenix missiles at precisely the same time. What it can do is launch successive missiles at sufficient speed that six might be simultaneously in the air. And even this has never been demonstrated.

Moreover, a simultaneous multiple-shot capability is more a function of an aircraft's fire control system than a function of the missile itself. And AWG-10 contractor, Westinghouse, has already completed Navy-funded design studies of new F-4 fire control systems designed to accommodate the new Sparrow. One design would replace the present AWG-10 analog system with a more reliable digital version, the AWG-14. Another would simply give the present AWG-10 system a simultaneous multiple-shot capability.

Range and simultaneous shot capability aside, the advantages would lie with the Sparrow. It would be more maneuverable over its range. It would not have to be dropped into the ocean if a dogfight developed, but could be used in theory as a dogfight weapon. It would cost only one-fourth as much, so we could afford to buy a few more.

#### NEW SPARROW

The new Sparrow could be carried on either of two planes. As indicated, there are new F-4 fire control systems which could handle it. It is already earmarked for use on the F-15, which might well be adaptable for carrier use.

These, then, are clear alternatives to fleet air defense against the Soviets. I do not mean to endorse them. I have already made clear my basic feelings in this regard. But they are available and if we want an anti-Soviet fleet air defense system, we do not need the F-14 to get it. In fact, these alternatives have three clear cut advantages over the F-14 in addition to costing far less.

To the extent timing were considered critical, it should be noted that both the A-6/Phoenix and F-4/Sparrow alternatives could be deployed ahead of the present schedule for the F-14.

More important, if we were reasonable, these alternatives would give us an opportunity to conduct realistic operational tests of both the Phoenix and the new Sparrow before billions of dollars were committed on the missiles themselves or on any plane designed to use them. The F-14 alternative simply will not permit this, tied as it is to a hopelessly concurrent contract schedule. I am convinced that realistic operational tests would only confirm what I have suggested here—that the Phoenix could be easily outmaneuvered and hopelessly countermeasured, while proving totally unreliable in the field. Nor am I sanguine

about the prospects of the new Sparrow. It was originally expected to enter production this year, but it has encountered sufficient disasters even in its artificial engineering test program to be kept in development for more debugging. It is also certain to cost at least \$100,000 per missile—much less than the Phoenix, but more than twice as much as the old Sparrow.

Most important of all, these alternatives would not rob us of the new air superiority fighter the Navy and our security may badly need. But that is my subject for next time. I shall try to prove in a few days that the F-14 costs the most yet, and has the poorest performance of all the fighter options that we have.

#### TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. CHILES). Under the previous order, there will now be a period for the transaction of routine morning business, not to exceed 15 minutes, with statements therein limited to 3 minutes.

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

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

(The remarks of Mr. Moss when he introduced S. 2510 are printed in the Record under Statements on Introduced Bills and Joint Resolutions.)

#### ORDER FOR EXTENSION OF PERIOD FOR 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 be extended 1 minute.

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

#### 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. RANDOLPH:

S. 2506. A bill to amend the Randolph-Sheppard Act for the blind so as to make certain improvements therein, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. BAYH:

S. 2507. A bill to amend the Gun Control Act of 1968. Referred to the Committee on the Judiciary.

By Mr. CHILES:

S. 2508. A bill to protect the concept of neighborhood schools. Referred to the Committee on Labor and Public Welfare.

By Mr. SCOTT (for himself, Mr. ALLOTT, Mr. BAKER, Mr. BAYH, Mr. BENNETT, Mr. BIBLE, Mr. BOGGS, Mr. CANNON, Mr. CRANSTON, Mr. FANNIN, Mr. GOLDWATER, Mr. GRAVEL, Mr. HART, Mr. HARTKE, Mr. HATFIELD, Mr. INOUE, Mr. JORDAN of Idaho, Mr. MOSS, Mr. PACKWOOD, Mr. PASTORE, Mr. PELL, Mr. SCHWEIKER, Mr. STEVENS, Mr. TALMADGE, Mr. THURMOND, Mr. WILLIAMS of New Jersey, and Mr. FONG):

S. 2509. A bill to incorporate Pop Warner Little Scholars, Incorporated. Referred to the Committee on the Judiciary.

By Mr. MOSS:

S. 2510. A bill to establish a corporation for the development of new energy sources, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. BELLMON:

S. 2511. A bill to permit national banks to invest in agricultural credit corporations. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. GURNEY:

S. 2512. A bill to amend the Social Security Act to provide increases in benefits, to improve computation methods, and to raise the earnings base under the old-age survivors, and disability insurance system, to make improvements in the medicare, medicaid, and maternal and child health programs with emphasis upon improvements in the operating effectiveness of such programs, and for other purposes. Referred to the Committee on Finance.

By Mr. HARTKE:

S. 2513. A bill to amend the Social Security Act. Referred to the Committee on Finance.

By Mr. BENNETT:

S. 2514. A bill for the relief of Jose Maria Ibaibarriaga. Referred to the Committee on the Judiciary.

By Mr. BYRD of West Virginia (for Mr. WILLIAMS, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. CRANSTON, Mr. EAGLETON, Mr. GRAVEL, Mr. HARRIS, Mr. HART, Mr. HARTKE, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUE, Mr. JACKSON, Mr. JAVITS, Mr. KENNEDY, Mr. MAGNUSON, Mr. MCGOVERN, Mr. METCALF, Mr. MONDALE, Mr. MONTOYA, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. PERCY, Mr. PROXMIER, Mr. RIBICOFF, Mr. SCOTT, Mr. SCHWEIKER, Mr. STEVENSON, and Mr. TUNNEY):

S. 2515. A bill to further promote equal employment opportunities for American workers. Referred to the Committee on Labor and Public Welfare.

#### STATEMENT ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. RANDOLPH:

S. 2506. A bill to amend the Randolph-Sheppard Act for the blind so as to make certain improvements therein, and for other purposes. Referred to the Committee on Labor and Public Welfare.

#### LEGISLATION OFFERED TO AMEND RANDOLPH-SHEPPARD ACT TO FURTHER BENEFIT BLIND CITIZENS

Mr. RANDOLPH. Mr. President, one of the most overworked words in government today is "priority." This label is attached to almost every proposal that comes before us, to convey a sense of urgency and necessity.

But the weakening of the word through overuse should not diminish the urgency and necessity of improving certain programs which, over the years, have proven to be beneficial to our society.

Such a program was signed into law by President Franklin Delano Roosevelt 35 years ago. The Randolph-Sheppard Act, authored by Senator Morris Sheppard and myself, established the program of granting preference to blind persons in the operation of vending facilities in Federal buildings.

This is, in every sense, humane legislation. It was a privilege for me, as a Member of the House of Representatives, to sponsor with Senator Sheppard a measure which provides blind men and women the opportunity to become self-supporting, taxpaying and productive citizens. Moreover, the Randolph-Sheppard Act has demonstrated to the public that individuals with this handicap are capable of self-sufficiency. It is seldom that a Federal program demonstrates such success that it is adopted and enlarged by the private sector of the economy. Yet today, three out of every four blind vending operations are located in business and other government facilities outside of the Federal establishment.

Congress authorized the program. Blind people themselves did the rest. They have worked diligently as small business entrepreneurs serving government employees and the public in snack bars and other types of vending facilities. In the late thirties, when employment opportunities for blind persons were severely limited and the public equated blindness with helplessness, these concessionaires contributed greatly to changing the image of a handicap. Their demonstrations of ability eased the acceptance of other handicapped workers by industry and influenced the establishment of public policy to provide training and job opportunities for our handicapped citizens.

Over the years, the vending stand program has provided gainful employment for thousands of blind persons, enabling them to support themselves and their families and lead normal lives.

Today, there are more than 3,350 licensed blind operators employed in more than 3,000 vending stands throughout the country. In fiscal 1970 they did a gross business of almost \$94 million. Average earnings of blind stand operators amounted to \$6,300.

Since 1936, the Randolph-Sheppard Act has been amended only once—that was in 1954, which updated its provisions in light of practices and conditions at that time.

In June of 1969, I introduced a bill to amend the act to provide expanded opportunities for blind vendors. Last June, during hearings conducted by the Senate Special Subcommittee on Handicapped Workers, which I chaired, we received testimony that if the bill, S. 2461, became law, the Randolph-Sheppard program could be expanded to more than double the number of blind vendors by the year 1975. Still this increased figure would be only a small percentage of the potential work force; there are approximately 450,000 legally blind persons in the United States. One million citizens have severe visual impairments.

The changes considered necessary in this legislation have been carefully con-

sidered over the past few years. Among the organizations consulted in preparing this bill were: The American Association of Workers for the Blind; the American Council for the Blind; the American Foundation for the Blind, General Council of Workshops for the Blind; Goodwill Industries of America; International Association of Rehabilitation Facilities; the National Rehabilitation Association; the National Council of State Agencies for the Blind; the President's Committee on Employment of the Handicapped; the National Federation of the Blind; National Industries for the Blind; International Association of Rehabilitation Facilities; National Rehabilitation Association; National Center for Deaf-Blind Youths and Adults; and the American Optometric Association.

Representatives of four Federal agencies also indicated general support for this legislation in our hearings. Witnesses were heard from the General Services Administration, the Rehabilitation Services Administration of the Department of Health, Education, and Welfare, the Committee on Blind-Made Products, and the President's Committee on Employment of the Handicapped.

It is gratifying to report that S. 2461, which had a total of 51 cosponsors, was approved by the Senate without a dissenting vote. Hearings were held by Representative JOHN BRADEMAs, chairman of the House Select Subcommittee on Education last December, but the House of Representatives did not have sufficient time to act on the legislation before adjournment.

Since its enactment in 1936, as I have indicated, the Vending Stand Act has been amended only once, when improvements to it were included in the Vocational Rehabilitation Act of 1954. At that time, there was little indication that the tremendous growth of automatic vending machines would rise to offer stiffing competition to the program.

To meet that challenge, and to expand and improve the opportunities for thousands of blind persons to become self-sufficient citizens, I am introducing a new bill to effect needed changes.

This bill would change the term "vending stand" to "vending facility" to more accurately cover the wide variety of concessions operated on Federal property by blind persons. It also defines a vending facility to include various types of concessions, including vending machines. Since the assignment of vending machine income has adversely affected blind vending stand operators in some instances, the bill tightens the procedure for making this assignment.

Present law requires licensed blind operators to be at least 21 years of age. My bill would make it possible for the State licensing agency to license responsible and capable blind men and women who are under 21. Such individuals are now actually employed in vending stands but, because of the restrictive language, they are designated as trainees until they are 21.

The measure authorizes food, beverages, and other items—as may be determined by the State licensing agency—to be prepared on the premises, as in

fact, is presently being done in many locations. It also eliminates the 1-year residence requirement as a prerequisite for licensing of blind concessionaires, an archaic provision already eliminated from the Vocational Rehabilitation Act.

An important new provision is the requirement for inclusion of sites for vending facility locations in the design, construction, or substantial alteration of Federal buildings of those leased by Federal agencies. This provision will help to assure growth of employment opportunities for persons while providing a valuable service to employees and the public. The requirement for consultation between the officials of the agency controlling property, the Department of Health, Education, and Welfare, and the State licensing agency will insure installation of the proper facility, if one is justified on the basis of potential business.

The fair hearing mechanism for aggrieved licensed blind operators now in the law is expanded to include an arbitration procedure if there is a dispute which cannot be settled otherwise. There is also a provision for arbitration of disputes between agencies controlling Federal property and State licensing agencies. In addition, a blind person or State licensing agency is authorized to seek judicial review of any agency action if they are adversely affected by that action.

Mr. President, these are the major provisions of my measure. If enacted into law, the bill will bring present law into conformance with accepted practice in the vending stand program and affect additional needed improvements.

The need for improvements in the Randolph-Sheppard Act was called to my attention by representatives of organizations of blind persons, and organizations of workers who serve blind persons in every State. Its provisions were carefully arrived at and agreed on after several conferences. The organizations giving active support are the major national organizations of and for the blind—the American Association of Workers for the Blind, American Council of the Blind, American Foundation for the Blind, Blinded Veterans Association, National Council of State Agencies for the Blind, and National Federation of the Blind. Their cooperation in working together to solve problems and meet changing needs is an excellent example of cooperation between consumers of service and providers of service.

Mr. President, I ask unanimous consent that the bill together with a section-by-section analysis of my amendments be printed in the RECORD.

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

#### S. 2506

A bill to amend the Randolph-Sheppard Act for the blind so as to make certain improvements therein, 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 "Randolph-Shep-

pard Act for the Blind Amendments of 1971."

#### PREFERENCE FOR VENDING FACILITIES ON FEDERAL PROPERTY

SEC. 2. Section 1 of the Act entitled "An Act to authorize the operations of stands in Federal buildings by blind persons, to enlarge the economic opportunities of the blind, and for other purposes," approved June 20, 1936 (20 U.S.C. 107), is amended to read as follows:

"SECTION 1. For the purposes of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under the provisions of this Act shall be authorized to operate vending facilities on any Federal or other property. In authorizing the operating of vending facilities on Federal property, preference shall be given, so far as feasible, to blind persons licensed by a State agency as provided in this Act; and the head of each department of agency in control of the maintenance, operation, and protection of Federal property shall, after consultation with the Secretary and with the approval of the President, prescribe regulations designed to assure such preference (including exclusive assignment of vending machine income to achieve and protect such preference) for such licensed blind persons without adversely affecting the interests of the United States."

#### CONCESSION VENDING SURVEYS

SEC. 3. Section 2(a) (1) of such Act of June 20, 1936 (20 U.S.C. 107a), is amended to read as follows:

"(1) Make surveys of concession vending opportunities for blind persons on Federal and other property in the United States;"

#### VENDING FACILITY

SEC. 4. Such Act of June 20, 1936, is further amended by striking out "vending stand" and "stand" wherever they appear and inserting in lieu thereof "vending facility" and by striking out "vending stands" and "stands" wherever they appear and inserting in lieu thereof "vending facilities".

#### ELIMINATION OF AGE REQUIREMENT AND VENDING OF FOOD AND BEVERAGES

SEC. 5. Section 2(a) (4) of such Act of June 20, 1936, is amended by (1) striking out "and at least twenty-one years of age", (2) striking out "articles dispensed automatically or in containers or wrapping in which they are placed before receipt by the vending stand, and such other articles as may be approved for each property by the department or agency in control of the maintenance, operation, and protection thereof and the State licensing agency in accordance with the regulations prescribed pursuant to the first section;" and inserting in lieu thereof the following: "foods, beverages, and other such articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, as determined by the State licensing agency;"

#### DELETION OF CERTAIN LIMITATIONS IN LICENSING BLIND OPERATORS OF VENDING FACILITIES

SEC. 6. Section 2(b) of such Act of June 20, 1936, is amended by (1) striking out "and have resided for at least one year in the State in which such stand is located", and (2) striking out "but are able, in spite of such infirmity, to operate such stands."

#### PROVISION OF VENDING FACILITY LOCATIONS

SEC. 7. Section 2 of such Act is further amended by adding a new subsection (d) at the end thereof:

"(d) In the design, construction, or substantial alteration or renovation of each

public building after January 1, 1972, for use by any department, agency, or instrumentality of the United States, there shall be included, after consultation with the State licensing agency, a satisfactory site or sites with space and electrical and plumbing outlets and other necessary requirements suitable for the location and operation of a vending facility or facilities by a blind person or persons. No space shall be rented, leased, or otherwise acquired for use by any department, agency, or instrumentality of the United States after January 1, 1972, unless such space includes, after consultation with the State licensing agency, a satisfactory site or sites with space and electrical and plumbing outlets and other necessary requirements suitable for the location and operation of a vending facility or facilities by a blind person or persons. All departments, agencies, and instrumentalities of the United States shall consult with the Secretary (or his designee) and the State licensing agency in the design, construction, or substantial alteration or renovation of each public building used by them, and in the renting, leasing, or otherwise acquiring of space for their use, to insure that the requirements set forth in this subsection are satisfied. This subsection shall not apply (1) when the Secretary (or his designee) and the State licensing agency determine that the number of people using the property is insufficient to support a vending facility or (2) to a vending facility operated by a blind person on privately owned property partially leased by a department, agency, or instrumentality of the United States wherein the lessor or his tenant (prior to the making of such lease) already has in operation a restaurant or other food facility in a part of the property not included in such lease and when such a vending facility operated by a blind person would be in direct and proximate competition with such restaurant or other food facility.

#### ARBITRATION BETWEEN OPERATORS AND LICENSING AGENCIES

SEC. 8. Section 3(6) of such Act (20 U.S.C. 107b) is amended by substituting a comma for the period at the end thereof and adding the following new wording: "including binding arbitration by three persons consisting of one person designated by the head of the State licensing agency, one person designated by the licensed blind operator, and a third person selected by the two, who shall serve as chairman."

#### DEFINITIONS

SEC. 9. (a) Section 6(b) of such Act (20 U.S.C. 107e) is amended to read as follows:

"(b) The term 'blind person' means a person whose central visual acuity does not exceed 20/200, in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual shall select."

(b) Section 6 of such Act is further amended by adding at the end thereof the following new subsection:

"(f) The term 'vending facility' includes, but is not limited to, automatic vending machines, snackbars, cart service, shelters, counters, and such other appropriate auxiliary equipment (as the Secretary may by regulations prescribe) as are necessary for the sale of the articles or services referred to in section 2(a) (4), which are, or may be operated by blind licensees, and such term also includes cafeterias, but only upon a demonstration by the State licensing agency of the feasibility of the inclusion of such facilities, as evidenced by a program of training and

supervision of blind licensees commensurate with the proposed operation."

#### ARBITRATION BETWEEN AGENCIES

SEC. 10. Such Act is further amended by redesignating section 8 (20 U.S.C. 107f) as section 9 and by inserting the following new section after section 7:

"Sec. 8. (a) An arbitration board of three persons consisting of one person designated by the Secretary who shall serve as chairman, one person designated by the head of the Federal department or agency controlling Federal property over which a dispute arises, and a third person selected by the two who is not an employee of the departments concerned shall hear appeals as provided in subsection (b) of this section.

"(b) If, in the opinion of a State licensing agency designated by the Secretary under this Act, any department or agency in control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of this Act, or any regulations issued thereunder, it may appeal to the board. The board shall, after notice and hearing, render its decision which shall be binding. If the board finds and determines that the acts or practices of any such department or agency are in violation of this Act, or the regulations issued thereunder, the head of the affected department or agency shall promptly cause such acts or practices to be terminated, and shall take such other action as may be necessary to carry out the decision of the board. All decisions of the board shall be published."

#### JUDICIAL REVIEW

SEC. 11. Such Act is further amended by adding the following new section:

"SEC. 10. Notwithstanding other provisions of this Act, any blind person or State licensing agency suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of this Act or other relevant statutes, shall be entitled to and shall have standing for judicial review thereof."

#### APPLICABILITY

SEC. 12. Such Act is further amended by adding the following new section:

"SEC. 11. Notwithstanding any other provision of law, the provisions of this Act are applicable to any agency, establishment, or other entity created within the Government of any department or agency of the United States."

#### EFFECTIVE DATE

SEC. 13. The amendments made by this Act shall become effective January 1, 1972.

#### SECTION-BY-SECTION ANALYSIS

The bill amends the Randolph-Sheppard Act as follows:

SECTION 1. Short title. This section provides that the Act may be cited as the "Randolph-Sheppard Act for the Blind Amendments of 1971."

SEC. 2. Preference for Vending Facilities on Federal Property. This section amends Section 1 of the Act of June 20, 1936, as amended, under which preference is granted to blind persons licensed by State agencies designated in the act to operate vending facilities on Federal property. It provides for exclusive assignment of vending machine income in order to assure, achieve, and protect the preference granted. Inconvenience to departments and agencies of the Federal Government is eliminated as a criterion for the establishment of a vending facility; however, such a facility would not be authorized if the interests of the United States would be adversely affected thereby.

SEC. 3. Concession vending surveys. This section amends section 2(a)(1) of the act by changing the term "concession-stand" to "concession vending."

SEC. 4. Vending facility. This section sub-

stitutes the term "vending facility" or "vending facilities" for vending stand(s) or "stand(s)" throughout the act in order to reflect the broader variety of concessions in the program.

SEC. 5. Age requirements; articles and services available. This section amends section 2(a)(4) of the act to eliminate the requirement that a licensed blind operator must be at least 21 years of age. It also alters language in the same section of the act to broaden the types of articles and services available in vending facilities to accord with current actual practice.

SEC. 6. Deletion of limitations. This section amends section 2(b) of the act to eliminate the unnecessary 1 year residence requirement before blind persons can become licensed operators. It also eliminates archaic wording contrary to rehabilitation principles referring to blindness and infirmity.

SEC. 7. Provision of locations. This section adds a new subsection (d) to section 2 of the act, providing for inclusion after January 1, 1972, of sites for vending facilities operated by blind persons, after consultation with the State licensing agency, in the design, construction, or substantial renovation or alteration of public buildings for use by the Federal Government. Similar provisions cover public buildings rented or leased by the Federal Government. The new subsection also requires agencies controlling Federal property to consult with the Secretary of Health, Education, and Welfare (or his designee) and the State licensing agency to insure inclusion of suitable vending facility sites unless it is determined that the number of persons using the building will not justify operation of a vending facility, or that lessors retain facilities that would compete with nearby vending facilities.

SEC. 8. Arbitration between operators and licensing agencies. This section amends section 3(6) of the act to expand fair hearing procedures for aggrieved licensed blind operators to include binding arbitration. It provides that the arbiters shall consist of one person named by the head of the State licensing agency, one person named by the licensed blind operator, and a third person selected by the two, who shall be chairman.

SEC. 9. Definitions. This section amends section 6(b) of the act to substitute the current legal definition of blindness for the obsolete terminology presently in the act of also adds a new subsection to section 6 of the act defining the term "vending facility" to cover the broad variety of concessions presently in use in the program, including automatic vending machines and cafeterias upon demonstration by the State licensing agency of feasibility.

SEC. 10. Arbitration between agencies. This section redesignates section 8 of the act as section 9 and establishes a new section 8 providing for arbitration of disputes between a State licensing agency and an agency controlling Federal property. It provides that the three arbiters shall consist of a person designated by the Secretary of Health, Education, and Welfare; one person designated by the head of the agency controlling Federal property over which the dispute has arisen; and a third person selected by the two who is not an employee of the departments concerned. It also provides that all decisions of the arbitration board shall be published.

SEC. 11. Judicial review. This section adds a new section 10 to the act providing for judicial review in the event a blind person or State licensing agency suffers a legal wrong or is adversely affected or aggrieved by the action of an agency.

SEC. 12. Applicability. This section provides that, notwithstanding any other provisions of law, the provisions of this act are applicable to any agency, establishment or other entity created within the Government of the United States to carry out the duties and functions of the Post Office Department or

any other department or agency of the United States.

SEC. 13. Effective date. This section provides for an effective date of January 1, 1972.

By Mr. BAYH:

S. 2507. A bill to amend the Gun Control Act of 1968. Referred to the Committee on the Judiciary.

RESTRICTION OF THE SALE OF "SATURDAY NIGHT SPECIAL" HANDGUNS

Mr. BAYH. Mr. President, I introduce for appropriate reference an amendment to the Gun Control Act of 1968.

This bill would prohibit the sale of the domestic "Saturday Night Special," the gun that has taken the place of the imported "Saturday Night Special," which was precluded from importation into the United States under the provisions of the Gun Control Act of 1968.

The effect of the amendment would be to prevent the transfer or sale by a federally licensed dealer of any firearm, other than a rifle or shotgun, to anyone except law enforcement officials unless the Secretary of the Treasury determines that the gun is suitable for lawful sporting purposes.

I shall emphasize, however, that this bill would not interfere with the legitimate, sporting use of the long guns, the rifles and shotguns, because the amendment does not cover them. In addition, handguns designed for and suitable for sporting purposes would not be affected by the amendment, for these firearms would meet the necessary criteria for sale to the public.

Mr. President, today in these United States we are faced with the increasing misuse of guns in murders, robberies, and in aggravated assaults.

For the first 3 months of 1971, murders increased 11 percent over a similar period of 1970.

In addition, robberies were up 17 percent and aggravated assaults increased 8 percent.

It is in these three categories of violent crime that guns are most often used.

We know that guns are used in 36 percent of murders, and in two-thirds of all armed robberies.

Since 1964, murder by gun has increased 100 percent, and gun robberies have mushroomed 198 percent.

Of the 633 law enforcement officers killed in the line of duty from 1961 through 1970, firearms were used in 95 percent of the incidents.

The reasons that I am introducing this bill to restrict the availability of these inexpensive, small caliber handguns is that they have no sporting use and were found in previous subcommittee studies to be used in one-third of all this Nation's gun murders.

The domestic "Saturday Night Special" now being produced by the millions in this country must be brought within the purview of the Federal law in the same manner in which the imported firearms were embargoed in 1968 by the Gun Control Act.

What are the types of firearms with which this amendment is concerned?

First, these weapons are basically the small caliber, inexpensive revolvers, usually of .22 caliber or .25 caliber design.

Second, these firearms are useless for sporting purposes because they are neither designed nor suitable for such purposes.

Third, these guns are crime guns, and are used in substantial numbers of murders, in armed robberies and in aggravated assaults.

Fourth, they are the weapons that began to be produced in quantity after the enactment of the Gun Control Act of 1968, which prohibited the importation of these very firearms. In other words, their increased domestic production is a circumvention of congressional intent in barring the importation of these guns made in foreign countries.

In the decade of the 1960's, the imported "Saturday Night Special" became the gun of choice in some 30 percent of all gun murders, armed robberies and aggravated assaults.

The reasons are obvious.

The gun was inexpensive to buy.

It was easily concealed, and it was lethal.

During our inquiries into the gun problem in the United States, virtually every public official who appeared before this subcommittee urged that this particular class of gun, the small caliber, inexpensive, pot metal revolver, be prohibited from importation into the United States.

With no questions asked, it was sold by mail order to nonresidents, to immature juveniles, to criminals.

Then in 1968 in response to the urgent plea of law enforcement officials throughout the United States, Congress enacted legislation prohibiting these deadly weapons from importation into the United States.

At that time there was no substantial comparable domestic manufacturer of these firearms. However, with the prohibitions of the Gun Control Act of 1968, entrepreneurs who had been in the importing business suddenly became firearms manufacturers and began to make the very gun that had been embargoed by Federal law.

Names familiar to this subcommittee as firearms importers began to produce these guns in large volume in the United States.

And, instead of millions of these weapons being imported into the United States, we began to witness the production of hundreds of thousands of "Saturday Night Specials" here in this country.

During subcommittee hearings on the matter in August of 1968, Associate Deputy Attorney General Donald Santarelli testified that some 60,000 cheap, domestically manufactured "Saturday Night Specials" were manufactured in the United States in 1968 and predicted substantial increases in production with each succeeding year.

Santarelli concluded that the crime problem caused by the "Saturday Night Specials," "has not abated, but, in fact, has exacerbated."

Two other witnesses representing the National Commission on the Causes and Prevention of Violence, called for an extension of the Gun Control Act to "prohibit the domestic production" of these "junk guns."

In response to these facts and urging of congressional action, this subcommittee developed legislation which was introduced in September of 1969.

No action was taken on this bill, and as Mr. Santarelli had pointed out in his testimony, the problem of the "Saturday Night Specials" has continued to grow.

In testimony before an Appropriations Committee of the House of Representatives, Randolph Thrower, the former Commissioner of the Internal Revenue Service, the Federal agency which administers and enforces our Federal gun laws, said that the cheap handgun known as the "Saturday Night Special" "is the one most frequently used for illegal purposes and in conflict between humans."

He went on to say:

While I can see the difficulties of reopening the gun legislation problem, if, in some way, this technical correction could be made, it would resolve a problem and permit local efforts to be effective in getting these non-sporting, irresponsible, and wholly lethal weapons out of full circulation.

He referred, of course, to the technical correction which would prohibit the domestic production and sale of these crime guns.

Mr. President, the amendment that I introduce today would effectively preclude the sale of these weapons to the public.

I believe that we must act upon this amendment without undue delay, before the incidence of criminal misuse of these guns reaches astronomical proportions.

We cannot afford the delay that occurred with regard to the foreign imported "Saturday Night Special."

For 10 years prior to 1968, hundreds of thousands of those weapons were imported each year, and many of them were either used in crime or are now lodged in the hands of potential abusers.

A similar situation cannot be allowed to develop with the domestic variety.

The subcommittee has surveyed law enforcement officials throughout the country. We have reports from major U.S. cities which reflect the criminal use of the domestic "Saturday Night Specials."

As has been the case in the past with the foreign imports, our Nation's largest cities, including Chicago, Detroit, Los Angeles, New York, and others are bearing the brunt of crime committed with these domestically made weapons.

The foreign imported "Saturday Night Special" became a murder-a-day gun; we cannot allow this to happen with regard to its American counterpart.

Only Congress can prevent such a tragic situation from developing.

The legislation that I propose today provides the necessary controls to restrict the manufacture and sale of these weapons, the production of which reached a staggering 630,000 in 1970. If this trend continues, we can expect millions of these weapons to flood the market each year, and we can expect substantial numbers of these guns to be involved in crimes of violence.

This would be deplorable.

The Senate must act to assure our citizens an additional measure of safety from armed criminals. The enactment

of this bill will, I am certain, guarantee that measure of safety.

I urge Senators to give this amendment their earnest consideration and support, so that we may move it through the Senate toward enactment into law.

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

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

S. 2507

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 922(b) of the Gun Control Act of 1968 is amended by—*

(1) striking out at the end of paragraph 4 thereof the word "and";

(2) striking out at the end of paragraph 5 of such section the period and inserting in lieu thereof a semicolon and the word "and"; and

(3) adding after paragraph 5 thereof the following:

"(6) any firearm, other than a rifle or shotgun, to any person, which the Secretary determines to be unsuitable for lawful sporting purposes based upon standards established by him pursuant to section 925(d) of this title."

By Mr. CHILES:

S. 2508. A bill to protect the concept of neighborhood schools. Referred to the Committee on Labor and Public Welfare.

Mr. CHILES. Mr. President, I am sending to the desk a bill entitled the Neighborhood School Act of 1971. I ask that a copy of this legislation be printed in full at this point in my remarks.

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

S. 2508

A bill to protect the concept of neighborhood schools

*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 "Neighborhood School Act of 1971".*

SEC. 2. (a) It is the policy of the United States to encourage the concept of the neighborhood school so that students are assigned to a public elementary or secondary school solely on the basis of residence within the geographic zone which that school serves.

(b) It is further the policy of the United States that no student may be denied attendance at the neighborhood school serving the geographic zone in which he resides on the basis of race, creed, color, religion, or national origin.

SEC. 3. (a) It is also provided that any student has the right to transfer and be provided transportation out of the neighborhood public elementary or secondary school serving the geographic zone in which he resides if such a student is a member of a minority group and that minority group constitutes at least fifty percent of the students enrolled in that school.

(b) For the purpose of this section—

(1) "minority group" means any individuals who are Negro, American Indian, Spanish-surnamed American, Portuguese, or Oriental, and, as determined by the Secretary pursuant to regulations, and combinations of any such individuals;

(2) "Spanish-surnamed American" means an individual of Mexican, Puerto Rican, Cuban, or Spanish origin or ancestry.

SEC. 4. (a) Federal funds shall be made available under the Elementary and Second-

ary Education Act of 1965 or any other provision of law to pay the cost of the assignment or transportation of students in accordance with the provisions contained in Sec. 3 (a) of the Act.

(b) Notwithstanding any other provision of law no officer or employee of any department of agency or the Federal Government shall order or require the assignment of transportation of students inconsistent with the policy set forth in this Act.

Mr. CHILES. Mr. President, few issues dominate the thinking of the people of my State of Florida today more than the assault on the neighborhood school, which traditionally has been the bulwark of our public educational system for over a hundred years.

In my walk across Florida, I talked with over 40,000 people, and I found this was one of the problems that more people talked with me about than anything else. So many people told me that they bought a home in a neighborhood paying more than they really could afford to pay specifically so they could send their child to a certain school and now they find that they have got to bus their children across town, many times on split sessions where one child goes at 6 and one goes at 12. This certainly upsets people tremendously. And I was unable to explain to them how this would help the education of their children. I have found both black and white people are very upset by the idea that they must bus children just to have a mathematical formula of the races.

The legislation I have introduced today in the Senate would define this neighborhood school concept. This legislation would say no student would be denied the right to attend his neighborhood school on the basis of race, color, religion, or national origin.

This would accomplish the obvious benefits of having the parent and the teacher close to each other, having the parents close to their children for emergencies such as sickness or injury, requiring the child to spend less time in transportation so he would have more time for his homework and extracurricular activities and, of course, lowering the item of costs.

At the same time this legislation would not deny a student the right to transfer and be provided transportation out of his neighborhood school when he is a member of a minority race and his race constitutes a majority of his neighborhood school. Legislation has already passed the Senate making funds available to school boards to assist in this purpose.

Just to close a disadvantaged school is not the long lasting solution. The primary effect a closing has is to shut out and close a community center. Congress needs to face the problem of providing Federal funds that could be matched by the State for disadvantaged schools which would allow a lower pupil-teacher ratio and would provide additional funds for guidance counselors, vocational technical education and recreational equipment. I am presently working on legislation to key in on these schools and make prize schools out of them. This would allow children in a deprived neighborhood a chance to catch up. It would

meet the child's needs where they are, raise educational requirements, and would provide for a center for the community, giving a point of pride from which to build the neighborhood and develop leadership.

With the fall school term now underway, there are those who would seek to prey on the emotions and fears of our parents and children. We must remember that our courts represent the law of our land and interpretation of the U.S. Constitution as it is now written and I sincerely hope that parents will not seek to disobey the law and Constitution because of their dissatisfaction with the busing of their children.

I believe busing will affect the quality of education but I am convinced that open defiance by parents will be much more damaging.

We must work under our American system to make changes which will assure children of a good education. We want and ask our young people to work within the system. We all should do the same with this problem.

By Mr. SCOTT (for himself, Mr. ALLOTT, Mr. BAKER, Mr. BAYH, Mr. BENNETT, Mr. BIBLE, Mr. BOGGS, Mr. CANNON, Mr. CRANSTON, Mr. FANNIN, Mr. GOLDWATER, Mr. GRAVEL, Mr. HART, Mr. HARTKE, Mr. HATFIELD, Mr. INOUE, Mr. JORDAN of Idaho, Mr. MOSS, Mr. PACKWOOD, Mr. PASTORE, Mr. PELL, Mr. SCHWEIKER, Mr. STEVENS, Mr. TALMADGE, Mr. THURMOND, Mr. WILLIAMS of New Jersey, and Mr. FONG):

S. 2509. A bill to incorporate Pop Warner Little Scholars, Inc. Referred to the Committee on the Judiciary.

POP WARNER LITTLE SCHOLARS, INC.

Mr. SCOTT. Mr. President, I am pleased to introduce legislation similar to that which I sponsored in the 91st Congress to provide a Federal charter for Pop Warner junior league football.

I support this program because of its inestimable value not only to the youth of the Commonwealth of Pennsylvania, but also to the many young people of over 30 other States.

The issuance of a Federal charter to this splendid organization would protect the Pop Warner name and insignia and also recognize its broad scope. The non-profit charter granted by the State of Pennsylvania is not sufficient to cover the expanding program of Pop Warner football.

Pop Warner's method of combining exceptional athletic accomplishments with high academic standards in our young citizens is a worthwhile endeavor. This program is an asset to the maintenance of a strong nation by building healthy and intellectually competent youth who can assume the burdens of leadership in the future.

I am proud to include the following distinguished Senators as cosponsors of this bill: Senators ALLOTT, BAKER, BAYH, BENNETT, BIBLE, BOGGS, CANNON, CRANSTON, FANNIN, GOLDWATER, GRAVEL, HART, HARTKE, HATFIELD, INOUE, JORDAN of Idaho, MOSS, PACKWOOD, PASTORE, PELL,

SCHWEIKER, STEVENS, TALMADGE, THURMOND, WILLIAMS of New Jersey, and FONG.

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

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

S. 2509

A bill to incorporate Pop Warner Little Scholars, Incorporated

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That Herbert Barnes, 1352 Easton Road, Warrington, Pennsylvania; Joseph J. Tomlin, 1004 Western Saving Fund Building, Philadelphia, Pennsylvania; G. Martin Brill Watts, 571 Sycamore Mills Road, Media, Pennsylvania; James T. Bryan, Junior, 67 Wall Street, New York, New York; Milton Clark, 5401 Walnut Street, Philadelphia, Pennsylvania; George M. Ewing, Junior, 611 Maplewood Road, Wayne, Pennsylvania; Donald C. Osgood, 1000 Miramar Place, Fullerton, California; Anthony F. Visco, Junior, 1418 Packard Building, Philadelphia, Pennsylvania; Maurie H. Orodner, 6004 North 13th Street, Philadelphia, Pennsylvania; Charles A. Barsuglia, 7246 Marsden Street, Philadelphia, Pennsylvania; Stanley M. Bednarek, 2607 East Allegheny Avenue, Philadelphia, Pennsylvania; Mitchell N. Daroff, Rittenhouse Plaza Apartments, Philadelphia, Pennsylvania; John D. Scott, City Hall, Philadelphia, Pennsylvania; David G. Tomlin, 3664 Richmond Street, Philadelphia, Pennsylvania; and their successors, are hereby created and declared to be a body corporate by the name of Pop Warner Little Scholars, Incorporated (hereafter in this Act referred to as the "corporation"), and by such name shall be known and have perpetual succession. Such corporation shall have the powers and be subject to the limitations and restrictions contained in this Act.

COMPLETION OF ORGANIZATION

Sec. 2. A majority of the persons named in the first section of this Act are authorized to complete the organization of the corporation by the selection of officers and employees, the adoption of bylaws, and the doing of such other acts as may be necessary to complete the organization of the corporation.

OBJECTS AND PURPOSES OF CORPORATION

Sec. 3. The objects and purposes of the corporation shall be—

- (1) to inspire youth, regardless of race, creed, or color, to practice the ideals of sportsmanship, scholarship, and physical fitness; and
- (2) to bring youth closer together through the means of common interest in sportsmanship, scholarship, fellowship, and athletic competition.

CORPORATE POWERS

Sec. 4. (a) The corporation shall have power—

- (1) to sue and be sued, complain, and defend in any court of competent jurisdiction;
- (2) to adopt, alter, and use a corporate seal;
- (3) to appoint and fix the compensation of such officers and employees as its business may require and define their authority and duties;
- (4) to adopt and amend bylaws, not inconsistent with this Act or any other law of the United States or any State in which it is to operate, for the management of its property and the regulations of its affairs;
- (5) to make and carry out contracts;
- (6) to charge and collect membership dues, subscription fees, and receive contributions or grants of money or property to be devoted to the carrying out of its purposes;

(7) to acquire by purchase, lease, or otherwise, such real or personal property, or any interest therein, wherever situated, necessary or appropriate for carrying out its objects and purposes and subject to the provisions of law of the State in which such property is situated (A) governing the amount or kind of real or personal property which similar corporations chartered and operated in such State may hold, or (B) otherwise limiting or controlling the ownership of real or personal property by such corporations;

(8) to transfer, lease, and convey real or personal property;

(9) to borrow money for its corporate purposes, issue bonds therefor, and secure the same by mortgage, deed of trust, pledge, or otherwise, subject to all applicable provisions of Federal or State law; and

(10) to do any other acts necessary and proper to carry out its objects and purposes.

(b) For the purpose of this section, the term "State" includes the District of Columbia.

**PRINCIPAL OFFICE; SCOPE OF ACTIVITIES; DISTRICT OF COLUMBIA AGENT**

SEC. 5. (a) The principal office of the corporation shall be located in Philadelphia, Pennsylvania, or in such other place as may later be determined by the board of directors, but the activities of the corporation shall not be confined to that place, but may be conducted throughout the United States.

(b) The corporation shall maintain at all times in the District of Columbia a designated agent authorized to accept service of process for the corporation. Service upon, or notice mailed to the business address of, such agent, shall be deemed notice to or service upon the corporation.

**MEMBERSHIP**

SEC. 6. Eligibility for membership in the corporation and the rights and privileges of members shall, except as provided in this Act, be as set forth in the bylaws of the corporation.

**BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES**

SEC. 7. (a) Upon enactment of this Act, the membership of the initial board of directors of the corporation shall consist of the persons named in the first section of this Act.

(b) The initial board of directors shall hold office until the first election of a board of directors. The number, manner of selection (including filling of vacancies), term of office, and powers and duties of the directors shall be set forth in the bylaws of the corporation. The bylaws shall also provide for the selection of a chairman and his term of office.

(c) The board of directors shall be the governing board of the corporation, and a quorum thereof shall be responsible for the general policies and programs of the corporation and for the control of all funds of the corporation and for the control of all funds of the corporation. The board of directors may appoint committees to exercise such powers as may be prescribed in the bylaws or by resolution of the board of directors.

**OFFICERS; ELECTION OF OFFICERS**

SEC. 8. The officers of the corporation shall be those provided in the bylaws. Such officers shall be elected in such manner, for such terms, and with such duties, as may be prescribed in the bylaws of the corporation.

**USE OF INCOME; LOANS TO OFFICERS, DIRECTORS, OR EMPLOYEES**

SEC. 9. (a) No part of the income or assets of the corporation shall inure to any member, officer, or director or be distributable to any such person during the life of the corporation or upon its dissolution or final liquidation. Nothing in this subsection, however, shall be construed to prevent the payment of reasonable compensation to officers of the corporation or reimbursement

for actual necessary expenses in amounts approved by the corporation's board of directors.

(b) The corporation shall not make loans to its members, officers, directors, or employees. Any director who votes for or assents to the making of such a loan, and any officer who participates in the making of such a loan, shall be jointly and severally liable to the corporation for the amount of such a loan until the repayment thereof.

**NONPOLITICAL NATURE OF CORPORATION**

SEC. 10. The corporation and its officers and directors as such shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

**LIABILITY FOR ACTS OF OFFICERS AND AGENTS**

SEC. 11. The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

**PROHIBITION AGAINST ISSUANCE OF STOCK OR PAYMENT OF DIVIDENDS**

SEC. 12. The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

**BOOKS AND RECORDS; INSPECTION**

SEC. 13. The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having authority under the board of directors, and it shall also keep at its principal office a record of the names and addresses of its members entitled to vote. All books and records of the corporation may be inspected by any member entitled to vote, or his agent or attorney, for any proper purpose, at any reasonable time.

**AUDIT OF FINANCIAL TRANSACTIONS**

SEC. 14. The provisions of sections 2 and 3 of the Act of August 30, 1964 (36 U.S.C. 1102, 1103), entitled "An Act to provide for audit of accounts of private corporations established under Federal law" shall apply with respect to the corporation.

**USE OF ASSETS ON DISSOLUTION OR LIQUIDATION**

SEC. 15. Upon dissolution or final liquidation of the corporation, after discharge or satisfaction of all outstanding obligations and liabilities, the remaining assets of the corporation may be distributed in accordance with the determination of the board of directors of the corporation and in compliance with this Act, the bylaws of the corporation, and all other Federal and State laws applicable thereto.

**TRANSFER OF ASSETS**

SEC. 16. The corporation may acquire any and all of the assets of the Pennsylvania corporation known as "Pop Warner Little Scholars", upon discharging or satisfactorily providing for the payment and discharge of all the liabilities of such corporation, and upon complying with all laws of the State of Pennsylvania.

**EXCLUSIVE RIGHTS TO NAME, EMBLEMS, SEALS, AND BADGES**

SEC. 17. The corporation shall have the sole and exclusive right to use the name "Pop Warner Little Scholars", and to have and to use such emblems, seals, and badges as may be required in carrying out its program. Nothing in this section shall be construed to interfere or conflict with established or vested rights.

**COMPLIANCE WITH STATE AND FEDERAL REGULATIONS**

SEC. 18. The corporation shall continue to comply with the laws, rules, and regulations governing nonprofit organizations issued by the Commonwealth of Pennsylvania including, but not limited to, the filing of annual financial and other reports with the appropriate State office as may be requested. The corporation shall continue to be subject to the laws of Pennsylvania applicable to non-

profit organizations as well as the Federal laws applicable to corporations chartered by Congress.

**RESERVATION OF RIGHTS TO AMEND OR REPEAL CHARTER**

SEC. 19. The right to alter, amend, or repeal this Act is expressly reserved.

By Mr. MOSS:

S. 2510. A bill to establish a corporation for the development of new energy sources, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. MOSS. Mr. President, when the Senate Interior and Insular Affairs Committee conducted its hearing in July on S. 1846, a bill to establish the coal gasification development corporation, we heard witness after witness testify to the energy shortage and to the urgency of the needs of our country to meet its energy requirements in coming years.

Research in the coal gasification industry is making great progress. Through the legislation introduced by Senator JACKSON and I it is hoped to accelerate work in this area. But we still face deficits in our energy ledger.

The Congress must assist, encourage, and stimulate the production and conservation of all our energy sources.

Energy experts emphasize that new measures must be found to augment the potential to be realized from synthetic gas from coal. We look to LNG, Canadian imports, the Alaskan possibilities, but we must also look to other new energy sources.

Every possibility must be examined.

For example, we have vast oil shale formations, estimated to contain 2 trillion barrels of oil and we have for too long been without meaningful direction in developing these resources.

Over 80 percent of such deposits are on Federal lands and the administration has been unable to come up with a plan of development which would bring industry into the development picture.

Oil shales, tar sands, and solar resources will all have to be tapped in order to meet the needs of our burgeoning energy-demanding society.

To that end, I am today introducing a bill which will authorize a New Energy Sources Corporation to be jointly managed by Government and industry to demonstrate commercial methods of producing energy from tar sands, oil shale, solar resources, and other new energy sources, as they may develop.

The function of the Corporation will be to bring into commercial reality new sources of energy. The Corporation will dissolve upon the completion of its work.

I look to the ingenuity of American industry to produce new alternatives to solve our energy needs with the help of Government, operating through such a corporation.

Mr. President, I send the bill to the desk and ask that it be appropriately referred.

By Mr. BELLMON:

S. 2511. A bill to permit national banks to invest in agricultural credit corporations. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. BELLMON. Mr. President, as a member of the Senate Subcommittee on Rural Development, I have been surprised and distressed to find the great handicap which faces the farmers and ranchers of our country in trying to secure farm operating credit.

Because of limitations placed on rural banks by existing laws and regulations, and low lending limits coupled with the accelerating size of farm units, farmers and ranchers have been forced to seek credit from other institutions outside of their local area. Many would prefer to do business with their local banker. When these banks have tried to establish what is defined by the Farm Credit Act as an "Other financial institution," they have been stopped by a legal barrier. The purpose of establishing the OFI was to utilize the existing Federal intermediate credit bank system to mobilize deposits and make them available for loans in agriculture areas where currently small banks could not meet the loan demands. Legal prohibitions have prevented banks from investing in the total capital stock of OFI's. I have introduced today a bill which would lift this prohibition against the ownership of stock by national banks when an association is organized for the purpose of extending credit to farmers and ranchers for agricultural purposes.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 2511

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph "Seventh" of section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end thereof a new sentence as follows: "Notwithstanding any other provisions in this paragraph, the association may invest for its own account an amount which shall not exceed at any one time 10 per centum of the association's unimpaired capital and surplus, in the stock, bonds, or other obligations of any corporation engaged solely in providing credit to farmers and ranchers for agricultural purposes."*

By Mr. GURNEY:

S. 2512. A bill to amend the Social Security Act to provide increases in benefits, to improve computation methods, and to raise the earnings base under the old-age survivors, and disability insurance system, to make improvements in the medicare, medic-aid, and maternal and child health programs with emphasis upon improvements in the operating effectiveness of such programs, and for other purposes. Referred to the Committee on Finance.

Mr. GURNEY. Mr. President, today I am introducing a comprehensive social security-medicare reform bill entitled the Social Security Improvements bill. My bill is meant to serve as an alternative to H.R. 1, which has been presently set aside because of the high priority of the economic and tax reform legislation.

We are now into fall and it is crystal clear that H.R. 1, with its controversial welfare reform, will not be enacted this year. There will not be enough time remaining after the economic and tax reform has been processed.

My bill eliminates welfare reform and other controversial matters. It includes only that social security and medicare reform which is badly needed and upon which most of Congress agrees.

When last year's social security bill was introduced, many greeted it as necessary and indispensable legislation. By the time the Congress had finished with it, it contained items on international trade, and a family assistance plan, none of which related to the original intent of the bill. The only purpose these two additions served was to prevent the aged and disabled from benefiting from the legislation they so vitally needed.

The Special Committee on Aging has called the problems of the elderly an "unnoticed crisis." It is a crisis which affects a majority of 20 million elderly Americans, and which threatens to engulf many more millions now near retirement age.

John B. Martin, the Commissioner on Aging and Special Assistant to the President, has said:

Aging is not easy to "sell," to raise high in a list of national priorities. Much of America still looks for a fountain of youth. . . . It is true that a minority of the national population is in the later years today. . . . One in ten Americans is an older American. But 70 of every 100 Americans born today may expect to live into their 70's. . . . And so we truly speak for a majority. Let us speak well and loudly.

We need to get on with these amendments and bring our social security system up to date.

Contained in my bill is a 5-percent benefit increase to social security beneficiaries. This increase would bring social security payments into a more realistic balance with the recent cost-of-living increases. The bill provides that in the future years, the benefit increases, earnings test, wage base, and tax rate will be adjusted automatically on a cost-of-living scale. The time to do this is long past due.

The earnings test, or the amount of social security an annuitant can earn without losing his benefits, will be raised to \$3,000 per year in my bill.

It provides that men, who must presently be 65 before drawing full social security retirement benefits, or 62 before drawing reduced benefits, will be put on a par with women. They will be able to draw full benefits at age 62, and reduced benefits at age 60.

The bill also provides for a reduction in the waiting period for social security disability benefits. Under present law, a person who becomes disabled in January must wait until July before he begins drawing disability benefits. My bill reduces the waiting period to 4 months. About 140,000 people would benefit by this provision. About \$185 million in additional benefits would be paid out during the first year.

My bill also provides disability insurance benefits for the blind. About 225,000 people, blind workers and their dependents, will become eligible for monthly benefits. About \$225 million in additional benefits would be paid out during the first year under this provision.

Title II of the bill, the medicare/

medicaid provisions, provides a much needed cleanup of the medicare program. In my bill, the Secretary of Health, Education, and Welfare would be given authority to terminate payment for services by a supplier of health and medical services found to be guilty of abuses. Program review teams would be established to furnish the Secretary professional advice in carrying out this authority.

Probably the most important provision of the medicare section of my bill relates to the coverage of disability beneficiaries under medicare. Certainly we all realize the difficulties that disabled persons have in obtaining adequate private sector health insurance. Extending the medicare program to these individuals will give them an urgently needed coverage.

Other provisions of my bill relating to medicare are much like those same provisions in H.R. 1. I have added, however, certain amendments made by the Finance Committee last year to H.R. 17550. These include establishment of professional standard review organizations, inspector general for health administration, treatment in mental hospitals for children, and public access to records concerning an institution's qualifications.

In my view, this last addition is perhaps the most significant addition to my bill over and above H.R. 1. The President recently spoke about the ghastly conditions in our nursing homes. My own mail indicates that many of our elderly are frightened and alarmed by the prospect of being "shut away" in a nursing home. Section 274 of my bill provides that if a hospital or extended care facility fails to meet the qualifications for coverage under medicare, but that the failure is not sufficient to justify termination of such coverage, the nursing home or hospital will be notified of the failure, and if after 90 days this deficiency still exists, it shall be made known. Florida has made dramatic improvement in nursing homes in recent years. However, I believe that this provision will force the bad nursing homes to measure up to reasonable standards while not providing difficulties for the good nursing homes.

Title III of my bill relates to welfare. I have not attempted to deal with the major problems of welfare, since I feel any major welfare legislation should be divorced from social security.

My bill then provides only that old-age assistance and aid to the blind and disabled shall be raised to \$150 per month.

It also provides that should social security benefits be increased by certain amounts, the State shall increase their standard of need by an equal amount. This would stop the unfortunate practice in many of our States where a person who is entitled to both the social security and aid to the blind is short changed even though his social security has been increased. When his social security is increased, his aid to the blind or disabled is decreased an equal amount. The bill provides that the States shall raise their level of need, but that the Federal Government will take over the cost of this increase.

Certainly there is nothing in my bill of which the Senate is not well informed. We considered H.R. 17550 last year, and we passed it. The problem was that we passed it too late for it to become law. We need to get on with the business of improving our social security and medicare systems. We have already waited too long, while our elderly, our blind, and our disabled wait for us to enact legislation to bring the social security system up to date. In the strongest possible terms, I urge your support and favorable consideration of this legislation.

We must not and cannot continue to callously ignore the very real and pressing problems confronted by the sick and the elderly. It is time that the United States, the greatest nation on earth, fulfills its greatness, meets their challenge, and gives our elderly a share in the amenities of life which we associate with an American standard of living.

By Mr. HARTKE:

S. 2513. A bill to amend the Social Security Act. Referred to the Committee on Finance.

AN ECONOMIC GAME PLAN FOR ELDERLY AMERICANS

Mr. HARTKE. Mr. President, during the last few weeks, the attention of the Nation has been focused on proposals which will end inflation and bolster the status of American products on the world market. A national plan is long overdue. Yet, in far too many respects, the Nixon plan is the wrong plan at the wrong time.

During the next several days, I plan to discuss alternatives to the President's proposals—alternatives which are more equitable and more effective. This Congress must take the initiative where Mr. Nixon has failed to exercise leadership. That initiative should begin with the enactment of the most far-ranging and progressive social security package in more than 30 years.

More than 4.7 million elderly Americans live in poverty. That is a proportion far higher than any other age group in this country, and it is growing rapidly. We have it within our power to enact legislation which will end the threat of poverty which hangs over the heads of 20 million senior citizens and millions more in years to come. By taking the action I propose today, we not only end a social and economic injustice; we also provide elderly Americans with money they need—and will spend—for food, clothing, and other basic necessities.

The elderly of this country are entitled to a life of dignity and economic security. Indeed, they have a "right" to expect that the country they served through their most productive years will not forget them in their time of need. The legislation I introduce today, "The Older Americans' Rights Act of 1971" acknowledges this obligation and makes numerous, broad-gaged changes in the social security system. Specifically, "The Older Americans' Rights Act" would accomplish the following objectives:

First. A 10-percent increase in cash benefits: Many social security beneficiaries have little or no income other than their social security benefits and must turn to welfare to supplement their

meager income. A 10-percent increase in benefits—rather than the 5-percent increase provided in H.R. 1—will provide some improvement in benefit adequacy as well as offset the price increases that have occurred since last January. Furthermore, the increase I propose would be payable 6 months earlier than the 5-percent increase provided in H.R. 1. This change in the effective month of the benefit increase will provide not only quicker relief for the beneficiaries, but it would also aid the economy as a whole by boosting consumer spending at a time when increased spending is urgently needed.

Second. Special minimum benefit: I propose that the Congress provide a special minimum benefit equal to \$6 multiplied by the number of years coverage up to a maximum of 30 years of coverage rather than the \$5 per year of coverage up to a maximum of 30 years as proposed in H.R. 1. This rather modest change will help to eliminate poverty among those who have worked a substantial number of years in employment covered by the social security system.

Third. Increased retirement test: The amount of money which an older American can earn without suffering any loss in benefits should be raised from the present \$1,680 to \$2,400—rather than the H.R. 1 increase to \$2,000. Above the \$2,400 level, there should be a \$1 reduction in benefits for every \$2 earned. This change will enable more older Americans to remain active and contributing members of our society.

Fourth. Increase in taxable wage base: In order to provide adequate earnings protection for the average and above-average worker under the social security program, the maximum amount of earnings that is taxable and creditable toward benefits should be increased from \$10,200 as in H.R. 1 to \$12,000 in 1974.

Fifth. Age 62 computation: In order to correct the present inequities of benefit computations for men and women, H.R. 1 proposes to phase in over a 3-year period an age 62 computation of benefits provision for men. While this proposal is laudable, it would fail to benefit those who reached age 62 before 1972. To correct this deficiency, I propose to extend the age 62 computation provision to those on the benefit rolls when the provision becomes effective. At the same time, the proposal in H.R. 1 to change the number of quarters of coverage needed for insured status for men would also be fully effective for January 1972, rather than the 3-year period under H.R. 1.

Sixth. Waiting period for disability benefits: I propose to reduce the waiting period for disability benefits from the present 6 months to 3 months. This change is needed to assist those disabled workers whose private disability benefits expire after the first few months of disability.

Furthermore, additional disabled workers would be eligible—and presently eligible workers will be eligible sooner—to have vocational rehabilitation services financed from social security trust funds. Rehabilitation services are generally more effective if begun as soon as possible after disablement.

Seven. Eliminate test of recent covered work: Workers should be able to qualify for disability benefits without having to meet a test of recent covered work. This is a test which does not have to be met to qualify for other social security benefits. Some workers lose their disability protection when, because of progressive illness, they are unable to work with the regularity necessary to give them the required 20 quarters of coverage during the 40-quarter period ending with the quarter in which the worker becomes disabled. All too many of those who fail to meet this requirement have worked under social security for 20 years or more. The determination of disability has progressed to such a point that valid determinations can be made without reliance on a recency-of-work test. In fact, such determinations are presently made for widows, widowers, and adults who became disabled in childhood without regard to whether they have done recent work or whether they have ever worked.

Eight. Liberalized disability definition: Under the definition of disability in the present law, a worker cannot be considered disabled unless his impairments are so severe as to render him unable to engage in any substantial gainful activity. An exception is provided for blind workers age 55 and older who can qualify for benefits under a less stringent test of disability. A severe but not totally disabling impairment has a much greater impact on an older worker than on a younger worker who has a greater potential for retraining and adjustment to new work. All too many older workers drop out of the work force in their fifties and early sixties, because of impairments that are not totally disabling but which nevertheless prevent them from continuing their regular jobs. As a practical matter, they cannot get another job and are therefore without earnings. This inequity can be eliminated by making disability benefits available to a worker aged 55 or older if he is so disabled that he can no longer engage in substantial gainful activity in his regular work or in any other work in which he has engaged with some regularity in the recent past.

Ninth. Additional dropout years: In computing average monthly earnings on which benefit amounts are based, H.R. 1 provides that 1 year of low earnings—in addition to the 5 years that may be disregarded under present law—may be disregarded for each 15 years of coverage a person has under social security. The method used in averaging earnings has a substantial effect on the protection afforded under the program. Since benefits payable to a man who retires at 65 this year are based on earnings averaged over 15 years, average earnings under the program now generally bear a much closer relationship to earnings just before retirement than they will in the future, when benefits are based upon earnings averaged over a period of 38 years for men and 35 for women—or 35 for both men and women under H.R. 1. This is so because, in most cases, the number of years used is equal to 5 less than the number elapsing after 1950—or, if later, after the year in which the worker reaches age 21. Earnings averaged over

a period of 35 years will not, in the great majority of cases, provide an accurate reflection of earnings in the period just before retirement. In order to make it possible for benefits to more accurately reflect recent earnings, I propose that 1 year of low earnings—in addition to the 5 permitted to be dropped under the present law—for each 10 years of coverage could be dropped in computing the average monthly earnings on which benefit amounts are based. This proposal would be more effective than the additional dropout year provision in H.R. 1, since a man who worked from age 22 to age 65, for example, would use 4 years less in averaging his earnings than would be used under the present law, rather than the 2 years less that he would use under H.R. 1.

**Tenth. Current cost financing:** The financing of the social security program should be on a current cost basis, with the trust funds maintained at a level approximately equal to 1 year's expenditures. The cash benefits contribution rate schedule in H.R. 1, as under the present law, will build up large trust fund accumulations in the near future, because the ultimate contribution rate in the law—5.15 percent each for employers and employees under the present law and 6.1 percent each under H.R. 1—is higher than necessary to finance benefits and administrative costs for many years to come. As a result, the cash benefits trust funds will grow to nearly three times the amount of benefit expenditures and administrative costs by the end of this century. Under a compulsory social insurance program, it is not necessary to rely on interest earnings from large trust fund accumulations to assure future payment of benefits. One year's benefit payments is an amount that should be sufficient to meet benefit costs during those temporary situations when current outgo is larger than current income. By limiting the contribution rate to a steady level for the next 40 years or so, major improvements in the program can be financed at a rate far below the ultimate rate provided for in H.R. 1 or in the present law.

**Eleventh. Rising earnings assumption:** Actuarial estimates of income to the hospital insurance part of the social security program are based on assumptions that earnings levels will continue to rise in the future, as they have in the past, and that the contribution and benefit base will be increased proportionately as earnings levels rise. The cash benefits program, on the other hand, is presently based on the assumption of level earnings and level benefits. This assumption seriously understates the dollar figures of program income and outgo over the long-range future. For this reason, the actuarial cost estimates for the cash benefits program should be based on the assumption that earnings levels will rise, that the contribution and benefit base will be increased as earnings levels rise, and that benefit payments will be increased as prices rise.

**Twelfth. Part A medicare coinsurance:**

H.R. 1 imposes a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day of inpatient hospital coverage during a benefit period, beginning with the 31st day and extending through the 60th day. If enacted, this would mark the first time any Congress has passed legislation to reduce social security benefits. Medicare is a program which affects nearly all Americans. Not only are most of the 20 million people age 65 and over dependent on a certain level of protection, but many younger and middle-aged family heads have been helped by not having to pay large hospital bills of older parents. While there is strong sentiment for controlling the costs of the program, this should not be done by way of reducing benefits. This provision in H.R. 1 is not necessary to put the hospital insurance program on a sound financial basis. Revised financing to accomplish this end is provided for in H.R. 1, and there is no reason to believe that such financing will not be effective. The H.R. 1 provision also introduces considerations that may affect the physician's medical decision about the need for continued hospital care. To that extent, it carries with it the potential for impairing the quality and appropriateness of care furnished to medicare beneficiaries. Under present medicare regulations, a physician's certification of medical necessity for continued hospitalization is required in each case of a hospital stay in excess of 12 days. Therefore, it must be assumed that in the great majority of such cases, the medical necessity for this continued care has been established professionally. The provision in H.R. 1 would also place an additional burden on the States which pay for the deductibles and coinsurance for their medicare recipients. The present payments of such costs already represents a substantial portion of the States' Medicaid expenditures and could affect some State budgets seriously.

**Thirteenth. Routine eye care, eyeglasses, dentures, and hearing aids:** The health insurance program now covers nonroutine eye, ear and dental services. However, expenses incurred by individuals in connection with even relatively routine eye, ear and dental care can be quite substantial, particularly where an individual requires medical attention in two or more of these areas. Moreover, the medical appliances often required with such care—that is, hearing aids—can be costly items. I, therefore, propose that the supplementary medical insurance program cover expenses incurred for routine eye care, eyeglasses, dentures, and hearing aids subject to a deductible of \$100 in a calendar year.

**Fourteenth. Maintenance drugs:** Prescription drugs represent the largest single personal health expenditure the aged are now required to meet out of their own resources. A Department Task Force of Prescription Drugs, a special committee of nongovernmental drug experts, and the 1971 Advisory Council on Social Security all recommended that pre-

scription drugs be covered under medicare. Because of this recognized need, I propose that the medicare program cover those drugs which are important for the treatment of certain specified chronic conditions afflicting the aged and disabled—heart conditions, high blood pressure, diseases of the circulatory system, diabetes, respiratory conditions, and kidney conditions, for example. In addition to identifying these conditions, my proposal would provide that the Secretary of Health, Education, and Welfare, with the assistance of an expert committee on drugs, would establish a list of covered drugs which are important in the treatment of these diseases. Such coverage would apply to all persons entitled to protection under the hospital insurance plan including disability beneficiaries under the social security and railroad retirement programs, as well as persons age 65 and over. Beneficiaries would be responsible for a flat copayment of \$2 per new prescription and \$1 per refill prescription. Medicare payment would be to the drug vendor who would be responsible for maintaining necessary records and initiating claims.

**Fifteenth. General revenue financing of cash benefits:** Under present law, regular social security cash benefits are financed from contributions made by employees, employers, and the self-employed. General revenues are used only to finance, first, special payments made on a transitional basis to certain uninsured people age 72 and over; second, benefits attributable to military service before 1957; and third, noncontributory wage credits provided for members of the military service after 1967. General revenues are also used to finance part of the costs of the medicare program. In order to make the social security program effective in its early years, full-rate benefits are being paid to people who were already old, or in their middle years, at the time their work was first covered under the program. Only a small percentage of the actual costs of the benefits being provided to these people is met by the contributions they and their employers paid. The cost of paying full-rate benefits during the early years of the program is equal to about one-third of the total cost of the program. Thus, a substantial part of the contributions to the program goes to meet the cost of getting the program started. If this cost were to be met by a Government contribution, all of the contributions paid by future generations of workers and their employers would be available to furnish protection for them. Social security contributes to the well-being of the Nation as a whole as well as that of the individual beneficiaries. It is, therefore, appropriate that the Nation as a whole, through phased-in Government contributions from general revenues, contribute to the financing of the program. This idea is not a new one. The majority of foreign social security programs have provisions for Government contributions. General revenue contributions were recommended in

1935 by the committee which helped to formulate the original social security program and were further endorsed by social security advisory councils in 1938 and 1948. While many who advocate the general revenue financing of cash benefits have suggested that the Government's share be one-third, the cost to the Government of such a program and its consequent impact on our economy would be substantial. In order to reduce this impact, I propose that general revenue financing of the cash benefits program be phased in over a period of 9 years, eventually reaching one-fifth of benefit outgo. Under this proposal, the general revenue contribution for the cash benefit program would be equal to one-twenty-fifth of the fiscal outgo in fiscal 1973, three-fiftieths of the benefit outgo in fiscal 1974, two-twenty-fifths in fiscal 1975, one-tenth in fiscal 1976, three-twenty-fifths in fiscal 1977, seven-fiftieths in fiscal 1978, four-twenty-fifths in fiscal 1979, nine-fiftieths in fiscal 1980, and one-fifth in each fiscal year after 1980. I estimate that the general revenue contribution would amount to roughly \$2 billion in fiscal 1973 and would be needed to meet the significant increase in benefit outgo that would be provided under the proposed benefit improvements that I have outlined above.

Sixteenth. General revenue financing of medicare: Under present law, general revenues finance hospital insurance benefits on a transitional basis for those who do not meet regular medicare requirements and one-half of the most of the benefits payable under the medical insurance part of the program. The Government contribution thus amounts to about one-fifth of the program costs. Under the hospital insurance program, the protection provided for each insured worker is the same regardless of his earnings. For this reason, the cost of health insurance for workers who pay contributions that are less than the value of their benefit protection should be met in part by the Nation as a whole through general revenues. If this cost is not met through general revenues, the regular worker and his employer, particularly the higher-paid regular worker, will be paying contributions in excess of the value of his protection in order to subsidize those who do not pay their own way. I, therefore, propose that the combined parts A and B of medicare be financed by a one-third contribution from employees, one-third from employers, and one-third from general revenues. The general revenue contribution would be graded in over a period of 4 years, beginning with a contribution equal to one-fifth of benefit outgo in fiscal 1973, one-fifth in fiscal 1974, one-fourth in fiscal 1975, and one-third in each fiscal year after 1975. I estimate that the general revenue contribution for medicare in fiscal year 1973 will amount to about \$3 billion. Under H.R. 1, the general revenue contribution for medicare would be about \$2¼ billion in fiscal year 1973.

Mr. President, I believe "The Older Americans' Rights Act of 1971" sets a series of realizable goals, which if ob-

tained would better guarantee the security and dignity of this Nation's elderly.

By Mr. BYRD of West Virginia (for Mr. WILLIAMS, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. CRANSTON, Mr. EAGLETON, Mr. GRAVEL, Mr. HARRIS, Mr. HART, Mr. HARTKE, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUE, Mr. JACKSON, Mr. JAVITS, Mr. KENNEDY, Mr. MAGNUSON, Mr. MCGOVERN, Mr. METCALF, Mr. MONDALE, Mr. MONTAYA, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. PERCY, Mr. PROXMIER, Mr. RIBICOFF, Mr. SCOTT, Mr. SCHWEIKER, Mr. STEVENSON, and Mr. TUNNEY):

S. 2515. A bill to further promote equal employment opportunities for American workers. Referred to the Committee on Labor and Public Welfare.

Mr. BYRD of West Virginia. Mr. President, at the request of the distinguished Senator from New Jersey (Mr. WILLIAMS), I offer on his behalf for introduction a bill entitled "Equal Employment Opportunities Act of 1971."

Mr. President, I ask unanimous consent, at his request, that the text of the bill and a section-by-section analysis be printed in the RECORD; and I further ask unanimous consent that a statement by the Senator from New Jersey be printed in the RECORD in conjunction with the introduction of the bill.

I also ask unanimous consent that a statement by the Senator from Massachusetts (Mr. KENNEDY) be printed in the RECORD.

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

#### S. 2515

A bill to further promote equal employment opportunities for American workers

*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 "Equal Employment Opportunities Enforcement Act of 1971".*

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

(1) In subsection (a) insert "governments, governmental agencies, political subdivisions," after the word "individuals".

(2) In subsection (b) strike out all before "Provided further", and insert in lieu thereof the following:

"(b) The term 'employer' means a person engaged in an industry affecting commerce who has eight or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code), (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided*, That during the first year after the date of enactment of the Equal Employment Opportunities Enforcement Act of

1970, persons having fewer than twenty-five employees (and their agents) shall not be considered employers."

(3) In subsection (c) beginning with the semicolon strike out through the word "assistance".

(4) In subsection (e) strike out between "(A)" and "such labor organization," and insert in lieu thereof "twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971", or (B) eight or more thereafter."

(5) At the end of subsection (h) insert before the period a comma and the following: "and further includes any governmental industry, business, or activity".

SEC. 3. Section 702 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e-2) is amended to read as follows:

#### "EXEMPTION

"SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its religious activities."

SEC. 4. (a) Subsections (a) through (e) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e-5(a)-(e)) are amended to read as follows:

"(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

"(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission upon the request of any person claiming to be aggrieved, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a copy of the charge on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the 'respondent') as soon as practicable thereafter and shall make an investigation thereof. Charges shall be in writing and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission

is authorized to take action with respect to the charge.

"(c) In the case of a charge filed by or on behalf of a person claiming to be aggrieved alleging an unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall take no action with respect to the investigation of such charge before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered or certified mail to the appropriate State or local authority.

"(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law, unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

"(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and a copy shall be served upon the person against whom such charge is made as soon as practicable thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

"(f) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission and to the person aggrieved, which determination shall not be reviewable in any court, the Commission shall issue and cause to be served upon the respondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof, at a place therein fixed not less than five days after the

servicing of such complaint. Related proceedings may be consolidated for hearing. Any member of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

"(g) A respondent shall have the right to file an answer to the complaint against him and with the leave of the Commission, which shall be granted whenever it is reasonable and fair to do so, may amend his answer at any time. Respondents and the person aggrieved shall be parties and may appear at any stage of the proceedings, with or without counsel. The Commission may grant such other person a right to intervene or to file briefs or make oral arguments an amicus curiae or for other purposes, as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the Rules of Civil Procedure for the district courts of the United States.

"(h) If the Commission finds that the respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons aggrieved by such unlawful employment practice an order requiring the respondent to cease and desist from such unlawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organizations, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title: *Provided*, That interim earnings or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons alleged in the complaint to be aggrieved an order dismissing the complaint.

"(i) After a charge has been filed and until the record has been filed in court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission and the parties for the elimination of the alleged unlawful employment practice and the commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any finding or order made or issued by it. An agreement approved by the Commission shall be enforceable under subsections (j) through (n) and the provisions of those subsections shall be applicable to the extent appropriate to a proceeding to enforce an agreement.

"(j) Findings of fact and orders made or issued under subsections (h) or (i) of this section shall be determined on the record. Sections 554, 555, 556, and 557 of title 5 of the United States Code shall apply to such proceedings.

"(k) Any party aggrieved by a final order of the Commission granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals for the circuit in which the unlawful employment practice in question is alleged to have occurred or in which such party resides or transacts business, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days after the service of such order, a written petition praying that the order of the Commission be modified or set aside. A copy

of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to any other party to the proceeding before the Commission, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant to the petitioner or any other party, including the Commission, such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside, in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the court of appeals. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission, its member, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(l) The Commission may petition any United States court of appeals for the circuit in which the unlawful employment practice in question occurred or in which the respondent resides or transacts business, for the enforcement of its order and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that its order be enforced and for appropriate temporary relief or restraining order. The Commission shall file in court with its petition the record in the proceeding as provided in section 2112 of title 28, United States Code. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the Commission. Upon the filing of such petition, the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant to the Commission, or any other party, such temporary relief, restraining order, or other order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the

Commission and enforcing the same to the extent that such order is affirmed or modified. Any party to the proceeding before the Commission shall be permitted to intervene in the court of appeals. No objection that has not been urged before the Commission, its members, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(m) If no petition for review, as provided in subsection (k), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Commission under subsection (l) after the expiration of such sixty-day period. The clerk of the court of appeals in which such petition for enforcement is filed shall forthwith enter a decree enforcing the order of the Commission and shall submit a copy of such decree to the Commission, the respondent named in the petition, and to any other parties to the proceeding before the Commission.

"(n) If within ninety days after service of the Commission's order, no petition for review has been filed as provided in subsection (k), and the Commission has not sought enforcement of its order as provided in subsection (l), any person entitled to relief under the Commission's order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the unlawful employment practice in question occurred, or in which a respondent named in the order resides or transacts business. The provisions of subsection (m) shall apply to such petitions for enforcement.

"(o) The Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by attorneys appointed by the Commission.

"(p) Whenever a charge is filed with the Commission pursuant to subsection (b) and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief in the proceeding, the Commission shall, after it issues a complaint, bring an action for appropriate temporary or pre-

liminary relief pending its final disposition of such charge, or until the filing of a petition under subsections (k), (l), (m), or (n) of this section, as the case may be, in the United States district court for any judicial district in the State in which the unlawful employment practice concerned is alleged to have been committed, or the judicial district in which the aggrieved person would have been employed but for the alleged unlawful employment practice, but, if the respondent is not found within any such judicial district, such an action may be brought in the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a judicial district in which such an action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a)(2) thereof, shall govern proceedings under this subsection.

"(q) (1) If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has neither issued a complaint under subsection (f) nor entered into an agreement under subsection (f) or (l) which is acceptable to the Commission and to the person aggrieved, the Commission shall so notify the person aggrieved and within sixty days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon the commencement of such civil action, the Commission shall be divested of jurisdiction over the proceeding and shall take no further action with respect thereto, except that, upon timely application, the court in its discretion may permit the Commission to intervene in such civil action if the Commission certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending termination of State or local proceedings described in subsection (c) or (d) or the efforts of the Commission to obtain voluntary compliance.

"(2) The right of an aggrieved person to bring a civil action under paragraph (1) of this subsection shall terminate once the Commission has issued a complaint under subsection (f), or has entered into an agreement under subsection (f) or (l) which is acceptable to the Commission and to the person aggrieved: *Provided*, That if after issuing a complaint the Commission has not issued an order under subsection (h) within a period of one hundred and eighty days of the issuance of the complaint, the Commission shall so notify the person aggrieved and a civil action may be brought against the respondent named in the charge at any time prior to the Commission's issuance of an order under subsection (h): *Provided further*, That if the person aggrieved files a civil action against the respondent during

the period from one hundred and eighty days to one year after the issuance of the complaint such person shall notify the Commission of such action and the Commission may petition the court not to proceed with the suit. The court may dismiss or stay any such action upon a showing that the Commission has been acting with due diligence on the complaint, that the Commission anticipates the issuance of an order under subsection (h) within a reasonable period of time, that the case is exceptional, and that extension of the Commission's jurisdiction is warranted."

(b) Subsections (f) through (k) of section 706 of such Act and references thereto are redesignated as subsections (r) through (w), respectively.

(c) Section 706(r) of such Act, as redesignated by this section, is amended by adding at the end the following sentence: "Upon the bringing of any such action, the direct court shall have jurisdiction to grant such temporary or preliminary relief as it deems just and proper."

(d) Section 706(u) and (v) of such Act, as redesignated by this section, are amended (1) by striking out "(e)" and inserting in lieu thereof "(q)", and (2) by striking out "(1)" and inserting in lieu thereof "(u)".

SEC. 5. Section 707 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(c) Effective on the date of enactment of the Equal Employment Opportunities Enforcement Act, the functions of the Attorney General and the Acting Attorney General, as the case may be, under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall thereafter carry out such functions in the manner set forth in subsections (d) and (e) of this section.

"(d) In all suits commenced pursuant to this section prior to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America or the Attorney General or Acting Attorney General, as appropriate.

"(e) Subsequent to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission: *Provided*, That all such actions shall be in accordance with the procedures set forth in section 706, including the provisions for enforcement and appellate review contained in subsections (k), (l), (m), and (n) thereof."

SEC. 6. (a) Subsections (b), (c), and (d) of section 709 of the Civil Rights Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e-3(b)-(d)) are amended to read as follows:

"(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the serv-

ices of such agencies and their employees, and, notwithstanding any other provision of law, may pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class or persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

"(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program including the chronological order in which such applicants were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply.

"(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving

such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection."

(b) Section 709 of the Civil Rights Act of 1964 is amended by: (1) redesignating section 709(e) as 709(f) and (2) by adding immediately after section 709(d) as amended, the following subsection (e):

"(e) Any record or paper required by section 709(c) of this title to be preserved or maintained shall be made available for inspection, reproduction, and copying by the Commission or its representative, or to the Attorney General or his representative, upon demand in writing directed to the person having custody, possession, or control of such record or paper. Unless otherwise ordered by a court of the United States, neither the members of the Commission nor its representative, or the Attorney General, nor his representative shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress or any committee thereof, or to a governmental agency, or in the presentation of any case or proceeding before any court or grand jury. The United States district court for the district in which a demand is made or in which a record or paper so demanded is located, shall have jurisdiction to compel by appropriate process the production of such record or paper."

SEC. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 42 U.S.C. 2000e-9) is amended to read as follows:

#### "INVESTIGATORY POWERS

"SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply:

*Provided*, That no subpoena shall be issued on the application of any party to proceedings before the Commission until after the Commission has issued and caused to be served upon the respondent a complaint and notice of hearing under subsection (f) of section 706."

SEC. 8. (a) Section 703(a)(2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e-2(a)(2)) is amended by inserting the words "or applicants for employment" after the words "his employees".

(b) Section 703(c)(2) of such Act is amended by inserting the words "or applicants for membership" after the word "membership".

(c) (1) Section 704(a) of such Act is amended by inserting "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," after "employment agency" in section 704(a).

(2) Section 704(b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," and (B) inserting a comma and the words "or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee" before the word "indicating".

(d) (1) The second sentence of section 705 (a) is amended by inserting before the period at the end thereof a comma and the following: "and all members of the Commission shall continue to serve until their successors are appointed and qualified: *Provided*, That no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the

session of the Senate in which such nomination was submitted".

(2) The fourth sentence of section 705(a) of such Act is amended to read as follows: "The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearings examiners, and employees as he deems necessary to assist it in the performance of its functions and fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code."

(e) Section 705(g)(1) of such Act is amended by inserting at the end thereof the following: ", and to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))".

(f) Section 705(g)(6) of such Act is amended to read as follows:

"(6) to intervene in a civil action brought by an aggrieved party under section 706."

(g) Section 713 of such Act is amended by adding at the end thereof the following new subsections:

"(c) Except for the powers granted to the Commission under subsection (h) of section 706, the power to modify or set aside its findings, or make new findings, under subsections (i), (k), and (l) of section 706, the rulemaking power as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from rules of specific applicability, and the power to enter into or rescind agreements with State and local agencies, as provided in subsection (b) of section 709, under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, including functions, duties, and powers with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: *Provided*, That nothing in this subsection authorizes the Commission to provide for persons other than those referred to in clauses (2) and (3) of subsection (b) of section 556 of title 5 of the United States Code to conduct any hearing to which that section applies.

"(d) The Commission is authorized to delegate to any group of three or more members of the Commission any or all of the powers which it may itself exercise."

(h) Section 714 of such Act is amended by striking out "section 111" and inserting in lieu thereof "sections 111 and 1114".

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

"(5) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

(c) Clause (111) of section 5316 of such title is repealed.

SEC. 10. Section 715 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended to read as follows:

"SEC. 715. All authority, functions, and responsibilities vested in the Secretary of Labor pursuant to Executive Order 11246

relating to nondiscrimination in employment by Government contractors and subcontractors and nondiscrimination in federally assisted construction contracts are transferred to the Equal Rights Employment Opportunity Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall hereafter carry out all such authority, functions, and responsibilities pursuant to such order."

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section:

**"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT**

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), and in those portions of the government of the District of Columbia, and the legislative and judicial branches of the Federal Government having positions in the competitive service, shall be made free from any discrimination based on race, color, religion, sex, or national origin.

"(b) The Equal Employment Opportunity Commission shall have authority to enforce the provision of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply with such rules, regulations, orders, and instructions: *Provided*, That such rules and regulations shall provide that an employee or applicant for employment shall be notified of any final action taken on any complaint filed by him thereunder.

"(c) Within thirty days of receipt of notice, given pursuant to subsection (b), of final action taken on a complaint of discrimination based on race, color, religion, sex, or national origin, or after ninety days from the filing of the initial charge until such time as final action may be taken, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706(q), in which civil action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

"(d) The provisions of section 706 (q) through (w), as applicable, shall govern civil actions brought hereunder.

"(e) All functions of the Civil Service Commission which the Director of the Office of Management and Budget determines relate to nondiscrimination in Government employment are transferred to the Equal Employment Opportunity Commission.

"(f) This section shall become effective six months after the date of enactment of this Act.

"(g) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution, statutes, and Executive orders."

SEC. 12. The amendments made by this Act to section 706 of the Civil Rights Act

of 1964 shall not be applicable to charges filed with the Commission prior to the enactment of this Act.

**SECTION-BY-SECTION ANALYSIS OF EQUAL EMPLOYMENT OPPORTUNITIES ACT OF 1971**

**SECTION 2**

This section amends certain definitions in section 701 of the Civil Rights Act of 1964.

Section 701(a).—This subsection defines "person" to include State and local governments, governmental agencies and political subdivisions.

Section 701(b).—This subsection would extend coverage of employers to those with 8 or more employees one year after enactment. The standard for determining the number of employees of an employer, that is, "employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year", would apply to employers of 25 or more employees during the first year as well as the final coverage of eight or more employees. This subsection would broaden the meaning of "employer" to include State and local governments and the District of Columbia departments or agencies (except those subject by statute to procedures of the Federal competitive service as defined in 5 USC 2102).

Section 701(c).—This subsection eliminates the exemption for agencies of the United States, States or of political subdivisions of States from the definition of "employment agency" in order to conform with the expanded coverage of State and local governments in section 701(a) and (b).

Section 701(e).—The subsection is revised to include coverage of labor organizations with 8 or more members one year after enactment.

**SECTION 3**

Section 702 is amended to eliminate the exemption for employment of individuals engaged in educational activities of non-religious educational institutions. It continues the exemption for employment of aliens outside the United States and to a religious corporation, association, educational institution or society with respect to employment of individuals of a particular religion to perform work connected with religious activities.

**SECTION 4 (a)**

This section amends sections 706 (a)-(e) of the Civil Rights Act of 1964 entitled "Prevention of Unlawful Practices."

Section 706(a).—This subsection would empower the Commission to prevent persons from engaging in unlawful employment practices under sections 703 and 704 of title VII of the Civil Rights Act of 1964.

Section 706(b).—This subsection prescribes the procedures to be followed when a charge of an unlawful employment practice is filed with the Commission. The Commission must serve a copy of the charge on the respondent, investigate the charge and make its determination on whether there is reasonable cause to believe that the charge is true. If it finds no reasonable cause, the Commission must dismiss the charge; if it finds reasonable cause, it must attempt to conciliate the case. The subsection makes a number of changes in existing law:

1. Under present law, a charge may be filed only by a person aggrieved under oath. This subsection would permit a charge to be filed by or on behalf of a person aggrieved, and eliminates the requirement of an oath.

2. The Commission would be required to make its determination on reasonable cause as promptly as possible and, "so far as practicable," within 120 days from the filing of the charge or from the date upon which the Commission is authorized to act on the charge under section 706 (c) or (d).

3. This subsection and section 8(c) of the bill add appropriate provisions to carry out the intent of the present statute to provide full coverage for joint labor-management

committees controlling apprenticeship or other training or retraining, including on-the-job training programs. While these joint labor-management committees are prohibited under section 703(d) of the present act from discriminating, they were not expressly included in the prohibition against discriminatory advertising or retaliation against persons participating in Commission proceedings (sec. 704 (a) and (b)) or in the procedures for filing charges in section 706(a).

Section 706(c).—This provision retains the present requirement that the Commission defer for a period of 60 days to State or local agencies functioning under appropriate anti-discrimination laws (or 120 days during the first year after the effective date of such law). The only change in the present law is to delete the term "no charge may be filed" by an aggrieved person in such State or locality. The present statute is somewhat ambiguous respecting Commission action on charges filed prior to resort to the State or local agency. The new language clarifies the present statute by permitting the charge to be filed but prohibiting the Commission from taking action with respect thereto until the prescribed period has elapsed.

Section 706(d).—This subsection, requiring deferral to State or local anti-discrimination agencies in the case of charges filed by a member of the Commission, follows the language of the present statute.

Section 706(e).—This subsection prescribes the time limits for the filing of a charge. Under the present statute, the charge must be filed within 90 days after the alleged unlawful employment practice occurred. In cases where the Commission defers to a State or local agency, the charge must presently be filed within 210 days of the occurrence of the alleged unlawful practice, or within 30 days after the person aggrieved receives notice that State or local agency has terminated its proceedings, whichever is earlier. This subsection would permit charges to be filed within 180 days of the alleged unlawful practice—a limitation period similar to that contained in the Labor-Management Relations Act, as amended (29 U.S.C. 160(b)). Where the Commission defers to a State or local agency, the time limit is extended to 300 days after the occurrence of the alleged unlawful practice or 30 days after receipt of notice that the State or local agency has terminated its proceedings. This subsection also requires that the charge be served on the respondent as soon as practicable after its having been filed.

Sections 706(f) through 706(p).—These subsections, which are new, set forth the procedure to be followed where the Commission, after finding reasonable cause to believe that the allegations of the charge are true, is unable to conciliate the case. The hearing and review requirements are similar to those found in most statutes governing administrative agencies.

Section 706(f).—Under this subsection, if the Commission is unable to secure a conciliation agreement pursuant to section 706 (b) that is acceptable to the Commission and to the person aggrieved, it would promptly issue and serve upon the respondent a complaint and notice of hearing. The Commission's determination that it is unable to secure such an agreement would not be reviewable in court. Conciliation agreements entered into by the Commission would be enforceable in court in accordance with the provisions of section 706(1). If a Commissioner files a charge, he shall not participate in a hearing in any complaint arising out of such charge, except as a witness.

Section 706(g).—This subsection prescribes certain statutory procedural requirements after a complaint is issued by the Commission. The respondent would be provided an opportunity to file an answer

to the complaint, and to amend its answer upon a showing of reasonableness and fairness. The respondent and the aggrieved person are full parties and permitted to appear at any stage of the proceeding. The provision for active participation of the aggrieved persons differs from the Labor-Management Relations Act (29 U.S.C. 160 (b)), under which the person filing the charge is permitted to intervene only in the discretion of the person conducting the hearing. The Commission could also, in its discretion, grant to other persons the right to intervene, to file briefs, or to make oral argument, as it deems appropriate. Testimony at hearings must be under oath and reduced to writing and proceedings shall, so far as practicable, be conducted in accordance with the rules of evidence in the district courts of the United States. This last provision is similar to that contained in the Labor-Management Relations Act (29 U.S.C. 160(b)). As specified in section 706(j), all hearings must be conducted in accordance with the Administrative Procedure Act. The only persons, in addition to members of the Commission, who may preside at hearings are hearing examiners appointed under section 3105 of title 5 of the United States Code.

Section 706(h).—This subsection provides that if the Commission, following a hearing, finds that the respondent has engaged in an unlawful employment practice, it shall state its findings of fact and issue an order to be served on the parties, requiring that the respondent cease and desist from its unlawful conduct and take such affirmative action, including reinstatement or hiring of employees, with or without backpay as will effectuate the policies of the Act. Interim earnings or amounts earnable with reasonable diligence by the aggrieved persons would operate to reduce the backpay otherwise allowable. The order could also require that the respondent make reports from time to time to the Commission. If the Commission finds no unlawful employment practice, it would state such findings and issue an order dismissing the complaint. This provision is intended to give the Commission wide discretion in fashioning the most complete relief possible to eliminate all of the consequences of the unlawful employment practice, caused by, or attributable to the respondent.

Section 706(i).—This subsection would make clear the authority of the Commission, any time after a charge has been filed until the record is filed in court, to end proceedings by agreement with the parties for the elimination of the alleged unlawful employment practice. Agreements entered into under this section or section 706(f) would be enforceable in the appropriate court of appeals under section 706(l) through (n). The Commission would also be able, upon reasonable notice, to modify or set aside, in whole or in part, any finding or order made or issued by it.

Section 706(j).—This subsection requires that findings of fact and orders made or issued under subsection (h) or (i) be on the record in accordance with Administrative Procedure Act.

Section 706(k).—This subsection would permit a party aggrieved by a final order of the Commission—the respondent or the person or persons on whose behalf the charge was filed—to seek review of such order in a U.S. court of appeals within 60 days after the service of the Commission's order. The subsection specifies the procedures to be followed after a petition for review is filed, including:

1. The clerk of the court transmits a copy of the petition to the Commission and to any other party to the proceeding before the Commission;

2. The Commission files in court the record in the proceedings pursuant to 28 U.S.C. 2112

at which time the court of appeals has exclusive jurisdiction.

3. The Court of Appeals is authorized to grant such temporary relief, restraining order, or other order: as it deems just and proper and may enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission. The findings of fact by the Commission are conclusive if they are supported by substantial evidence on the record considered as a whole.

4. Any party to the proceedings before the Commission may intervene in the court of appeals and a party may apply for leave to adduce additional evidence before the Commission, which could then modify its original findings. Modified findings would also be conclusive if supported by substantial evidence on the record considered as a whole.

5. Objections not urged before the Commission, its members, or agents, will not be considered by the court unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

6. Commencement of proceedings under this subsection would not stay the Commission's order unless ordered by the court.

7. The courts of appeals are required to hear petitions expeditiously. This requirement is intended to emphasize to the courts of appeals the need for promptly acting on petitions in order to have speedy resolution of these cases.

Section 706(l).—This subsection would authorize the Commission to petition a U.S. court of appeals for enforcement of its order. The prescribed procedures in the case of petitions for enforcement under this subsection are similar to section 706(k) except that no time limit is specified for the enforcement petition (but, see section 706(m) regarding the self-enforcement procedure), and the Commission would be authorized to seek an order from the court for temporary or preliminary enforcement of its order pending complete review by the court of appeals.

Section 706(m).—Under this subsection, if there is no petition for review filed within 60 days as provided in section 706(k), the Commission's findings of fact and order would become conclusive in connection with any petition for enforcement filed pursuant to section 706(l). If the Commission petitions for an enforcement order, the clerk of the court of appeals would enter a decree enforcing the order of the Commission and transmit copies to the Commission, the respondent, and any other parties to the proceeding before the Commission.

Section 706(n).—This subsection provides that any person entitled to relief under a Commission order could obtain enforcement of the order if within 90 days after service of the Commission's order there has been no petition for review filed under subsection (k) or no petition for enforcement filed by the Commission under subsections (l) or (m). The procedures and provisions of subsection (m) would apply to such petition for enforcement.

Section 706(o).—This subsection provides that the Attorney General would conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other Commission litigation, including litigation arising under section 706(k), (l), (m), (n), (p), or (q), litigation arising in connection with the Commission's recordkeeping requirements under section 709, the enforcement of the Commission's authority to conduct investigations under section 710, and private litigation in which the Commission is involved as amicus curiae, as well as judicial proceedings in which the Commission intervenes, shall be conducted by attorneys appointed by the Commission.

Section 706(p).—Under this subsection, if, after a charge is filed under section 706(b), the Commission concludes on the basis of a preliminary investigation that prompt ju-

dicial action is necessary to preserve its power to grant effective relief in the proceeding, it must bring an action for appropriate preliminary or temporary relief in the United States district court in the judicial district in which the unlawful employment practice is alleged to have been committed, where the person would have been employed but for the alleged unlawful practice, or if the respondent is not to be found in any of these districts, in the judicial district where the respondent has its principal office. The subsection further provides that for purposes of 28 U.S.C. 1404 and 1406 (which permit the court to transfer an action to another judicial district where the action might have been brought) the district in which the respondent has his principal office is to be considered a judicial district where the action might have been brought.

This subsection, in addition, would make rule 65 of the Federal Rules of Civil Procedure, except paragraph (a) (2) thereof, applicable to proceedings under section 706 (p). Rule 65 prescribes procedural requirements for the granting of temporary restraining orders and preliminary injunctions. Paragraph (a) (2) of rule 65 permits the court to advance the trial on the merits and to consolidate the trial on the merits with the hearing on the application for injunction. This provision would be inapplicable to proceedings under section 706 (p).

Any relief ordered by the court under this subsection would be permitted to run until such time as a court of appeals has assumed jurisdiction of a review or enforcement petition.

Section 706(q).—This subsection preserves the private right of action by an aggrieved person, under this subsection, the aggrieved person may bring such an action within 60 days after being notified by the Commission that it has dismissed the charge, or that 180 days have elapsed from the filing of the charge without the Commission either issuing a complaint or entering into an agreement under section 706 (f) or (i) which is acceptable to the Commission and to the person aggrieved.

The subsection would also divest the Commission of jurisdiction over any pending proceedings upon the filing of a private action. Conversely, the right of an aggrieved party to bring a private action would terminate once the Commission issued a complaint under subsection 706(f) or entered into conciliation agreement under subsection 706 (f) or (i) which is agreeable to the Commission and to the person aggrieved. If the Commission does not issue an order within 180 days after it issues a complaint, the aggrieved person may also institute a civil action. If such action is instituted within one year of the issuance of the Commission's complaint, the Commission may request that it be stayed or dismissed upon a showing that it has been acting with due diligence, that it anticipates issuance of an order within a reasonable time on the complaint, and that extension of exclusive jurisdiction of the Commission is warranted.

#### SECTION 4 (b) AND (d)

These sections redesignate the paragraph numbers of subsections of section 706 (e) through (k) of the Civil Rights Act of 1964 that would be retained as section 706 (q) through (w), and also redesignate other paragraph numbers to be consistent with the changes made in section 706.

Section 4(c).—This section adds a sentence to subsection 706(a) relating to an action by a District Court that would permit just and proper preliminary relief.

#### SECTION 5

Section 707, establishing the Attorney General's "pattern or practice" action, is amended to provide for a transfer of this function to the Commission upon the en-

actment of the bill. The subsection would provide that currently pending proceedings would continue without abatement, that all court orders and decrees remain in effect, and that the Commission would be substituted as a part for the United States of America or the Attorney General or Acting Attorney General as appropriate. The Commission would have authority to investigate and act on pattern or practice charges except that any action would follow the procedures of Section 706.

## SECTION 6

This section amends section 709 of the Civil Rights Act of 1964, entitled "Investigations, Inspections, Records, State Agencies."

Section 709(a).—This subsection, which gives the Commission the right to examine and copy documents in connection with its investigation of a charge, would remain unchanged.

Section 709(b).—This subsection would authorize the Commission to cooperate with State and local fair employment practices agencies in order to carry out the purposes of the title, and to enter into agreements with such agencies, under which the Commission would refrain from processing certain types of charges or relieve persons from the record-keeping requirements. This subsection would make two changes in the present statute. Under this subsection, the Commission could, within the limitations of funds appropriated for the purpose, also engage in and contribute to the cost of research and other projects undertaken by these State and local agencies and pay these agencies in advance for services rendered to the Commission. The subsection also deletes the reference to private civil actions under section 706(e) of the present statute.

Section 709(c).—This subsection, like the present statute, would require employers, employment agencies, labor organizations, and joint labor-management apprenticeship committees subject to the title to make and keep certain records and to make reports therefrom to the Commission. Under the present statute, a party required to keep records could seek an exemption from these requirements on the ground to undue hardship either by applying to the Commission or bringing a civil action in the district court. This subsection would require the party seeking the exemption first to make an application to the Commission and only if the Commission denies the request could the party bring an action in the district court. This subsection would also authorize the Commission to apply for a court order compelling compliance with the recordkeeping and reporting obligations set forth in the subsection.

Section 709(d).—This subsection would eliminate the present exemption from record-keeping requirements for those employers in States and political subdivisions with fair employment practice laws or for employers subject to Federal executive order or agency recordkeeping requirements. Under this subsection, the Commission would consult with interested State and other Federal agencies in order to coordinate the Federal record-keeping requirements under section 709(c) with those adopted by such agencies. The subsection further provides that the Commission furnish information obtained to State and local fair employment agencies, on condition that the information would not be made public prior to the institution of State or local proceedings.

Section 709(e).—Under this subsection, the Commission, or the Attorney General, would have the authority to direct the person having custody of any record or paper required by section 709(c) to be preserved or maintained to make such record or paper available for inspection or copying by the Commission or the Attorney General. The district court of the judicial district where the demand is made or the papers are located would

have jurisdiction by appropriate process to compel the production of such record or paper. The subsection further provides that the members of the Commission and its representatives or the Attorney General and his representatives, would not, unless ordered by the court, disclose any record or paper produced except to Congress or a congressional committee, to other governmental agencies, or in the presentation of cases before a court or a grand jury.

## SECTION 7

This section would amend section 710 of the Civil Rights Act of 1964 to make section 11 of the National Labor Relations Act (29 U.S.C. 161), except for one provision thereof, applicable to Commission investigations. This section would require the Commission or a member thereof, upon application of a party, to issue a subpoena requiring the attendance and testimony of a witness or the production of any evidence in a proceeding. The person served with the subpoena could petition the Commission to revoke the subpoena within 5 days. On application of the Commission, an appropriate district court could order a person to obey a subpoena and failure to comply with the court order would be punishable in contempt proceedings.

Under this section, the Commission would not be authorized to issue a subpoena on the application of a private party before it issues a complaint and notice of hearing. This provision, which is in accord with the actual practice of the National Labor Relations Board, would give the Commission exclusive authority to conduct the prehearing investigation.

Section 11 of the National Labor Relations Act also contains provisions relating to privileges of witnesses, immunity from prosecution, fees, process, service, and return, and information and assistance from other agencies.

## SECTION 8(a) AND (b)

These subsections would amend sections 703(a)(2) and 703(c)(2) of the present statute to make it clear that discrimination against applicants for employment and applicants for membership in labor organizations is an unlawful employment practice. This subsection would merely be declaratory of present law.

## SECTION 8(c)(1) AND (2)

These subsections would amend section 704(a) and (b) of the present statute to make clear that joint labor-management apprenticeship committees are covered by those provisions which relate to discriminatory advertising and retaliation against individuals participating in Commission proceedings.

## SECTION 8(d)(1)

This subsection would amend section 705 of the present statute to permit a member of the Commission to serve until his successor is appointed but not for more than 60 days when Congress is in session unless the successor has been nominated and the nomination submitted to the Senate, or after the adjournment sine die of the session of the Senate in which such nomination was submitted.

## SECTION 8(d)(2)

The subsection is substantially the same as present section 705 and would make the Chairman of the Commission, on behalf of the Commission, responsible for the administrative operations of the Commission and for the appointment of officers, agents, attorneys, hearing examiners, and other employees of the Commission in accordance with Federal law.

## SECTION 8(e)

This subsection would amend section 705(g)(1) of the present act to permit the Commission to accept uncompensated services. It is intended to permit the Commission to utilize these services for such purposes as education, publicity, and the collection of

data. It would not be expected to accept such services in connection with the prosecution or decision of cases before it except in extraordinary situations.

## SECTION 8(f)

This subsection would eliminate the provision in present section 705(g) authorizing the Commission to request the Attorney General to intervene in private civil actions and instead permit the Commission itself to intervene in such civil actions as provided in section 706(q).

## SECTION 8(g)

This subsection would, subject to certain exceptions, permit the Commission to delegate any of its functions, duties and powers to such persons as it may designate by regulation. A number of other agencies have broad authority to delegate functions; for example, the Securities and Exchange Commission (15 U.S.C. 78d-1), the Interstate Commerce Commission (49 U.S.C. 17(5)) and the Federal Communications Commission (47 U.S.C. 155(d)). The exceptions are as follows:

(1) The Commission could not delegate its powers to make decisions on the merits after administrative hearings under section 706(h) or to modify or set aside its findings or make new findings under section 706(i), (k), and (l). However, like the National Labor Relations Board (29 U.S.C. 153(b)), the Commission would be authorized to delegate this power or any of its other powers to groups of three or more members of the Commission.

(2) The Commission could not delegate its authority under section 713(c) to make rules of general applicability. A similar limitation is imposed on the Securities and Exchange Commission (15 U.S.C. 78d-1(a)).

(3) The Commission could not delegate its authority under section 709(b) to make agreements with States under which the Commission agrees to refrain from processing certain charges or to relieve certain persons from the recordkeeping requirements.

(4) The Commission could not provide for the conduct of administrative hearings except by members of the Commission or by hearing officers appointed in accord with 5 U.S.C. 556.

## SECTION 8(h)

This subsection would afford additional protection to officers, agents, and employees of the Commission in the performance of their official duties by making 18 U.S.C. 1114 applicable to them.

## SECTION 9(a), (b), AND (c)

These subsections would make certain modifications in the position of the Chairman of the Commission and the members of the Commission in the executive pay scale, so as to place them in a position of parity with officials in comparable positions in agencies having substantially equivalent powers such as the National Labor Relations Board, the Federal Trade Commission and the Federal Power Commission.

## SECTION 10

Section 715.—This section transfers the functions of the Secretary of Labor under Executive Order 11246 concerning non-discrimination in employment by government contractors to the Commission. Under existing organization, the Executive Order is enforced by the Office of Federal Contract Compliance.

## SECTION 11

Section 717(a).—This subsection would make clear that personnel actions of the U.S. Government affecting employees or applicants for employment shall be made free from any discrimination based on race, color, religion, sex, or national origin. All employees subject to the executive branch and Civil Service Commission control or protection are covered by this section.

Section 717(b).—Under this subsection, the Commission would have the authority to enforce the provision of subsection 715(a). The Commission would be empowered to issue rules, regulations, orders and instructions as it deems necessary. The head of each executive department and agency and the appropriate officer of the District of Columbia would be required to comply with such Commission directives. Employees or applicants must be notified of final action on their complaints.

Section 717(c) and (d).—The provision of section 706(q) concerning private civil actions by aggrieved persons would apply to aggrieved Federal employees or applicants. They could file a civil action within 30 days of notice of final action on a complaint given pursuant to subsection 717(b), or after 90 days from the filing of an initial charge.

Section 717(e).—This section would transfer nondiscrimination functions of the Civil Service Commission to the Equal Employment Opportunity Commission.

Section 717(f).—This subsection would make the effective date of section 717 six months after the date of enactment of this Act.

Section 717(g).—This subsection provides that nothing in this act relieves any Government agency or official of his existing nondiscrimination obligations under the Constitution, other statutes, or executive orders.

The present section 715 relating to a special study by the Secretary of Labor is repealed by the substitution of the new provisions. That study has been completed and the section has no more effect.

#### SECTION 12

This section provides that the amended provisions of section 706 concerning the cease and desist enforcement powers would not apply to charges filed with the Commission prior to the effective date of this act. In addition, those new or amended sections of title VII not specifically stated in this section to be inapplicable to current charges, such as the amendments to section 705, 709, 710, 713, and 715 would cover existing charges.

#### STATEMENT BY SENATOR WILLIAMS

Mr. President, on behalf of myself and other Senators, I introduce a bill that would strengthen and broaden the enforcement powers of the Equal Employment Opportunity Commission.

Title VII of the Civil Rights Act was enacted by Congress in 1964. This Act, signed into law just a little more than seven years ago, recognized the prevalence of discriminatory employment practices in the United States and the need for Federal legislation to deal with the problem of such discrimination. The goal of assuring equal employment opportunity for all of our citizens was made a national commitment by that Congressional Act. Unfortunately, however, the machinery we created for achieving this goal was not in all respects equal to the commitment.

The deficiency in the 1964 Act was that the Equal Employment Opportunity Commission, which was established to administer Title VII, was not given the authority to issue judicially enforceable orders to back up its findings of discrimination based on race, color, religion, sex, or national origin. Its authority in such cases has been limited to conciliation efforts.

As a consequence, unless the Department of Justice concludes that a pattern or practice of discrimination is involved, the burden of obtaining enforceable relief rests upon each individual victim of discrimination, who must go into court as a private party, with the resultant expense that entails, in order to secure the rights promised him under the law.

Thus, those persons whose economic dis-

advantage was a prime reason for enactment of the Equal Employment Opportunities provision, find that their only recourse in the face of unyielding discrimination is one that is financially prohibitive.

A further consequence is that the Commission's lack of enforcement authority reduces its ability to achieve compliance and conciliation efforts. Obviously respondents are less willing to cooperate in arriving at a satisfactory resolution of a discrimination complaint when they know that the Commission's power is merely exhortive. The experience of the Commission has substantiated this conclusion for the fact is that conciliation efforts have been unsuccessful in more than half of the cases in which it has found that discrimination has occurred.

The economic consequences to those whom the Act was designed to help have been extreme. The statistics are vivid and I would like to recite just a few of the more significant results. Last month the nation's overall unemployment was 6 percent of the labor force. The unemployment rate for Negroes and other minorities was 9.8 percent. By comparison, the rate of white unemployment was 5.6 percent. The unemployment rate of non-white teenagers at this time last year was 28.7 percent. This horrendous figure has increased to 31.3 percent compared with 15.4 percent for white teenagers.

Moreover, the burden of unfair employment practices does not just fall on our minority citizens. A major area of compliance ignored by employers is the rights of female workers.

About 40 percent of all workers are women. Current figures indicate that two-thirds of all working mothers are either widowed, divorced or separated from their husbands, or had husbands whose incomes were below \$7,000.

The discrimination against women in employment continues particularly with regard to earnings. The average American woman who works full time earns only \$60.50 for each \$100 earned by the average American man.

Unfortunately, it must also be noted that discrimination, primarily in the executive suite, is still practiced on the basis of religion and nationality.

The time has come to bring an end to job discrimination once and for all and to ensure to every American the decent self-respect that goes with a job commensurate with one's abilities.

The hopeful prospects that Title VII offered millions of Americans in 1964 must be made a reality in fact if we are to maintain a healthy society and a Nation dedicated to justice.

Last year I introduced similar legislation as S. 2453. That bill, after extensive deliberation by the Senate, was passed providing the needed enforcement machinery for equal employment opportunity for the first time. Unfortunately, the House of Representatives did not act on the bill before adjournment.

Our bill provides the Equal Employment Opportunity Commission with the power to conduct administrative hearings if conciliation efforts fail after a complaint and to issue cease and desist orders that would eliminate discriminatory employment practices.

Similar procedures have long been available to other administrative agencies, and there is clearly no valid reason for any longer depriving this Commission of similar machinery for performing its assigned responsibilities. To ensure due process, the Commission's orders will be subject to judicial review in the United States Courts of Appeal upon petition by any party to the proceedings.

In addition, the bill consolidates three areas of Federal civil rights activities in the Equal Employment Opportunity Commis-

sion. Since the enactment of the Civil Rights Act of 1964 there has been increased activity by the Federal Government in eliminating employment discrimination through its procurement power under Presidential Executive Order. In addition, the Federal Government has moved to eliminate employment discrimination within its own house through the President's authority over the Civil Service Commission.

In its most recent report, the Civil Rights Commission commented on the need for consolidation of Federal Government anti-discriminatory efforts:

"In October 1970, the Commission concluded that only by transferring OFCC's contract compliance responsibilities and Justice's litigation responsibilities to EEOC could effective coordination of Federal equal employment efforts be achieved. In the light of continued ineffective coordination, the Commission continues to believe that consolidation of equal employment opportunity functions is necessary."

Consequently, the bill provides that the present authority of the Attorney General to bring cases involving a pattern or practice of resistance to Title VII would be transferred to EEOC. Second, the activity under Executive Order 11246 relating to equal employment opportunity by government contractors would be transferred from the Secretary of Labor to the Commission. Third, the overall supervision for Equal Employment Opportunity for Federal employees would be transferred from the Civil Service Commission to the Equal Employment Opportunity Commission.

The bill also contains other significant provisions. The Commission's jurisdiction would be extended to include employers and unions with eight or more employees and members, State and local Government employees, and teachers.

Finally, the bill makes a number of changes relating to the organization of the Commission recordkeeping requirements and the procedures involved in administrative enforcement.

I believe that by enacting this bill we will be able to finally make the Commission a truly effective instrument for preventing discrimination in employment and fulfilling the Congressional commitment to equal employment opportunity made several years ago.

#### STATEMENT BY SENATOR KENNEDY

Mr. President, I am cosponsoring the Equal Employment Opportunities Enforcement Act of 1971 because I believe that its grant of cease and desist power to the EEOC is vital to the accomplishment of the national goal of equal access to jobs for all Americans, and because we have waited too long to extend the provisions of the 1964 Equal Employment Act to state and local government and to additional private employers.

I wish to express, however, my serious concern that the bill's transfer of all equal employment functions from Department of Labor, Department of Justice and the Civil Service Commission to the EEOC at this point in time may impose an unmanageable burden on that already overworked and underfunded agency. Moreover, this transfer may place all of the equal employment eggs in one basket—a basket that might turn out to be a weak one if a majority of the Commission members is not enthusiastic and courageous about implementing the mandate of the 1964 Civil Rights Act.

But, I am confident that these concerns will receive full consideration in the hearings and debate on the bill, and that the final version of the legislation will reflect such changes or protections as may appear necessary. I therefore am pleased to cosponsor the bill at this time as evidence of my desire for its speedy processing and its passage at the earliest possible time.

ADDITIONAL COSPONSOR OF A  
RESOLUTION

SENATE RESOLUTION 73

At the request of Mr. BYRD of West Virginia, the Senator from Utah (Mr. Moss) was added as a cosponsor of Senate Resolution 73, amending rule XVI of the Standing Rules of the Senate.

NOTICE OF HEARING ON NOMINA-  
TIONS

Mr. BYRD of West Virginia. Mr. President, on behalf of the Committee on the Judiciary, and at the request of the distinguished chairman, Mr. EASTLAND, I desire to give notice that a public hearing has been scheduled for Tuesday, September 21, 1971, at 10:30 a.m., in room 2228, New Senate Office Building, on the following nominations:

John A. Field, Jr., of West Virginia, to be U.S. circuit judge, fourth circuit, vice Herman S. Boreman, retired.

Sherman G. Finesilver, of Colorado, to be U.S. district judge, district of Colorado, vice William E. Doyle, elevated.

William Brevard Hand, of Alabama, to be U.S. district judge, southern district of Alabama, vice Daniel H. Thomas, retiring.

James Hunter III, of New Jersey, to be U.S. circuit judge, third circuit, vice William F. Smith, deceased

James Rosen, of New Jersey, to be U.S. circuit judge, third circuit, vice William H. Hastie, retired.

At the indicated time and place persons interested in the hearing may make such representations as may be pertinent.

The subcommittee consists of the Senator from Mississippi (Mr. EASTLAND), chairman; the Senator from Arkansas (Mr. McCLELLAN), and the Senator from Nebraska (Mr. HRUSKA).

NOTICE OF HEARING IN PROVIDENCE, R.I., ON CUTBACKS IN  
MEDICARE AND MEDICAID COV-  
ERAGE

Mr. RANDOLPH. Mr. President, I ask unanimous consent that I may be permitted to have printed in the RECORD an announcement by the Senator from Maine (Mr. MUSKIE) with regard to a hearing to be held in Providence, R.I., September 20, 1971, on "Cutbacks in Medicare and Medicaid."

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

STATEMENT OF SENATOR MUSKIE

Mr. President, the Subcommittee on Health of the Elderly of the Senate Special Committee on Aging will continue its study of the impact on older Americans of proposed cutbacks in Medicare and Medicaid coverage. The subcommittee's first hearing was held in Los Angeles, California, on May 10, 1971, and a second hearing was held in Woonsocket, Rhode Island, on June 14, 1971.

Our next hearing on this subject will take place on September 20, 1971, in Providence, Rhode Island, at 10 a.m., at the Sts. Peter and Paul Auditorium, Franklin Street. Senator Claiborne Pell will preside.

ADDITIONAL STATEMENTS

SENATOR WINSTON L. PROUTY,  
OF VERMONT

Mr. MCGEE. Mr. President, it is with a deep sense of loss that I rise to pay my respects to the memory of a very esteemed colleague, Winston Prouty. His death last week came as a shock to all of us who deeply respected his attributes.

Winston Prouty was a man of high integrity and honor, who totally committed himself to the work of public service.

Few of us now in the Senate can forget the hard and articulate fight he led for the social security program in 1968. His pleas for a guaranteed annual income at that time clearly indicated he was a man of vision. I know the rest of my colleagues share this sense of loss and mourn the passing of a great statesman. This has been a tragic loss, not only for the people of Vermont, but for the Nation as well.

Mr. RIBICOFF. I was saddened to learn of the death last Friday of the distinguished junior Senator from Vermont, Winston L. Prouty.

Senator Prouty had served the people of Vermont well over the last 33 years, first as mayor of Newport, then as a State representative, and later as the chairman of the State water conservation board. In 1950, he was elected to the first of four terms in the House of Representatives and in 1958 won the first of three elections to the Senate.

All of us who served with Win Prouty will remember his distinguished work on the District of Columbia, Rules, Labor and Public Welfare, and Commerce Committees, especially his efforts on behalf of the elderly, the St. Lawrence Seaway, and Federal aid for school construction.

Senator Prouty's reflective manner and effective advocacy will be sorely missed by the Senate, the citizens of Vermont, and the entire Nation.

Mr. BYRD of Virginia. Mr. President, I am deeply saddened, as is every Member of the Senate, at the death of our esteemed colleague, Senator Winston L. Prouty, of Vermont.

Senator Prouty, a native and resident of Newport, Vt., gave 33 years of his life to the public service of his State and Nation.

During the 21 years he served in Congress, Senator Prouty was a steadfast patriot, one who championed the causes of education, the workingman, and the elderly.

Senator Prouty was a thoughtful man and an effective legislator. Spare of frame and quiet in manner, Senator Prouty showed a dogged persistence and attention to detail that always helped the Senate to produce sounder legislation.

Senator Prouty may be best remembered for his efforts in behalf of senior citizens, but in every area where he turned his attention, he proved himself a faithful, dedicated public servant.

Mr. INOUE. Mr. President, Senator Winston Prouty was noted for his tenacious perseverance in carrying out his

responsibilities as a U.S. Senator. He represented his State and his people well.

In addition to his State constituency, today there are millions of Americans who grieve his passing, in particular, the elder citizens of our Nation for whom he was in the forefront proposing legislation to provide a better life for them.

Win Prouty will be missed. I join my colleagues in expressing my deepest condolences to his beloved wife.

PRISON REFORM

Mr. BELLMON. Mr. President, I am sure that other Members of the Senate are as stunned and outraged as I am at the bloody and violent episode at New York State's Attica State Prison which left 38 hostages and inmates dead. The slaughter of human life that occurred yesterday was more horrifying than any such event in recent times. However, it followed by only a few weeks the disturbance at San Quentin Prison in California, in which three guards and three inmates were killed.

While these incidents are indelibly impressed on the minds of Americans because of their current nature, the prison system throughout the country has been marred by similar uprisings all too often in recent years. In fact, America's penal system has become a breeding ground for rebellion.

Prison riots are a blot on the fabric of our society. Yet they are inevitable as long as our prisons remain in the condition they are in. No decent citizen can condone the actions of the prisoners at Attica in assigning executioners to murder hostages in cold blood. But the shock of this unnecessary massacre should create an awareness among thinking citizens of the problems of the prisons, and move us to look into the causes for such violence and take steps to reform our inhuman and ineffective correctional efforts.

The problems in our present prison system are not new ones. They have existed since man first began placing his fellowman in captivity for defying the laws of his society. The problems begin with the prisoner himself. The average prison inmate is a man lacking in education, lacking in skills, lacking in self-respect. Chances are he has a history of drug abuse and probably is suffering from emotional difficulties. Also, and this is an important point to remember, more than likely he has had at least one prior conviction.

Take a man with that kind of background, put him in prison for 5 years, and what happens? Under the present system, this amounts to an interminable period of confinement in a world of sterile walls, steel bars, long corridors, and chain links. As a result, the factors that led a man to commit a crime in the first place are augmented; and when he is released, all too often he ends up back in prison within a short time.

Our prisons are severely lacking in the kind of activities to keep a prisoner suitably occupied. Training programs are in-

adequate and are not geared to real-life situations in business and industry.

The term "corrections system" is a misnomer, because there is neither a system nor much correction. Only 2 percent of the Nation's jail population of more than 400,000 is exposed to any kind of innovative corrections programs. Only 20 percent of our corrections officials are actually involved in rehabilitation programs. The other 80 percent are performing security and administration work.

The Law Enforcement Assistance Administration has not used its resources to change the system, but rather to perpetuate it. There is a critical and pressing need to invest public funds in prison reform research and programs. Last February, I introduced a bill, S. 662, to promote the development and reform of penal and correctional systems. It is aimed at developing the basic knowledge of successful prison operation which is presently missing. It is also intended to involve prison systems of all levels in the development of this information and in establishing a system of evaluating the results and disseminating the information throughout the Government.

The bill establishes a Commission on Penal and Corrections Systems Development and Reform. A State or States would submit to the commission a plan for comprehensive correctional reform which would include provisions for the discipline, treatment, care, rehabilitation, education, training, and motivation of inmates in innovative State or Federal prison systems.

Hearings were held on the bill last May by Senator BURDICK's Subcommittee on National Penitentiaries. At that time, witnesses from all parts of the country, representing various levels of prison operations, gave supporting testimony. I have been joined by a number of other Senators in sponsoring this reform legislation.

Mr. President, I believe the people of the country are looking to Congress, not to the States, to find the solution to this serious problem. States should not be expected to attack the problem separately. The Federal Government has both the resources and the responsibility to develop and support a correctional system that corrects instead of aggravating crime.

Now, in the emotional aftermath of the Attica tragedy, is an appropriate time for action to correct the mistakes of the past and to lay the groundwork for a better system of truly correcting those who are imprisoned for breaking the law.

#### NATIONAL SCHOOL LUNCH PROGRAM

Mr. RIBICOFF. Mr. President, today I have joined with several Senators in a letter to President Nixon urging that proposed cutbacks in the national school lunch program be rescinded.

Under new regulations issued by the Department of Agriculture the Federal Government would reduce its reimbursement rate per meal to 35 cents, although the actual cost of meals averages above 50 cents per meal and present regula-

tions allow reimbursement of up to 60 cents.

This means that unless the regulations are modified or additional revenues are raised at the State or local level, school districts throughout the Nation, including those in Connecticut, will have to reduce or eliminate their lunch programs. In short, the new regulations assure the continuation of hunger for thousands of schoolchildren.

In Connecticut the continued progress and indeed the very existence of the school lunch program is threatened. On a statewide basis Connecticut can anticipate a loss of \$700,000 in Federal funds from the new reimbursement schedule. Under such fiscal restraints it will be virtually impossible to increase the number of free or reduced-cost school lunches served in the State from the 4.8 million served in 1970-71 to the 5.3 million meals which should be made available in 1971-72.

In such cities as Hartford, New Haven, and Bridgeport, it is predicted that the low-cost lunch programs will have to be terminated by the end of the year unless the regulations are modified or massive amounts of State and local revenues are found.

In Hartford, for example, the new guidelines will amount to a subsidy reduction of \$180,000—a cutback of 17 cents per meal. Since the Hartford Board of Education is already subsidizing the school lunch program at a rate of \$400,000 per year, the added deficit of \$180,000 means that the board will either be forced to increase its subsidy to \$580,000 or stop feeding poverty children when the money runs out. The Hartford money will run out on or about December 15, 1971.

Given the acute fiscal crisis facing Government at the State and local level, it is realistic to assume that towns and cities will be forced to cut back on these vital nutrition programs.

The Federal Government must therefore continue to meet its moral and legal duty to keep these vital food programs in operation. The regulations which I and a bipartisan group of Senators have proposed will insure the continued vitality of these programs.

I hope the Nation will never reach a point where it places a higher priority on budget-cutting than it does on feeding America's hungry children.

I ask unanimous consent that the letter to the President be printed in the RECORD.

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

U.S. SENATE,  
SELECT COMMITTEE ON  
NUTRITION AND HUMAN NEEDS,  
Washington, D.C., September 9, 1971.

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

DEAR MR. PRESIDENT: We are writing you out of a deep concern regarding the purpose of proposed school lunch regulations issued by the Department of Agriculture on August 13, 1971. The proposed regulations concern the use of federal funds to carry out the mandate of Public Law 91-248 which provides that "any child who is a member of a household which has an annual income not

above the applicable family size income level set forth in the income poverty guidelines shall be served meals free or at a reduced cost." Thus, the real test of the adequacy of the proposed new regulations is whether or not they will make it possible for the states and localities to meet the obligations and requirements which Public Law 91-248 imposes upon them.

After careful study and analysis, it is our judgment that the proposed regulations will not meet this basic test. Therefore, we find ourselves in agreement with the unanimous conclusion of the State Directors Section of the American School Food Service Association that the proposed regulations in their present form pose a very real threat to the continued progress of the National School Lunch Program.

If these regulations are not altered we believe the following events will occur. Many schools will be forced to eliminate Child Nutrition Programs. There will be further hardships to the nation's economy through unemployment and reduced consumption of raw resources such as food and equipment. Absenteeism, dropouts and apathetic students will negate the benefits of the multi-billion dollar investment for public and private schools. And finally, and most important, there will continue to be hungry children in America's schools.

The adverse effect of the proposed regulations is compounded by the fact they were announced only three weeks before school was to open, creating chaos in the states. The anticipated loss to the states in the 1971-72 school year under the 35 cent reimbursement rate set by the proposed regulations, as compared to what the states would have received under the rates instituted by the Department of Agriculture last March, will run into millions of dollars. For example, the state directors have estimated Missouri will lose \$4,000,000; California \$9,000,000; Massachusetts \$3,240,000; Ohio \$5,565,000; Oregon \$1,476,175; Tennessee \$2,772,000; Georgia \$4,100,000 and West Virginia \$2,661,300. The states cannot make up this loss from state or local funds and will have no alternative but to reduce planned participation to stay within the limitation of available funds. Therefore, many needy and eligible children will go without school lunches.

Certainly, this was not the intent of Congress when it passed Public Law 91-248, nor your intent when signing it into law on May 14, 1970.

In regard to the School Breakfast Program, the proposed regulations have not only placed a limitation on the expansion of this program but have also precipitated a situation where several states will be forced to cancel the School Breakfast Program this school year. In the past, the Department of Agriculture has set a precedent in that many states in 1970-1971 used Section 32 funds for breakfast expansion. These funds were provided as a bloc grant to be used where needed in the individual states for expanding food programs to eligible needy children. However, the proposed regulations have made no provisions for continuing the authority to transfer such funds from Section 32 to the School Breakfast Program.

In addition to this matter of transfer of Section 32 funds, there is another important question which needs to be answered in regard to the Breakfast Program. According to Public Law 92-32 (Section 2), the Department of Agriculture is authorized to use \$25 million for the School Breakfast Program. Only \$18.5 million, however, has been allocated to the states. A memorandum of September 1 from the Department stated that the remaining \$6.5 million will be allocated only to those states, "demonstrating the need for these funds to maintain their program at the April level." The response from several state directors has strongly indicated that

there is a need for this \$6.5 million to be allocated immediately.

For example, in the State of Kentucky, the Breakfast Program will need to be canceled at the beginning of October unless more money is allocated. In the reality that cancellations will occur, we implore that there be a reconsideration by the Department of Agriculture to transfer Section 32 funds to the Breakfast Program and to immediately allocate the remaining \$6.5 million of the authorized \$25 million to those states who face a possibility of cancelling their Breakfast Programs.

We, therefore, request that the proposed regulations be withdrawn and be replaced with regulations that would provide for a maximum reimbursement rate of 48 cents from Section 11; a maximum reimbursement rate of 12 cents from Section 4 for free and reduced price lunches; and guaranteed reimbursement from Section 4 of 5 cents for generally assisted lunches. We also suggest that the regulations pertaining to the use of Section 32 funds allow an immediate allotment of these funds for free or reduced priced lunches to all states based on need accompanied by transfer authority. In this way we could be certain that the funds Congress made available to the Secretary under this authority would be fully utilized.

We further suggest that before any proposed regulations are published that they be submitted to the National Advisory Council, created by Public Law 91-248, and the State Directors Section of the American School Food Service Association in order that these regulations could be instituted with the greatest degree of cooperation so that any further delays in the implementation of the intent of Public Law 91-248 may be avoided.

Respectfully,

MARLOW W. COOK,  
PHILIP A. HART.

#### NEW LIVES FOR OLD—THE STORY OF PROJECT SENIOR ABILITIES—SENATE BILLS 555 AND 1307 OFFER POSITIVE PROGRAMS

Mr. RANDOLPH. Mr. President, today only about 17 percent of all persons 64 years and older are gainfully employed and such employment is usually in part-time jobs. However, earnings from this work account for approximately 30 percent of the total money income of all aged persons. This ranks second only to income from retirement benefits, such as social security, railroad retirement, and private pensions.

For many older Americans, a job can supplement inadequate retirement benefits. It can also help to break the poverty cycle for those who did not become poor until they entered the senior citizen category. But for others, a job is much more. It can be a most rewarding and satisfying experience for those who want to remain more active during their later years.

Several pilot programs have clearly demonstrated that our older citizens have a wealth of experience and talent. Older persons, I strongly believe, should have a wide range of choices, depending on their needs and desires:

To work or pursue more leisurely activities;

To work part time or full time; or  
To work for pay or as a volunteer.

A classic example of the value of employment for older Americans is Project Senior Abilities, which is conducted in New York. This program has helped pro-

vide temporary job opportunities for elderly persons in a wide range of capacities, including quality control engineers, secretaries, clerks, key punch operators, security guards, and teachers.

Programs such as Project Senior Abilities provide additional compelling evidence in support of two measures I have sponsored to maximize employment opportunities for older persons, as well as middle-aged workers. For example, S. 555—the Older American Community Service Employment Act—would provide new opportunities for public service employment for low-income persons 55 and older. Elderly participants in these programs would serve in a wide range of useful endeavors, such as antipollution activities; health care; community beautification; day care; and others. In addition, my Middle-Aged and Older Workers Employment Act, S. 1307, would authorize financial assistance for nonprofit volunteer groups seeking to locate new job opportunities for older persons.

An article published recently in *Rehabilitation Record* describes in very human terms the impact of Project Senior Abilities on the lives of older Americans.

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:

#### NEW LIVES FOR OLD—THE STORY OF PROJECT SENIOR ABILITIES

(By Henry Viscardi, Jr., LL.D., and James P. Gelatt)

Dr. Viscardi is president of Human Resources Center, Albertson, N.Y., and Mr. Gelatt is director of public relations. H. Gordon Graham is the project director of the SRS-supported study described in this paper.

Many of us are fast approaching the age when some days we are beginning to feel old or at least older. If you don't believe you are getting over-the-hill, just listen to a 9-year-old explain "orbital rendezvous" or try the modern math.

In approaching the problems of the older citizen, we have applied many of the considerations which apply to the disabled, in fact to all men.

To begin with, there are 20 million men and women age 65 and over—nearly 1 out of 10 Americans. Thirteen thousand of them have passed their 100th birthday. One American reaches 65 years of age every 20 seconds. They include the rich and the poor, the educated and the untaught, the hale and the sick, the skilled and the unskilled.

Our older citizens constitute a larger population than the total of 20 smaller states. By the turn of the century, there will be 28 million of them in America.

For their benefit we must reject the notion that retirement is a status, that old people are nice and have done their part.

Whatever aches and maladies our aged may suffer, none is so bad or so common as loneliness. The idea that people are well off when they have ample things to consume is hardly enough. Consuming things is only part of being well off. We also get happiness out of producing and creating things. "Pride of work," it used to be called. For many today it is only a memory.

Our attitude must change so that retirement from active productive living should be by choice and not by compulsion of age. Many of our older citizens have no desire to stop work. They want to be useful. Social

Security and retirement benefits are not a satisfactory substitute for a pay check. Many are able to work and want to work. Modern methods of business, government, and industry must be altered if they are not to be denied the opportunity to do so.

Project Senior Abilities (PSA) at Human Resources Center, Albertson, New York, grew out of the realization that for thousands of individuals in our country, retirement meant being relegated to second-class citizenry. Recognizing that there are a great many men and women whose skills and talents are being wasted when they are forced into retirement, and understanding the pressing needs of the business community for temporary personnel who are capable of doing quality work, Human Resources Center sought to establish Project Senior Abilities.

Its purpose, as stated in the application to SRS, was to act as a liaison between the skilled senior worker and business and industry. The Center, through its research and training faculty, would evaluate a number of retired workers for the purpose of determining who best might be employed by firms in the greater New York area.

Through the development of this project, Human Resources Center is seeking, as it has with the disabled and retarded whom it serves, to alleviate some of the problems and frustration of the senior worker by helping him to maintain his dignity and independence. By developing a program of temporary employment, it was the Center's intent to avoid affecting existing pension and insurance plans, thereby establishing a more favorable climate for the employment of the senior worker. By carefully evaluating each senior worker before recommending him for employment, the Center was assuring businesses and industries that they would have available a supply of skilled temporary personnel.

On November 14, 1969, the first step was taken. The Center had received the support of SRS and business, and proceeded with a conference in which prominent businessmen in the Long Island community were invited to learn of the new program. On the days that day were executives from several well-known businesses in the New York area, including the Insurance Company of North America, Franklin National Bank, and the Grumman Corporation, who are also giving the Project their active support.

Over 125 businessmen attended and left convinced that the program had potential. They had suggested areas in which job skills were needed and had become aware of the existence and availability of a temporary work force which might serve their particular needs.

#### THE RECRUITMENT

Having set the stage, the next move was to secure the personnel. This has proved to be an ongoing program, with recruitment throughout the greater New York area. The project staff traveled to wherever it had an opportunity to share the news of the project with interested senior citizens.

Preretirement clubs in industry, senior citizens auxiliaries, church and social groups, all were contacted so that their members might learn of the opportunities being opened for them should they desire part-time, temporary work.

Sensing that the project had a unique appeal, the media became interested; spot announcements were begun, and still continue on a regular basis on some 20 radio and television stations. The project's director, H. Gordon Graham, himself a senior citizen, appeared live on talk shows and on WNEW's Focus program. Local press coverage proved particularly effective, and articles on Project Senior Abilities were placed weekly.

All of the efforts were coordinated through close contact with the Nassau County Office of Aging and the New York State Employ-

ment Service, and frequent contact was made with the New York Division of Vocational Rehabilitation, to make other professionals aware of the program underway in behalf of the senior worker.

Each applicant receives careful evaluation, so that he might be placed in a temporary position to his liking and ability. Where necessary, training and retraining are provided by the personnel of Human Resources Center.

#### THE FOCUS

The focal point of PSA was and is the development of a "work force supplement" or temporary employment program for older Americans. Each employee is placed on the payroll of Human Resources Center. His employment with a cooperating corporation might be full-time or part-time, short term or long term. He might perform his duties at the facility of the cooperating agency, at home, or at the Center, but by being listed on the Center's payroll, the older employee does not adversely affect the retirement or other programs of the cooperating corporation. Thus, for example, if the retirement program at a company demands that a highly skilled individual be retired at age 65, he could "retire" and yet continue to be productively employed working on tasks of vital interest to that company while not affecting its employee benefit programs, since he would now be an employee of Human Resources. Further, seasonal employment demands, or short term business emergencies, may be effectively handled without disrupting the normal operations of the cooperating organization or requiring relatively great amounts of time in recruiting, screening, and training.

Thus, it should be clear that the program does not "disenfranchise" qualified full-time employees. If the job in question can be effectively performed by a full-time employee of the corporation, it does not come under the province of this project. The characteristics of the employment opportunities are these: (1) that the job be of a part-time and/or short term nature; (2) that there be no career opportunities appealing to the younger worker associated with the job; and (3) that qualified professionals believe that it would be inefficient to train a younger person to do the job when there are older employees available who already possess appropriate skills.

Many jobs today are fast becoming obsolete. This is especially true in an era of computer services and data processing. There is little or no value in training younger workers for a job which will be obsolete in 3 to 5 years. Yet the job must be done. To the older worker, the future obsolescence is not important. He brings to this job environment, a reservoir of lifetime skills and an attitude of respectful gratitude for the opportunity to be productive.

#### THE IMPACT

Part of the evaluation of a program as unique as PSA must focus on the economic impact it creates. The evaluation must include the number and percentage of clients placed, the average length of employment, and their dollar earnings. In order for the program to be successful in other localities there must be a description and an identification of the type of companies, jobs, and individuals which are found to be appropriate for the successful employment of older workers. Data with regard to the amount and type of retraining necessary to bring older persons to a productive level will be tabulated and discussed by the research faculty. Thus, evaluation of Project Senior Abilities is attempting to relate characteristics of older workers in the program to success on the job. Data, such as the sex, age, amount and previous type of work experience, attitudinal characteristics, etc., of each client will be

correlated with indicators of successful job placement in an attempt to identify those properties of older employees which are predictive of job success. In this way, PSA can serve as a model for the creation of similar programs across the country.

#### THE PROGRESS

As PSA completed its first year, it boasted a temporary work force of over 200 retired persons, having placed some 75 of them in work opportunities in the Long Island area. Among the occupation categories in the skills bank are: clerk, secretary, keypunch operator, switchboard operator, security guard, sales personnel, draftsman, teacher, proofreader, teletype operator, bench worker, addressograph operator, quality control engineer, lawyer.

Project Senior Abilities is naturally feeling the squeeze of the current economic recession, but as Frank Gentile, Vice President of the Center puts it, "We have a program in Project Senior Abilities which has great potential. We are confident that if our progress has been this successful considering we are a new organization in somewhat trying times, we have at least demonstrated that the senior employee has a place not only in business or industry, but in society as well. He need not become a passive recipient in the welfare state, but can continue to be a happy, contributing member of the American economy." It would appear that the employers who have taken part in PSA would agree. Among the comments by business executives:

From the manager of one of the country's largest detective and security agencies: "We have found Mr. W. to be competent and conscientious, and would like to take this opportunity to thank you personally and the Human Resources Center for your efforts in providing this referral. Be assured that we will call upon you in the future for assistance in filling other positions within our organization." From an equipment company in New York: "We are now very happy with a bookkeeper, Mr. F., and also a part-time secretary, Mrs. M."

And from the plant manager of a color corporation, "I believe I have talked to a dozen or so employers who have at one time or another been in the same situation. They are very interested in my result . . . I have spread the 'word' to many people and I only hope that they will take advantage of this opportunity as I have."

Perhaps as important as the opinion of businesses who have become involved in PSA are the feelings of those for whom it is a source of independence and self-sufficiency. One man puts it this way: "I still feel, at the risk of being thought immodest, that I'm a very young 68. I'm not so much concerned about money as I am about being alert. I want to be part of the mainstream of society."

#### THE TIME IS NOW

For our older citizens and for everyone, if we are ever to enjoy life, now is the time—not tomorrow, nor next year, nor in some future life after we have died. The best preparation for a better life next year is a full, complete, productive, joyous life this year. Right now, at any age. Our beliefs in a rich future life are of little importance unless we translate them into a rich present life. There are really no twilight years. Today should always be the most wonderful day.

Human Resources Center has found working with its older citizens as rewarding as the experiences it has known with the disabled. Chronological age is not our true age. Every person is different and no two people born on the same day are really as old as each other by the time they get past middle age. Experts on aging around the world are working on a whole new calendar of human life, based not on months or days or

years, but on the analysis of factors which will determine how far you have traveled along a normal life span.

The great Satchel Paige will long be remembered for his endurance record as a pitcher. He was one of the baseball greats. This was his advice for staying young:

Avoid fried meats which angry up the blood. If your stomach dispute you, lie down and pacify it with cool thoughts. Keep the juices flowing by jankling around gently as you move. Go light on the vices, such as carrying on in society. The social ramble ain't restful. Avoid running at all times. Don't look back. Something might be gaining on you.

#### PRESIDENT NIXON'S TAX PROPOSAL

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the text of the statement made last week by Secretary John B. Connally before the House Ways and Means Committee be printed in the RECORD.

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

STATEMENT OF THE HONORABLE JOHN B. CONNALLY, SECRETARY OF THE TREASURY BEFORE THE HOUSE WAYS AND MEANS COMMITTEE, SEPTEMBER 8, 1971

Mr. Chairman and Members of this Distinguished Committee, I appear before you today to voice strong and urgent support for the tax proposals embodied in President Nixon's New Economic Policy. Early enactment of these measures, substantially in the form recommended by the Administration, is essential if the comprehensive program announced by the President on August 15 is to have maximum success—and if it is to fulfill the great expectations of the American people.

Literally millions of words have been written about the New Economic Policy and I shall not take the Committee's time today to describe the measures in detail. However, a brief outline of the thrust and implications of the President's policies can serve as a useful framework for discussion of those legislative proposals which are of direct interest to this Committee.

Stated briefly, Mr. Chairman, President Nixon on August 15—

Instituted a 90-day wage-price freeze to break the back of inflation and speed the return to stable economic growth;

Established a temporary 10-percent surcharge on imports and suspended temporarily the convertibility of the dollar into gold or other reserve assets, in order to improve this country's position in world trade and provide the base for improving international monetary and trading arrangements;

Proposed acceleration of tax reductions now scheduled for 1973 to 1972, thus raising total individual income tax reduction next January to \$4.9 billion (of which \$2.2 billion will result from the acceleration);

Asked for repeal of the 7 percent excise tax on sales of new automobiles, a step which will bolster demand for new cars and will result in over \$2 billion in tax savings to car buyers;

Proposed enactment of a 10 percent Job Development Credit (5 percent after August 15, 1972) to:

(1) Create jobs by stimulating spending on new productive equipment,

(2) Increase productivity, which is the only effective way of achieving reasonable price stability and steadily rising real income for workers and savers,

(3) Enhance the competitive position of American industry and labor in an increasingly competitive world;

Called for legislation to remove the bias

in our tax system which leads to the export of jobs (the proposed Domestic International Sales Corporation); and

Balanced the losses of revenue from the tax changes with reductions in Federal budget outlays, a necessity if inflationary pressures are to be contained.

The President's New Economic Policy is a comprehensive and cohesive program. This coordinated approach promises a much greater impact than could be expected from the sum of its parts. Each of the measures has been proposed from time to time by others. But, by putting all the pieces together, the President's proposals constitute an effective attack on a complex set of economic problems.

Mr. Chairman, we urge prompt action on the part of this Committee. This carefully balanced program will be seriously impaired if any of its important parts are not enacted.

The key point to emphasize is the job-creating impact of the President's program. Jobs will be created in the private sector, not in the public sector by expanding government payrolls.

Take the automobile industry as an example. At least one out of ten jobs in this country is related to automobile production and sales. It is distressing to note that the most recent figures (discounting seasonal slack) show close to 50,000 men out of work in the automobile manufacturing industry. I know of no analyst who disagrees with the view that the repeal of the excise tax (which will be passed on to the consumer), combined with the temporary import surcharge, will increase domestic automobile production and sales in the months ahead. Some industry leaders predict an increase of 5 to 10 percent. If we split the difference, and assume a 7½ percent gain, domestic car sales may rise from the previously estimated 8,000,000 to 8,600,000.

Mr. Chairman, 600,000 additional domestic automobile sales can be translated directly into 150,000 additional jobs, not counting dealer employees.

I disagree with the arguments of those who maintain that the excise tax should remain on autos as a penalty tax on pollutants. If tax penalties are to be used for environmental purposes, they should be specifically tailored and carefully implemented.

The President's tax proposals have been characterized by some as a "business bonanza." This charge implies that nothing is being done for individuals. It also suggests that profits are high and should be reduced.

What are the facts?

Enactment of the President's proposals, plus the \$2.7 billion of tax cuts already scheduled to take effect in January, will mean an income tax reduction in 1972 of \$4.9 billion for individuals, most of whom are in the lower income brackets. The increased reduction will result from the President's proposal to accelerate the cuts scheduled in 1973 to 1972.

Nor is the elimination of the auto excise tax a "business bonanza." It is the car buyer—not the producer—who will get the break as the auto companies pass on the tax cut.

What is the overall result for individuals? In 1972 the combined effect of the cuts already scheduled, plus enactment of the President's program, will mean a reduction in individual tax payments—*income and excise*—of about \$7 billion.

How have profits been doing? Measured as a percentage of Gross National Product, profits today are lower than at any time since 1938.

During the past five years, while total wages and salaries have increased 37 percent, from \$394 billion to \$541 billion—a jump of \$147 billion, corporate profits have decreased over 10 percent, from \$84 billion to \$75 billion—a drop of \$9 billion.

These figures should be disturbing to all of us. It now takes many thousands of dol-

lars of investment to sustain one job in American industry. Where will this money come from?

In our economic system, profits are a prerequisite to attracting and retaining this needed capital. If sufficient profits are not earned by a business, it can neither attract outside equity capital nor justify the retention of its own capital.

At a time when there is an acute shortage of risk capital—not only in the United States but throughout the world—it is imperative that American businesses, owned by millions of Americans, generate profits sufficient to attract such capital.

Too often when we talk about profits, people think only in narrow terms—of the wealthy individual receiving a dividend on his stock. The fact is that millions of working Americans are capitalists in their own right. They own equity interest in pension plans, insurance companies, mutual funds, profit sharing plans, and in thousands of individual firms. Thus, over 100 million Americans directly or indirectly provide this capital—the lifeblood of our economy—and hence share in the benefits of its productive use.

This question of business benefits versus individual benefits must be put in perspective; they are not separable. I know of no better way to gain this perspective than to go back to January 1969, and compare business and individual tax actions since that time. Many of us tend to forget that Congress, in enacting the Tax Reform Act of 1969 granted a massive tax cut to middle and low-income individuals, while raising taxes sharply on business corporations and individuals in the top brackets. Let's look at the record.

To be complete, the record must include the impact of the Tax Reform Act, plus the Administration's change in depreciation regulations and the tax proposals of the New Economic Policy. If the impact of these measures is spread over the five years, 1969 through 1973, the result is startling:

*Federal income tax payments of individuals will have been reduced by almost \$34 billion. Tax payments on corporate profits will have declined by slightly more than \$1 billion.*

The record is clear. Enactment of the President's recommendations, given the perspective of the three years of the Nixon Administration, will *not* be a bonanza for business.

The President's program is also fiscally sound. In fiscal year 1972, the \$3.8 billion in net revenue reductions will be offset by \$4.9 billion in expenditure cuts, resulting from a 5 percent reduction in Federal employment and proposals to freeze the Federal pay increase and defer, for a short while, proposals for revenue-sharing and welfare reform.

The President's support for these programs has not diminished. These legislative deferrals are just that and no more, and in fact they reflect primarily realistic legislative time-tables for these high-priority measures.

The fiscal balance, which is highly desirable from a fiscal and debt management standpoint, does not significantly detract from the net expansionary thrust of the New Economic Policy. This is because the elements of the program which create jobs are extremely powerful relative to the spending cuts.

In effect, the President is proposing a "mix" in fiscal policy, between tax and expenditure, which places maximum reliance on our private, free enterprise economy, and less reliance on expanding the already large Government sector.

Mr. Chairman, it would be a mistake to leave the Committee with the impression that the President's New Economic Policy is geared solely to the solution of short-run problems. Every major measure that the President proposes has significant long-run benefits.

The short-run, job-creating effects of the President's program have been emphasized. But too many observers have overlooked the long-run relationship between productivity, jobs and a rising standard of living. Building upon the highly favorable experience with the investment credit, the new Job Development Credit can create literally hundreds of thousands of jobs in the years ahead as American industry tools up to be a vigorous competitor in an increasingly competitive world.

And in the long run, only rising productivity can provide the increase in *real income* that means a rising standard of living for all Americans.

As the President said in his Labor Day address:

"Productivity really means getting more out of your work.

"When you have the latest technology to help you do your job, it means you can do more with the same effort . . .

"When you have the training you need to improve your skills, you can do more . . .

"When you are organized to do away with redtape and duplicated effort, you can do more . . .

"And when you have your heart in what you're doing, when it gives you respect and pride as well as a good wage—you naturally do more . . .

"Those are the four elements of productivity: investment in new technology, job training, good management and high employee motivation. Taken together, they raise the amount each worker actually produces."

The President's program is a program to protect and enhance the well-being of the American working man, by assuring him a job—a job that rewards him through more dollars which maintain their value at home and throughout the world. This is the real thrust of the New Economic Policy.

Mr. Chairman, the President, as you know, imposed a temporary additional duty of 10 percent ad valorem on all dutiable imported merchandise, effective at 12:01 a.m., August 16. The President acted principally under the authority contained in the Trade Expansion Act and the Tariff Act of 1930, both of which are within the responsibilities of this Committee. For that reason I would like to tell you very briefly what has been done under the Proclamation to date.

Instructions have been issued to Customs officers for the collection of the duty. No unanticipated major problems have been encountered in the administration of this program which is going forward smoothly. Under the authority to grant exemptions from application of the duty, several orders have been issued. Those orders exempt all articles exported to the United States before the effective date of the President's action, including those at sea, strike-bound on the West Coast, or in warehouses or foreign trade zones which in the latter case, are withdrawn under requests filed not later than October 1.

Also, in accordance with the President's statements at the time of release of the Proclamation, specific commodities have been exempted because they are subject to mandatory quotas, including certain meat products, dairy products and other staples, sugar and sugar products, petroleum and cotton textiles. The full details of these exemptions have been published.

Mr. Chairman, this completes my introductory remarks. Inasmuch as productivity will play such a vital role in this nation's progress in the years ahead, let me turn first to the most important proposal now before this Committee—the enactment of the Job Development Credit.

#### A. JOB DEVELOPMENT CREDIT

We recommend enactment of a Job Development Credit, similar to the old investment credit but with two major differences:

1. The credit should be 10 percent for property acquired in the one year period beginning August 16, 1971, including property ordered before August 16, 1972, and delivered by February 15, 1973. The credit should then drop to 5 percent—the permanent rate.

2. No credit should be allowed for foreign-produced property as long as the temporary import surcharge is in effect. The credit should then be allowed for foreign-produced property ordered after the surcharge has been terminated. Foreign-produced property should be defined to include not only property produced abroad, but also property produced in the United States if more than 50 percent of the value is attributable to imported materials or components.

Other differences from the old investment credit are described in the General Explanation filed with the Committee.

The Job Development Credit is the key element in this tax program. It is designed to:

1. Increase the number of jobs in the United States.

2. Improve productivity by allowing our workers to produce with the newest, most technologically advanced machinery and equipment available; and

3. Increase the competitiveness of United States industry in relation to foreign producers, both in our domestic markets and in world markets.

The credit will provide an effective incentive for investment in new productive facilities—to expand our productive capacity and our output of goods and services.

The benefits of this program will be shared by workers, consumers, and savers or investors alike:

Workers because it will more quickly reduce unemployment, and because increases in productivity provide a permanent foundation for wage increases which are not eroded by higher prices;

Savers or investors because these results will restore corporate profits to reasonable levels, and because this will provide adequate incentive to sustain investment for a continuing high level of economic activity and future growth in the United States; and

Consumers because greater efficiency and productivity will help stabilize prices, and because greater output will encourage development of new products and services.

The United States needs to increase its real output. The specific goals we seek as a nation today require more real economic growth. In addition to higher wages without higher prices, we seek as a society to deal more effectively with poverty, inadequate educational and health facilities, undesirable living and working conditions in our congested cities, the deteriorating quality of our physical environment, and other pressing human problems.

Thus, we seek to improve our standard of living. The only way of achieving all of our objectives in the future is to increase our real output, that is, to insure the existence of sufficient resources to achieve these goals. We will provide this base for future growth by directing a greater portion of our current income now into the productive assets which will provide these resources in the future. The Job Development Credit is the method for achieving this result.

Unless there is growth in real output, the average working man will see little gain in his own real income. Continuing pressure for wage increases would lead to continued inflation. The result would almost surely be a loss of popular support for the expenditure programs required to meet the needs of our society for poverty relief, environmental control, urban rebuilding, and other objectives.

The essential elements of productivity growth are more capital, more efficient markets, more worker training, and more research and development. Except for encouraging the

investment of more capital, government is already an enthusiastic supporter of productivity growth. Thus, federal, state, and local governments together spend about \$55 billion for education and worker training. The federal government encourages research and development at a revenue cost of nearly \$14 billion annually, supplementing about \$8 billion of private funds for these purposes. Through consumer programs, enforcement of antitrust laws, and other means, government contributes to the efficiency of our markets.

In the tax area, however, we have gradually, and inadvertently, adopted a structure that weighs heavily on the accumulation of capital. We have a highly progressive estate tax. We have a corporate tax that imposes a double burden on income earned in corporations and paid as dividends.

The shortage of business capital at full employment acts as a barrier to full use of the advantages of increased research and development and increased training. A machinist thoroughly trained to operate a newly developed, highly efficient machine is wasted in the U.S. economy unless business has adequate capital to replace its old inefficient plant with such new equipment.

There are good reasons for the existing structure of our tax system. Every American should on reflection, however, be deeply concerned that this structure impinges on the formation of capital that we need for growth. We must reconcile our progressive tax structure with our need for capital by providing a tax incentive within the system for resources going directly into growth. This is exactly what the Job Development Credit accomplishes.

This need for a growth policy was recognized by prior Administrations both in the adoption of guideline depreciation and a 7 percent investment credit in 1962. The experience with the investment credit in 1962, however, was that there was a delay before business responded to the credit by increasing investment. In the present situation, we want a faster response so that increased investment demand will contribute to improving employment in the short run. Accordingly, we recommend a 10 percent credit for property acquired in the immediate future, then dropping to 5 percent for the long run.

To have maximum incentive in creating jobs quickly, the extra stimulant represented by the 10 percent credit should be available immediately, and it is of major importance that the period of the 10 percent credit should not be extended. We are seeking to provide a special incentive for increased business activity in the short run, and this effect diminishes in direct proportion as the period of the 10 percent credit is extended. At the same time, it should be long enough to avoid undue business disruption. Roughly 90 percent of all machinery and equipment has a normal production lead time of less than 18 months, and acceleration of delivery of the balance can often be accomplished by the producers. Further, in the case of long lead-time equipment, purchasers who ordered equipment in 1969 or 1970 when the credit was not in effect will obtain the 10 percent credit for property acquired within the next 18 months. The proposed system will achieve reasonable equity.

Any extended delay in adoption of the Job Development Credit would be counter-productive because of the business uncertainty that would exist. I earnestly urge its early enactment.

#### B. ACCELERATION OF 1973 TAX REDUCTIONS TO 1972

We recommend that tax reductions presently scheduled for January 1, 1973, be moved forward to January 1, 1972. This acceleration, combined with the tax reductions already scheduled for January 1, 1972, will result in tax reductions, and hence an in-

crease in consumer purchasing power, of \$4.9 billion per year, of which \$2.2 billion in the calendar year 1972 is attributable to our proposed actions.

The personal exemption is presently at the level of \$650 per person and is scheduled to increase to \$700 on January 1, 1972, and to \$750 on January 1, 1973. The increase to \$750 should be moved to January 1, 1972.

The standard deduction is presently at the level of 13 percent of income with a \$1,500 maximum and is scheduled to increase to 14 percent with a \$2,000 maximum on January 1, 1972, and to 15 percent with a \$2,000 maximum on January 1, 1973. The increase to 15 percent should be accelerated to January 1, 1972.

The benefits and distribution of the tax reductions are illustrated in tables filed with the Committee. The liability of a single taxpayer with an income of \$7,500 will be reduced \$53 effective January 1, 1972. The tax liability of a family of four with an income of \$10,000 will be reduced \$114.

We propose this additional income tax relief for individuals because the present level of unemployment calls for increasing consumer purchasing power through income tax reductions. These reductions will more than offset scheduled increases in social security taxes (\$2.8 billion), and they will create increased demand as well as increased investment. The combined increase in consumer purchasing power from this acceleration and from the repeal of the automobile excise tax, a total of \$7.1 billion, even after reduction by the social security tax increases, will be a powerful stimulus to business activity. Business may be expected to increase production immediately to have goods and services available by January 1, 1972.

The resulting increase in the number of jobs, in the level of business activity, and hence in the level of tax revenues in the future, will contribute, as will the Job Development Credit, to financing the costs of a better society in the future. The genius of the President's program lies, as our young people would say, in "Getting it all together." We propose increased tax relief to create increased demand, and the incentives created by the credit for increased investment will provide productive facilities to meet that demand.

#### C. REPEAL OF THE AUTOMOBILE EXCISE TAX

We recommend repeal of the 7 percent automobile excise tax effective August 16, 1971. The repeal will result in refunds to consumers who purchased cars after August 15, 1971, and before the date of actual repeal; purchasers after the date of repeal will pay reduced prices for their cars.

The present tax is 7 percent of the manufacturer's price. This works out to slightly under 5.5 percent of the final price to the purchaser, an average amount of \$200 per automobile. The distribution of automobile purchases is roughly a constant proportion of income, so this reduction amounts to a fairly uniform benefit among all income groups. While a higher proportion of used cars are purchased by lower income groups, the repeal of the tax on new automobiles will result in a reduction in the price of used cars, so the lower income groups will obtain proportional benefits.

The four major United States automobile manufacturers have given assurance that the benefits of the repeal will be passed on to the consumers.

Lower automobile prices will mean an increase in the demand for automobiles. The tax reduction when coupled with the temporary import surcharge will result in even a larger growth in sales of domestic cars.

The repeal of the automobile excise tax will result in a revenue loss for 1972 of \$2.2 billion. Since roughly nine out of ten automobiles are purchased by individuals, the

commitment of the automobile companies means that this largely represents additional tax relief to individuals. This provides further balance in our proposals between individual and business tax reductions.

**D. DISC AND OTHER BALANCE-OF-PAYMENT MEASURES**

Finally, we recommend adoption of the DISC proposal, providing for tax deferral for export income of Domestic International Sales Corporations if such income is used in export-related activities. Our proposal is almost identical to the provision favorably reported by this Committee and adopted by the House of Representatives in 1970 in H.R. 18970, except that we recommend that the provision become fully effective on January 1, 1972, rather than providing for a phase-in period. A copy of a draft bill and Technical Explanation have been filed with the Committee.

The need for the DISC proposal has been fully explained in previous public testimony before this Committee. In general, it is designed to provide the same type of U.S. tax treatment for U.S. companies engaged in exporting as is presently available if they manufacture abroad through foreign subsidiaries. The DISC proposal is designed to create and preserve more jobs in the United States by causing a healthy expansion in U.S. exports, and by making it as attractive from a tax standpoint for U.S. companies to produce goods in the United States for export to world markets as it is for them to build their factories in foreign countries and produce abroad.

In addition to serving the interests of labor by creating more jobs in the United States, the DISC proposal serves the interests of business and consumers as well. The interests of business are served because our present tax laws and those of other countries tend to favor overseas production; many United States businessmen would prefer to continue producing in the United States for foreign markets if the tax treatment for U.S. production could be equalized. The interests of consumers are served because a higher level of exports is needed to support continued expansion in imports.

The DISC will tend to focus greater interest among U.S. businesses on the potential of the export market which to a considerable extent has been neglected by our companies because of the more favorable tax consequences from producing abroad. A much smaller proportion of our total sales are for export as compared to most other major industrialized nations, and we need to concentrate more effort and activity in the promotion of export activity.

The DISC proposal, when fully effective, will result in a revenue deferral of approximately \$600 million annually before allowing for the effect of increased revenues from the feedback benefits to the economy. This amount may be only \$300 million in the first full year of its operation while exporters arrange to take full advantage of its provisions. We estimate that it will result in an increase in annual export sales of \$1.5 billion, which will mean more gross national product—more tax base in the United States and more tax revenues.

Mr. Chairman, members of the committee, you have before you now comprehensive tax proposals, broad in concept and detailed in formulation, which will help provide the tools for this nation to fashion a new era of economic prosperity. Again, I would like to point out that these tax proposals are an integral part of a new policy which offers constructive solutions to our major economic problems—domestic and international, production and consumption, in the public sector and in the private, inflation and unemployment. They are balanced between the

needs of all members of our production team—labor, business and government—to benefit all Americans.

**WHAT'S A SURPLUS?**

Mr. CHURCH. Mr. President, in the past several weeks, many of us watched with amazement as the Nixon administration, in all seriousness, announced that a deficit of \$23.2 billion is really a surplus of \$2.5 billion.

I do not think it is any wonder that the administration's so-called full employment surplus has become the brunt of so many jokes. Columnists have had a field day with this bit of nonsensical arithmetic.

One of the best columns to comment on this numerical wonder of the new, new math comes from Dwight Jensen, writing in the Boise, Idaho, Intermountain Observer of August 28, 1971.

Writes Jensen:

Like so many statements of the Nixon administration, especially those about the war, this one cheapens the language by robbing words of real meaning—"surplus" comes to mean "deficit," just as, in the State Department, "peace" comes to mean "war." You can read about it in detail in Orwell's 1984. Newspeak. Nixonspeak.

Mr. President, I ask unanimous consent that Mr. Jensen's column be printed in the RECORD.

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

[From the Intermountain Observer, Aug. 28, 1971]

**REMARKABLE—NIXONESE & JENSENESE  
(By Dwight Wm. Jensen)**

(NOTE: The following was written before the President announced the price wage freeze, etc. While we wait to see if the new economic game plan works, let's not forget the dubious thinking already displayed by the President's economic advisors:)

On the typing table rests (if twisting, writhing lies can be said to rest) a copy of a Treasury Department press release labeled "Joint Statement of Treasury Secretary John B. Connally and George P. Shultz, Director of the Office of Management and Budget, on budget totals for Fiscal Year 1971."

It runs four paragraphs. The last paragraph simply totes up some numbers—In the fiscal year in question, the United States government took in \$188.3 billion (it also tried to take in a lot of gullible voters, with varied success, and that's what the press release is aimed at doing), spent \$211.6 billion, and thus showed a deficit of \$23.2 billion. But this counts as a surplus of \$2.5 billion, by Nixon arithmetic, and the government is to be praised for coming out in the black.

The first three paragraphs explain that incredible numbers game in a language that has to be known not as English but as Nixoneese:

"For the third year in a row, a full employment balance or surplus has been achieved in the fiscal year 1971 after three successive years of full-employment deficits totalling more than \$40 billion.

"In fiscal 1971, which ended June 30, there would have been a surplus of \$2.5 billion had the nation's economy operated at full employment throughout the year.

"This record is in sharp contrast to that of fiscal years 1966 through 1968, when full employment deficits totaled more than \$40 billion."

No kidding. That's really what it says. Who says the government lacks imagination, or has no sense of humor?

You may think it a total waste of time and money for the government to put out such baloney. In fact, a more serious case can be made against it: Like so many statements of the Nixon Administration, especially those about the war, this one cheapens the language by robbing words of real meaning—"surplus" comes to mean "deficit," just as, in the State Department, "peace" comes to mean "war." You can read about it in detail in Orwell's 1984. Newspeak. Nixonspeak.

But the release has a certain usefulness. Taking it as my cue, I have composed the following letter, which I intend to mimeograph and mail to my creditors, if I can afford the postage:

"For the thirteenth year in a row, I have achieved a stunning surplus of income over expenditures during the past year, if you assume that I am entitled to count the money I would have made if I had worked to my full capacity.

"In the twelve months just ended, my total income on a full-capacity basis would have exceeded my total expenditures and encumbrances by \$6,498.23. This amount, added to a savings account which, if it existed, would include all the full-capacity surpluses since they began to accumulate, would now amount to \$107,335.95, including interest.

"This would mean that I probably would not have incurred my bill with you in the first place and, if I had, would have long since paid it.

"Please adjust your books accordingly and send me a receipt.

"I realize you may think that I am settling this account with Imaginary Money. Let me assure you, however, that the currency I am using is recognized by the Secretary of the Treasury himself as Coin of the Realm, and is used by him to balance the Federal budget. Therefore, I suggest that you use this letter to pay your income tax."

**JOBS FOR SCHOOL DROPOUTS**

Mr. BAYH. Mr. President, the National Council of Juvenile Court Judges held their annual convention in July of this year in New Orleans and elected James H. Lincoln, a Detroit, Mich., juvenile court judge, as its new president. I had the honor of being the principal speaker at that convention and the opportunity to meet and become acquainted with Judge Lincoln at the time.

He has served on the bench for 11 years in a city plagued with high unemployment rates for youth, poverty-ridden ghettos, riots, and a general lack of funds which compounds the difficulties. After 11 years of direct experience with these problems, Judge Lincoln has urged the Nation to develop a program providing high school dropouts with a relevant work experience. As he wisely put it, we must begin a "massive apprentice work program subsidized by the Federal government in which private firms would be paid public money to hire young dropouts off the street and train them to succeed at something."

This suggestion must be taken as seriously as any proposal to solve our national problem of juvenile crime. As chairman of the Senate Subcommittee on Juvenile Delinquency, I particularly commend Judge Lincoln's proposals to increase Federal aid to education for de-

velopment of combined work-study programs and to provide additional special schooling for youths who could benefit from this schooling. We must begin now to invest the resources necessary—and they will be large—to deal meaningfully with the huge problem of juvenile delinquency. As Judge Lincoln relates, a work-study program will cost billions of dollars, but we spent \$4 billion just last year alone fighting juvenile crime.

Mr. President, we must also mobilize public opinion in order to transform existing concern into a truly national effort to provide broad education for our youth. At the Conference of Juvenile Court Judges, I urged that all the judges investigate the administration of juvenile justice in their own juvenile court systems, and to give legislators the benefit of new constructive proposals.

For unless the juvenile court judges are prepared to roll up the sleeves of their judicial robes there is no hope for the kind of broad-based public response that the problems of juvenile delinquency and crime require. Judge Lincoln has taken on this challenge and I highly commend him.

I only hope that this administration will not fail, as it has in the past, to put the facts and demands of juvenile delinquency much higher in its list of national priorities than at the bottom.

I ask unanimous consent to have printed in the RECORD an article relating to Judge James H. Lincoln's program, entitled "We Must Give Jobs to School Dropouts," written by James H. Dygert, and published in the Washington Post, of August 29, 1971.

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

**WE MUST GIVE JOBS TO SCHOOL DROPOUTS**  
(By James H. Dygert)

DETROIT, MICH.—Millions of teenagers will drop out of American high schools in the next ten years and will end up terrorizing the nation's cities in roving street gangs spilling for trouble because they have nothing else to do.

Crime rates will shoot upward from already alarming levels.

Unless—says the new president of the National Council of Juvenile Court Judges, Detroit's outspoken James H. Lincoln—unless jobs are found for 15-, 16- and 17-year-olds.

"It's as big a problem as the atomic bomb," says Lincoln, "the biggest internal problem confronting the U.S."

Lincoln is seeking to sell the nation on what he is convinced, on the basis of his 11 years as a juvenile court judge in a big city with an angry, poverty-ridden ghetto, is the only solution; namely, a massive apprentice work program subsidized by the Federal government in which private firms would be paid public money to hire young dropouts off the street and train them to succeed at something.

**UNDERLYING CAUSES**

This proposal has evolved from the judge's conclusion that failure, boredom and the lack of something constructive to do are the underlying causes of crime, and only an all-out national effort can cure these ills in modern circumstances of overpopulated cities, galloping technology and complex economics.

Lincoln hinted at this in his 1968 book on the ghetto's 1967 explosion in Detroit, *The Anatomy of a Riot*. He wrote, "The time will come when our society will guarantee employment for all who are willing to work

... Without job opportunities, all else is futile."

There are only two possible areas of success open to most juveniles—school and work. Lincoln says, "What do you do with a 15-year-old boy who's reading at fourth-grade level? School is not every kid's bag; a lot of them just don't make it. The only possibility is work."

**BUT WHERE ARE THE JOBS?**

But there is no work for them. "How do we get jobs for kids," asks the judge, "when their fathers are laid off?"

The job situation will no doubt improve, but dropouts will be the last to benefit. They have it roughest in normal times. Having neither education nor skills, they're the least productive of workers and the least desirable from the standpoints of insurance rates and dependability. Unskilled jobs are close to extinction.

Yet a job can be pivotal. One boy got a job that paid only \$35 a week, but it was enough. He stayed out of trouble until he lost his job through circumstances not his fault eight months later, and was soon back in Lincoln's court. "It wasn't much of a job," says the judge, "but it was the margin of difference between being in trouble and not. It's that way for many of them."

One of the main reasons why these youngsters turn to mischief and crime, according to Lincoln, is boredom. "They have nothing to do."

**THE FAILURE HABIT**

Another is the failure habit. "The common denominator of crime and delinquency is failure in school," says Lincoln. "Most chronic delinquents read at three or four grades below their average grade placement. They're the lowest achievers among dropouts. They account for 90 percent of the severe behavior problems in this country."

Lincoln recently told Detroit's city council that all 16 youths in a troublesome street gang had been school truants for years. "The problem is not this gang, however," he added, "but what to do with the gang of 100,000 dropouts in Detroit in the next decade. Nothing will change much until we come up with a program to put thousands of juveniles in some kind of employment alternative to school."

The judge explains, "We have to give them some means of success experience. The way to attack behavior problems is not preaching, but substituting a worthwhile activity. We must find something for them to do."

That's the logic behind Lincoln's proposal for a Federally financed apprentice program in which the government would reimburse employers for training wages paid to young dropouts—"like \$1.60 an hour or whatever it takes. The boy might wash cars or dishes, or learn to be a mechanic, depending on his abilities. Part of it would be just to teach him some stability, to get there in the morning and stay on the job. And I'm not talking about a week or a month. He'd have to stay in this for perhaps several years."

Lincoln's program would include massive increases in Federal aid to education for development of combined school-work programs as well, and additional or special schooling for kids who could benefit from it. This must also be a national effort, he says.

Procedural changes in juvenile courts have actually impeded progress, Lincoln believes, by producing Pharisees who fret more over procedural perfection than problem solving. "I'm all for reforming the procedures and giving juveniles all their constitutional rights, but after we've done all that, the problem is still there."

**"GIMMICKS" WON'T DO**

"Gimmicks won't solve it either. I have seen all kinds of innovative programs and most of them are good. I'm not against that, but they're not enough and they've become such a fixation in people's minds that they're pre-

vented from coming to grips with the problem."

The community care concept of dealing with young offenders, for instance, is a good idea but certainly no panacea in Lincoln's view. Michigan is among the states turning to this enlightened approach. It stresses the treating of a delinquent on probation or in a small group home of five or six juveniles in the youngsters' own community instead of institutionalized confinement in a reform school that's actually a crime school.

This works fine in suburban communities that can offer job opportunities and extra school services, says Lincoln, but not in a big city ghetto. "What do you do with them there? It does no good to send them back to school and there aren't any jobs. You haven't solved the basic problem."

**TOUGHNESS WON'T HELP**

Get-tough laws aren't the answer, either, the judge says. "I'd use a whipping post, myself, if it would work. But it doesn't work."

There's another factor in crime and delinquency for which Lincoln puts much of the blame on the older generation. "We've given people in the lower-third income group middle-class values before they can afford them. TV advertising comes on every five minutes selling poverty-area people on having material things. They feel degraded if they don't have them."

The younger generation may be rebelling against materialism, but not the segment of it that comes into Lincoln's court. "They all feel they have to have material things. And money in their pocket. One of the main things they steal is a car, which is a very important status symbol. They feel big when they're driving a car."

"The drug problem is bad, and makes all of it more difficult, but even if that were eliminated, the crime and delinquency would remain high."

**NATIONAL EFFORT NEEDED**

No real headway can be made, Lincoln is convinced, without an organized, national effort to give young people a legitimate way to acquire cars and other material things and at the same time something constructive to do; namely, a job.

"I'm trying to outline the problem in new terms," says Lincoln. "To get going in a new direction. There are no jobs for these young people, so we're going to have to make some."

The big obstacle is cost. Lincoln admits the apprentice work program would cost billions. "But it's the only way. The issue is how to make millions of people succeed who are failing. What other reasonable alternative has been proposed? The nation has to focus on making juveniles feel successful in their day-to-day life. This means a vast shift in national resources, but we'd better take it on. There's no other way."

**TORONTO DECLARATION**

Mr. CHURCH. Mr. President, an important international conference of distinguished parliamentarians, scholars, administrators, and editors, meeting in Toronto from August 19 through August 21, focused on the serious crisis in East Pakistan. The participants called upon all governments to stop supplying military arms and economic aid to Pakistan until a political settlement can be achieved.

The South Asia Conference, sponsored by the private relief agency, Oxfam, was chaired by Mr. Hugh Keenleyside, former director-general of U.N. Technical Assistance and former Canadian Ambassador to Indonesia, and vice chaired by

Prof. John Kenneth Galbraith, of Harvard, former U.S. Ambassador to India.

I recommend to the Senate the declaration issued by this international assembly of South Asia experts, urging all governments:

- (1) To terminate immediately all military deliveries to Pakistan;
- (2) To suspend all economic aid to Pakistan;
- (3) To channel all possible resources into a massive emergency program for famine relief in East Pakistan, directed and administered by the United Nations;
- (4) To make firm continuing commitments to share fairly the economic burden of supporting the refugees in India;
- (5) To intervene to save the life of Sheik Mujibar Rahman.

I ask unanimous consent that the Toronto Declaration of Concern and Mr. Galbraith's statement to the South Asia Conference be printed in the RECORD.

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

#### THE TORONTO DECLARATION OF CONCERN

We are horrified by the events of recent months in East Pakistan which have resulted in one of the major disasters in man's history. Millions of refugees have fled in the wake of atrocities and military operations which continue to this day.

The spectre of famine threatens those who remain in East Pakistan. In India, the influx of a rising tide of some 7.5 million refugees to date has created grave problems.

The present situation is a threat to peace both in the subcontinent of South Asia and throughout the world, with danger of great power involvement in a familiar pattern of escalation. In spite of repeated warnings, including those of Secretary-General U Thant, the world remains largely indifferent. The staggering cost of the refugee operations have been left predominantly as a burden for India to carry. No effective political pressures have been brought to bear by the world community to end the mounting tragedy.

This conference calls for an immediate end to all killing. This can be achieved only in the context of a political settlement. There can be no lasting political solution without the democratic consent of the people of East Pakistan.

The secret military trial of Sheik Mujibar Rahman offends against the principles of the rule of law, outrages world opinion, and militates against the possibility of conciliation. His execution would end hopes of a peaceful settlement of the crisis.

In the longer view there can be no solution that does not allow the refugees to return and to live in security in their villages and homes.

All evidence points to the certainty of famine in East Pakistan by October. Food must be supplied from outside and distributed directly to rural areas on a neutral basis under the supervision and administration of a greatly augmented United Nations staff with the mandate and facilities necessary for effective action. We urge the Government of Pakistan and the leaders of the Bangla Desh movement to co-operate with this emergency humanitarian programme.

We urge all governments:

1. To terminate immediately all military deliveries to Pakistan;
2. To suspend all economic aid to Pakistan;
3. To channel all possible resources into a massive emergency programme for famine relief in East Pakistan directed and administered by the UN;
4. To make firm continuing commitments to share fairly the economic burden of supporting the refugees in India;

5. To intervene to save the life of Sheik Mujibar Rahman.

We appeal with the utmost urgency to all people in all countries to prevail upon their governments to act while there is still time.

This declaration is made by an international conference of people meeting in Toronto who are deeply concerned about events in East Pakistan. We have sought to be impartial and objective. We regret the distinguished individuals from West Pakistan who had indicated their willingness to attend were unable to do so.

#### THE TORONTO DECLARATION OF CONCERN—LIST OF ORIGINAL SIGNERS

Rev. E. Johnson, N.C. Dahl, G. Papanek, J. T. Thorson, Gen. J. N. Chaudhuri, Patrick P. McDermatt, Niall Maedermot, Chester Ronning, James Barrington, Hanna Papanek, Bernard Braine, M.P., John Holmes, Ajit Bhattacharjia.

Nurul Hassan, Jon E. Rohde, M.D., Rev. Eoin A. Mackay, Gerard Lachene, Thomas A. Dine, Hugh L. Keenleyside, Rev. Ernest Long, Judith Hart, M.P., Cornelia Rhode, Stanley Wolpert, Robert Dorfman, Homer A. Jack.

#### STATEMENT BY JOHN KENNETH GALBRAITH TO THE SOUTH ASIA CONFERENCE, TORONTO, AUGUST 20, 1971

I am sorry that a fall, together with a cautious doctor, is keeping me grounded for a few days. There is no conference in the past year that I have so regretted missing.

Could I have been present I would have urged first of all the importance of the world-wide effort, using both public and private funds to alleviate the hardships of the refugees now in India in such vast numbers. Nothing else is so important; no other task of our time should be more firmly on the conscience of mankind. I hope the conference will convey a full sense of urgency of this problem.

In the longer view we must recognize there can be no solution that does not allow these people to return to their villages and homes. This they must be able to do in safety. The requisite security will only exist when there is full autonomy and self-government in East Bengal. However it may be wished otherwise, continuing rule by West Pakistan will involve a state of well or badly suppressed revolt.

All friends of Pakistan wish for this solution. Otherwise the resources of this progressive and vigorous country will be absorbed by the problems in the East. Economic development in West Pakistan will falter. And the people and soldiers of West Pakistan will achieve in the eyes of the world a reputation for cruelty and oppression. They are not cruel and oppressive people. This is the reputation that is the fate of all armies, including that of the United States in Vietnam when faced with the task of sustaining an unpopular government.

While the conference must be clear as to this solution, it should be equally clear that it is a solution that no nation or group of nations can impose. This applies to India; all must urge her to continue her present policy in restraint in face of the great burden she is carrying. But equally, there should be no national policy that interferes with the resolution I have just mentioned.

This is, of course, a firm argument against military aid by the United States to Pakistan, for even symbolic assistance suggests support of present policy. It means also that economic aid to Pakistan should now go to the Pakistan refugees; otherwise it serves to cover the cost of the present East Pakistan policy.

Let me return now to my first point. Important as are these longer-range solutions, the one thing that can be done now is to make life for the refugees tolerable. Full attention must now be concentrated on this task.

#### AN ARKANSAS TRAVELER AT KENNEDY CENTER

Mr. FULBRIGHT. Mr. President, agriculture and classical music are strange bedfellows to most, but not to Miss Lily Peter.

A quite remarkable woman, Miss Lily, as she is known to the farming community in her hometown of Marvell, Ark., once mortgaged her 4,000-acre plantation to bring the Philadelphia Philharmonic to Arkansas.

Miss Peter, who was in Washington this past weekend as a sponsor of the concert of Moravian music at the Kennedy Center, was the subject of an interesting article entitled "Arkansas Traveler—an Arkansas Farmer at Kennedy Center," written by Henry Mitchell, and published in the Washington Post of Monday, September 13, 1971.

I ask unanimous consent that Mr. Mitchell's article be printed in the RECORD.

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

#### ARKANSAS TRAVELER

(By Henry Mitchell)

Lily Peter, of Marvell Ark., who knows she is a good farmer and hopes she is a poet, stood up for rural America at the Kennedy Center yesterday, merely by being present. For she is an enthusiastic Friend of the Center, and a link with the music of both yesterday and tomorrow.

A sponsor of the concert of Moravian music—the first chamber music concert in the new Center—she also is a descendant of Johann Friedrich Peter, who in the 18th century was one of those learned Moravians who produced the first body of chamber music in America. His second quintet, composed the year the American Constitution was adopted, was featured yesterday.

The music, like the descendant, was neat, polished; and if the composers were farmers, you are pretty sure they had fine barns and careful records.

Miss Peter sat in a box at the curve of the horseshoe, said she thought the Center was charming and its music glorious. She wore a high-necked, long-sleeved brown silk dress, with a cross of white and blue enamel that belonged to the last Russian czarina.

But most of the year she's out in her fields. She is one of the few women in the world who operates a complicated cotton and soybean plantation. She lives in a plain house, got up at 5 a.m. for years to open the farm store, can run a cotton gin herself, and the Lord only knows the last time she ever lounged on the gallery with a julep.

She is the first woman ever to build two sky-blue cotton gins. The usual old-gray-wood-and-tin gins look dilapidated and she decided a gin might as well look nice. (She is also quite proud of the plantation's safety record).

Her home plantation, out from Marvell, is the one on which International Harvester tested its prototype cotton-picking machines back in the '30s—an invention that as much as anything changed the Delta Country. On her farm (she did not own it then) in those days there were 95 tenant families. Now there are 11.

In the old days, nobody on a cotton farm would have upped and come to Washington the second week of September.

In the Delta Country it doesn't rain in September and October, but it pours in November. The trick is to get the cotton picked before the late rains. But with cotton machinery, you don't start picking until a great deal of the crop is ready—fewer and

later pickings, but vastly cheaper than hand labor. So now you don't have to be home in early September.

Though she has seen a few changes in her day, Miss Peter is not altogether old-fashioned. She spends much of her year racing her farm truck over Big Cypress Bayou to the Elaine Equipment Co., 40 miles away, for machine parts. And from time to time she's spotted in small Delta towns looking snappy in her polished black vinyl knee-height boots.

An authority on Hernando de Soto's route through her country in 1541 (though as she points out she was not actually present at the time) she once sent a picture of a locally famous cypress tree to a magazine, as an example of a tree de Soto passed by and must have seen.

A photographer among other things, Miss Peter shot the top of the tree at a distance, then moved in and shot the great base of the tree. The center of the ancient giant she could not shoot at all, since a forest of lesser trees obscured it. When the editor complained the tree didn't have a middle, she said why not just run the top of the tree at the top of the page and the bottom of the trunk at the bottom and just sort of fill in with type. Which was done, and the effect was fine.

A very serious farmer, she knows cockle-burs are botanically *Xanthium* and she's a walking encyclopedia on the uses of alpha, alpha, alpha-trifluoro-2, 6-dinitro-N, N-dipropyl-p-toluidine, one of the well-known weedkillers.

She has also published books of poetry, is an enthusiastic amateur historian and, perhaps above all, a music lover.

Two years ago she sat down and wrote Eugene Ormandy on her plain farm note paper and asked if he'd consider bringing the Philadelphia Orchestra to Arkansas for some concerts.

Ormandy later told reporters he was afraid, at first, that Miss Peter didn't understand the Philadelphia Orchestra didn't just pick up and plop down in Arkansas for the hell of it, but the upshot was the orchestra went to Arkansas, presented some sell-out concerts, and Mr. Ormandy kissed Miss Peter right in front of half of Little Rock on the auditorium stage—a thing Miss Peter remembers with pleasure.

She mortgaged her land for the concerts and dictated that no ticket could cost more than \$5—otherwise how could anybody but the rich afford to attend?

Yesterday's program hugely supported by North Carolinians and Pennsylvanians, nevertheless found in the farmer of Marvell a sponsor. Roger Stevens, Kennedy Center chairman, was saying at a luncheon before the concert (attended by box ticket holders at the Watergate Terrace) that the Center really belongs to the nation, not just Washington, "in spite of what some Washingtonians think."

But the problem, as one guest said in a whisper, is whether Lily Peter may not get the whole thing shipped down to Arkansas.

#### IN OPPOSITION TO PRESIDENT NIXON'S CRIME REVENUE-SHARING PROPOSAL

Mr. BAYH. Mr. President, I wish to address remarks to the first of the special revenue-sharing messages that the President has sent to the Senate. I refer to his message of March 2, which concerned crime.

I must take exception to it, to its intended purpose as a crime-abatement technique, and to the legislation that has been introduced in the Senate to implement that proposal, S. 1087.

The concept of assisting our financially

strapped States is not the central issue of my concern.

I know full well the financial plight of our States; however, I am further mindful of the serious problems that our cities face, not only in the area of crime and delinquency, but also with regard to poverty, unemployment, disease, and soaring welfare costs.

However, I do have serious reservations about the concept of crime revenue sharing concerning its deterrent effect upon crime and delinquency, concerning the making of our streets safe for its citizens, and concerning the strengthening and improving of our overall criminal justice system, including that which deals with youthful offenders.

These concerns are only intensified by a recent testimony before a subcommittee of the other body that Federal anticrime funds doled out to State planning agencies by the Law Enforcement Assistance Administration have been misused.

It has been charged that such misuse has occurred in Florida, in Alabama, and even in my own State of Indiana. Such allegations cast doubt over the manner in which Federal funds are currently being allocated and expended. Under a system of revenue sharing, with no Federal controls, as proposed by the administration, the possibility of further abuse will be vastly increased.

There is a definite need for Federal guidelines to insure that Federal anticrime funds are used for just such purposes: the improving of our criminal and juvenile justice systems throughout this Nation.

However, if crime revenue sharing is approved by Congress, we will have relinquished our responsibility to insure that Federal funds are utilized to optimum success in curbing crime in America.

How then would S. 1087 affect the funding of anticrime programs in the States?

Under the President's proposal, revenue sharing would be made applicable to provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

The Federal agency to administer these crime revenue sharing funds, the Law Enforcement Assistance Administration, has recently had its authority in the crime and delinquency area greatly expanded with amendments made to the 1968 Crime Act, enacted last year.

If revenue sharing is adopted, then vast sums of Federal moneys will be made available to State planning agencies for delinquency prevention and rehabilitation endeavors both through special revenue sharing under part C of the 1968 act and through grants and revenue sharing under part E of the act, which part only went into effect on January 2, 1971.

I want to insure that Federal funds are allocated on a priority basis that will insure a reduction in juvenile crime and that will produce a positive and effective approach toward rehabilitation of youthful offenders.

Mr. President, I am not confident that revenue sharing, as proposed through S. 1087, will accomplish those goals.

Further, I am not convinced that revenue sharing, as proposed, will have the impact where it is most needed.

Basically crime is a problem faced by this Nation's large cities.

Youngsters under the age of 18 years, according to arrest statistics, now account for approximately one-half of the serious crimes that are committed in the United States each year.

These index crimes include murder, robbery, rape, aggravated assault, burglary, larceny, and auto theft.

A disproportionate share of this crime and delinquency within the States is committed in urban cores, those densely populated cities, which have concomitant problems of disease, hunger, and neglect.

I am certainly mindful of the ever-increasing costs facing our Nation's cities in combatting crime and delinquency, in attempting to strengthen and improve upon their justice systems, and to rehabilitate persons either convicted of crimes or adjudicated as delinquents.

It is with regard to these above problems that I have serious reservations with reference to the President's revenue sharing message on crime, which would apportion funds to the States based on population.

There is ample evidence in hearings before the committees of Congress that sufficient funds have not been channeled through State planning agencies to our largest and most crime-ridden cities.

I have addressed myself to this problem during the Senate Judiciary Committee's consideration of amendments to the 1968 Omnibus Crime Control and Safe Streets Act of 1968, which were conducted during 1970 and which amendments were enacted in early January of this year.

Further, in a statement presented to the Joint Economic Committee by the National League of Cities and the U.S. Conference of Mayors on October 12, 1970, that organization indicated:

Presently cities are excluded from eligibility to receive the local share of planning funds in 29 states.

That statement pointed out further that, because regional planning units have been established in a number of States, planning funds have been allocated to those regional units rather than to units of local government.

I question whether the "revenue sharing concept" will only further exacerbate that condition in many of our States, a fact which, if so, will only serve to lessen the impact of revenue-shared funds as a crime-reduction endeavor.

I do not mean to intimate that coordination of effort and cooperation within the States are not essential, but I make the above point to emphasize that such units may very well serve to insure that "everyone gets a piece of the pie" rather than allocating funds on high-crime-incidence priority.

In fact, certain of the 1971 amendments to the Omnibus Crime Control and Safe Streets Act of 1968 were intended to insure an adequate and fair distribution of grant funds to cities, to assist them in their efforts to improve upon their criminal justice systems and thus to reduce crime.

In discussing the President's message on revenue sharing and crime, I would now turn to a brief legislative history of the Federal Government's efforts in assisting the States with their crime and delinquency problems.

I do so because this legislative history has an important bearing on the concept of revenue sharing as embodied in S. 1087, the bill that our distinguished colleague from Nebraska has introduced to implement the President's new crime revenue-sharing proposal.

This Federal endeavor had its genesis with the enactment of the Law Enforcement Assistance Act, which established within the Department of Justice an Office of Law Enforcement Assistance to engage in a rather modest grant program, designed and intended to strengthen and improve our law enforcement system.

The next element in the process was predicated on the findings and recommendations of President Johnson's Commission on Law Enforcement and Administration of Justice. That Commission has been characterized as representing the most comprehensive study of crime in the history of the United States. Its final report has been described as a landmark in crime research and the needs of law enforcement.

Its several task forces included those on juvenile delinquency and youth crime, on corrections, on the police and the community, and in sum it was all pervasive in an examination and evaluation of the entire criminal justice system.

In short the Commission's findings reflected a fragmented and often neglected criminal justice system within the States and the Commission recognized the need to develop, strengthen, and improve that system with the assistance of the Federal Government.

Thus in 1967, President Johnson proposed the Safe Streets and Crime Control Act, and as that act evolved from the Congress in 1968, as title I of the Omnibus Crime Control and Safe Streets Act, its purpose was to "assist State and local governments in strengthening and improving law enforcement at every level by national assistance."

The vehicle through which the planning and action grants were to be made available to the States was through the establishing at the State level of State planning agencies. In addition to this block grant approach toward allocation of funds, the Law Enforcement Assistance Administration, which was established by the act, was to have the authority to award discretionary grants.

A key provision of the legislation was that the Federal Government was to exercise some degree of control of fund allocation through the approval of comprehensive State plans, a provision which S. 1087, the Law Enforcement Revenue Sharing Act of 1971, would delete from the Federal law.

Mr. President, this proposal to delete that which provides for the approval of comprehensive State plans from the Federal law disturbs me to a great degree. In effect the Federal Government will turn over vast amounts of Federal

revenues to State planning agencies, with absolutely no guarantee other than post audit control, that these plans will be truly comprehensive and representative of the needs of the criminal justice system within each State.

In addition, S. 1087 would delete from the act an amendment which I emphasize was only added thereto on January 2 of this year and which provided:

No State plan shall be approved as comprehensive unless the Administration finds that the plan provides for the allocation of adequate assistance to deal with law enforcement problems in areas characterized by both high crime incidence and high law enforcement activity.

Mr. President, when the Judiciary Committee of this body considered the amendments to the Omnibus Crime Control and Safe Streets Act of 1968, which were adopted on January 2 of this year, the committee stated:

By one yardstick, that of national reported crime rates, the Committee believes that it is too early to evaluate the LEAA program. The national crime rates have not declined in the past two years. (See Table No. 2.)

Thus, it seems to me that it is premature to drastically overhaul a program whose status in the words of the Senate Judiciary Committee, only last September, was that it was in a stage of development that was too early to evaluate in terms of its impact upon crime, and in terms of crime reduction.

To impart through revenue sharing vast sums of Federal moneys to a program that has not yet been adequately evaluated in the language of the Senate Judiciary Committee, appears to me to be inappropriate.

I would add one further excerpt at this juncture from the committee's report for that language and the amendments to which it pertains have a direct bearing upon the problem of rehabilitating juvenile and youthful offenders.

The report states:

Perhaps most significantly, it retains the provisions authorizing LEAA to establish a new matching grant program to improve correctional facilities and techniques. Of all the activities within the criminal justice process, corrections appears to offer the greatest potential for significantly reducing crime. Ironically, it has been the most neglected component of the system, principally because of the very high cost of building or renovating prisons and other correctional facilities.

A significant paragraph of the amendment to the act, part E, to which the above statement is directed is as follows:

(4) provides satisfactory emphasis on the development and operation of community-based correctional facilities and programs, including diagnostic services, halfway houses, probation, and other supervisory release programs for readjudication and postadjudication referral of delinquents, youthful offenders, and first offenders, and community-oriented programs for the supervision of parolees;

While S. 1087 retains the basic grant approach toward part E of the act, revenue sharing funds would be made available to the States as "matching funds," for projects and programs undertaken under that part.

I would hope that S. 1087 does not in

effect subvert the intent of part E of the act, nor serve as a means of devoting less funds to this part than the Congress had intended.

Mr. President, I believe that the authority of the Law Enforcement Administration has been expanded, if by virtue of definition changes alone embodied in the 1971 amendments to the Safe Streets Act.

In fact the definition of "law enforcement" has been expanded in specific terms to reach the entire criminal and juvenile justice systems.

As this body moves to consider S. 1087, I would remind Senators of the interstate nature and characteristics of crime. Crime does not stop at a State border. The Careers in Crime Profile developed by the FBI reflects the mobility of offenders. Many crimes committed locally have national significance such as narcotic violations, organized crime, auto theft, and gambling.

If for no other reasons than these, I would urge Senators to give careful consideration to the President's proposal concerning special revenue sharing and crime.

That message and the legislation to implement it would negate the Federal Government's authority to approve comprehensive State planning as they endeavor to combat crime, and to rejuvenate and improve upon their criminal justice systems. I believe that this authority is essential if we are to achieve these goals.

I urge that the Senate reject S. 1087 for the reasons that I have set forth.

#### IACOCCA DISCUSSES NIXON ECONOMIC PROGRAM

Mr. GRIFFIN. Mr. President, in a speech last Friday before the Sales Executive Club of New York, Lee A. Iacocca, president of the Ford Motor Co., discussed President Nixon's new economic program.

I ask that an account of his address which appeared in the New York Times be printed in the RECORD.

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

IACOCCA URGES BACKING FOR NIXON PLANS; FORD PRESIDENT PRAISES TAX CREDIT—INEFFICIENCY OF WORKERS ASSAILED

(By William D. Smith)

Lee A. Iacocca, president of the Ford Motor Company, gave strong support yesterday to President Nixon's New Economic Policy although he contended that the 90-day wage-price freeze would cost the company \$130-million in pre-tax profits.

In a hard-hitting speech to the Sales Executives Club of New York, the Ford president praised the tax investment credit, suggested that increases in wages be tied to productivity, attacked worker inefficiency, and lashed out at those who would impose an excess-profits tax on industry.

The speech, spiced with laugh lines, received a standing ovation from the more than 1,000 executives gathered in the grand ballroom of the Waldorf-Astoria Hotel.

COMMITMENTS ASKED

The 46-year-old executive, who looks more like a football coach than a corporate officer, asked the businessmen to offer their

personal commitments to the success of the President's program. "The stakes are big and it is our own fate we are talking about. If the time has come to rally round the flag I suggest that we had truly better do it," he said.

Mr. Iacocca added that arguing about who was getting the best of the deal under the new economic program was foolish. He commented:

"The truth of the matter is that the economic package with its price-wage freeze doesn't favor anybody. It calls for temporary sacrifices and imposes them on everybody so that in the end everybody, business, labor, consumers, taxpayers, all of us, can benefit.

"The arguments really aren't over who's getting the most out of it but who's having to make the least sacrifice. Trickle up or trickle down, what we all better be paying attention to is making the program work. If it doesn't there aren't going to be any winners, just lots and lots of losers."

Mr. Iacocca drew a laugh from the audience by saying, "I don't deny that there are inequities. But there are enough inequities to go around."

The Ford official said that "the key to restoring competitive muscle to American industry is higher productivity." He added:

"No matter what you read in the paper that's what the new game plan is all about. A Labor Department study shows that during the nineteen-sixties the United States had the smallest gain in output per man-hour of any large industrial nation. Japan's productivity gain, for a pretty significant instance, was 188.5 per cent in that decade. Ours was 34.7 per cent."

Mr. Iacocca contended that the key to higher productivity was an increased level of capital investment. "One of the secrets of success of Germany and Japan in world markets is their very high level of capital investment," he stressed. "Over the last three years American business put 10 per cent of the gross national product into fixed investment. In Japan the figure was 25 per cent, the highest in the world."

The business leader said that "industry in countries like West Germany and Japan can maintain high rates of investment because they've got a lot going for them; a lot of Government incentives to expand, modernize and export."

He continued:

"Modest as it would be compared to incentives like those, restoration of the investment tax credit at 10 per cent temporarily and 5 per cent permanently for American business is, in my opinion, one of the most important and constructive features of the President's whole economic program.

"Those who try to discredit it as a windfall for business are fogging the issue. Its real purpose and effect will be to stimulate investment in better tools and facilities and thereby help to keep American industry and American workers in the running."

Mr. Iacocca went on, his voice rising in intensity:

"Important as the tax-relief provisions of the President's program are, they deal with only one aspect of the productivity problem. Frankly, there is no way that we at Ford can invent enough processes and techniques to increase productivity enough to offset the increases in labor costs that are baked into our labor contracts, not to mention absenteeism and featherbedding.

"I think it's time to face up squarely to the fact that increases in labor costs which exceed increases in productivity of the economy are inflationary. It's that simple and there's no way to get around it. You can't keep paying out more than you are producing."

He added: "What we really have is a better balance between labor costs and productivity. If we don't accomplish that we're just slipping our wheels on the inflation problem."

Mr. Iacocca accused those who favored an excess-profits tax of playing "good politics but lousy economics."

He added:

"A higher general level of profit on investment will lead to more innovation and more economic growth, more and more economic growth, more and better products for consumers, more and better jobs for employees.

"And right there is the fallacy of taxing excess profits, whatever that term is supposed to mean. All it does is encourage \* \* \* of the dollar is going to get skimmed off anyway. And if there is anything this country, its economy and its people can't afford it is efficiency. We have enough unplanned inefficiency and goofing off right now without putting in planned efficiency and goofing off right now without putting in planned inefficiency."

In another development in the automobile industry, Pehr Gyllenhammar, chief executive officer of A. B. Volvo, the largest industrial complex in Scandinavia, said he did not think that President Nixon's new policies would have much effect on the sales of the Volvo cars over the short-term period.

The Swedish executive, who is in New York on business, noted, however, that he was worried about the long-term effects, not just on his company but on the world economy in general. "It may trigger animosity among nations and destroy long efforts to promote free trade."

Meanwhile, Toyota Motor Sales announced that, under a recent Treasury ruling, approximately 12,000 buyers of Toyota cars and trucks would receive refunds ranging from \$61 to \$138. The Treasury stated that the 10 per cent surcharge on imported goods would not be applied to products in transit to the United States on or before Aug. 15.

#### IMPACT OF INDOCHINA WAR

Mr. CHURCH. Mr. President, the results of the Indochina war on and around the battlefield are still inconclusive. However, at the request of Senator J. WILLIAM FULBRIGHT, chairman of the Committee on Foreign Relations, the Library of Congress has prepared a summary on the impact of the war from January 1961 through February 1971. The compilation includes, in addition to American casualties, the terrible toll inflicted on the inhabitants of Vietnam, Laos, and Cambodia, and the long-lasting damage to the area's physical environment. For example, the U.S. herbicide spraying program has destroyed 6.2 billion board feet of timber, enough to have met the country's domestic needs for 31 years.

Sam Day, of the Intermountain Idaho Observer, has recounted the details of this important study on the war's impact both in Indochina and at home. I ask unanimous consent that Mr. Day's article be printed in the RECORD.

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

#### THE IMPACT OF THE WAR

(By Sam Day)

Everyone knows that the war in Indochina has killed and wounded a lot of people, caused a lot of destruction and cost a lot of money. But what has been the full impact? Sen. J. William Fulbright, chairman of the Senate Foreign Relations Committee, has asked the Library of Congress to research the question. The answers, made public by the committee a few weeks ago, are worth recording.

First, the human toll:

From January, 1961, through February, 1971, the United States suffered 44,610 dead and 295,406 wounded, for a total of 340,016 casualties, making it a costlier war than World War I and the Korean War in terms of U.S. manpower. (World War II was worse, with 1,076,245 U.S. casualties.)

But the American casualties are only the tip of the iceberg. To the U.S. military dead add 135,970 from South Vietnam, 4,330 from other Allied military forces and an estimated 714,984 from North Vietnam and the National Liberation Front, making a total of 899,894 combatants killed. (That doesn't include forces from Laos and Cambodia, for whom there are no figures.)

Military wounded from all sides (again excluding Laos and Cambodia) total 1,706,916, raising the total military casualty figure to 2,606,810. But this is still far from the end of it.

The civilian toll from the war is estimated at 325,000 dead and 725,000 wounded in South Vietnam, raising the grand total killed to 1,224,894, the grand total wounded to 2,431,916 and the grand total casualties to 3,656,810. And that doesn't include the extensive casualties from years of heavy bombing in North Vietnam and heavy fighting in Laos and Cambodia.

Refugees are estimated at 5,000,000 in South Vietnam, 1,400,000 in Cambodia and 300,000 in Laos. The study estimates that in addition to this there have been one million "war victims" (widows, orphans, disabled and those who have suffered property damage) and one million evacuated from their homes and relocated elsewhere for military reasons in South Vietnam.

Thus, the total killed, wounded, homeless, widowed, orphaned, evacuated and otherwise directly hurt by the war is 12,350,810, the bulk of them residents of South Vietnam, a nation of only 17-million. If the figures from other parts of Indochina were fully known, the total would probably exceed 15-million.

Next, the financial cost:

The Library of Congress estimates the U.S. budgetary outlay for the war over the past seven years at \$119.6-billion in military expenses, \$2.4-billion in additional economic assistance for Indochina and \$60-billion in veterans benefits to be paid out over the next 100 years. The total is \$182-billion. The cost includes the expending of 11,444,533 tons of munitions in Indochina, more firepower than was deployed in any previous war, and the loss of 7,602 aircraft worth \$5.7-billion.

The government of South Vietnam has budgeted about \$3.5-billion for the war (about two-thirds of its national budget) over the past five years.

Finally, the physical destruction:

In South Vietnam alone, production losses from the war are estimated at \$50-billion and capital assets destroyed at \$304-million. The latter are offset somewhat by the construction of airports, harbors and other productive facilities. Inflation, induced by the war, has brought a seven-fold increase in prices. The country's trade deficit last year totaled \$588-million.

Perhaps the most extensive and long-lasting damage to South Vietnam came from the U.S. herbicide spraying program, which covered 5,767,410 acres, almost one-seventh of the land area of the country. The spraying destroyed 6.2 billion board-feet of timber, enough to meet the country's domestic needs for 31 years. It laid waste to croplands capable of raising enough food to feed 600,000 persons for a year.

The figures convey only a part of the impact of the Vietnam war, says Senator Fulbright in an introduction to the report. They "merely hint at the vast destruction of the social fabric and economies of Indochina wrought as a consequence of this tragic war. There is no way of measuring the true cost of a shattered social structure, lost opportunities for development, persistent inflatio~

black marketeering, corruption and prostitution . . .

"Nor can (we) quantify the effects of this experience on U.S. society—not only the direct economic costs realized through our own inflation, high interest rates and balance-of-payments deficits, but also the intangible costs in terms of erosion of respect for law, further disruption of the constitutional system of checks and balances, increased distrust of government, and the growing use of violence as a political tool. These indirect and intangible consequences of the war will have an enduring effect on our future."

#### SEX DISCRIMINATION AND THE 14TH AMENDMENT

Mr. BAYH. Mr. President, I had the privilege recently of representing the National Federation of Business and Professional Women's Clubs as *amicus curiae* in two major cases involving sex discrimination now pending before the Supreme Court. These cases, *Reed* against *Reed* and *Alexander* against *Louisiana*, present the issue of the degree to which the equal protection clause of the 14th amendment guarantees equality of treatment for women under the law.

I have long believed, and have firmly advocated in this body, that women are entitled to equal protection of the laws under the 14th amendment. Sex discrimination has as substantial an adverse impact on our society as the other forms of discrimination which the Supreme Court has struck down in the past. Women have as great a claim to the benefits of the equal protection clause as do aliens, indigents, and members of racial minorities. The same premises of human dignity and fundamental equality that give rise to the 14th amendment demand that its full protection be extended to strike down discrimination on account of sex.

I ask unanimous consent that the entire *amicus* brief be printed in the RECORD.

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

[In the Supreme Court of the United States, Nos. 70-4 and 70-5026]

SALLY M. REED, APPELLANT, v. CECIL R. REED, ADMINISTRATOR, IN THE MATTER OF THE ESTATE OF RICHARD LYNN REED, DECEASED, APPELLEE

CLAUDE ALEXANDER, PETITIONER, v. STATE OF LOUISIANA, RESPONDENT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The National Federation of Business and Professional Women's Clubs, Incorporated, hereby respectfully moves for leave to file the attached brief *amicus curiae* in these cases. The consent of both attorneys of record has been received in *Alexander v. Louisiana*. In *Reed v. Reed* the consent of the attorney for the Petitioner has been received, and the consent of the attorney for the Respondent was requested but refused. Neither case has yet been set for oral argument, and Respondent's brief in *Reed v. Reed* is not due to be filed until September 7, 1971. Therefore, *amicus* respectfully submits that granting of this motion will not cause hardship to any of the parties or delay the resolution of the causes.

The interest of the National Federation of Business and Professional Women's Clubs in these cases arises from the fact that they squarely present the issue of the degree to which the Equal Protection Clause of the

Fourteenth Amendment guarantees equality of treatment for women under the law. One of the primary policy objectives of the Federation, which has approximately 180,000 members and is open to all working women, has been to eradicate laws and practices that perpetuate invidious sex discrimination. It is believed that the brief which *amicus curiae* is requesting permission to file will contain a more complete argument on the constitutional issue and a fuller description of the factual background surrounding these cases than any of the other briefs. If this argument is accepted, it would be dispositive of these cases.

Respectfully submitted,  
BIRCH BAYH,  
Attorney for National Federation of  
Business and Professional Women's  
Clubs, Inc.  
WASHINGTON, D.C.

[In the Supreme Court of the United States, Nos. 70-4 and 70-5026]

SALLY M. REED, APPELLANT, v. CECIL R. REED, ADMINISTRATOR, IN THE MATTER OF THE ESTATE OF RICHARD LYNN REED, DECEASED, APPELLEE

CLAUDE ALEXANDER, PETITIONER, v. STATE OF LOUISIANA, RESPONDENT

BRIEF AMICUS CURIAE OF THE NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC.—INTEREST OF AMICUS

The National Federation of Business and Professional Women's Clubs, Inc. (hereinafter referred to as BPW), is a nationwide non-partisan organization dedicated to promoting the interests of business and professional women. It is a federation composed of 53 state federations, which in turn are composed of 3,800 local clubs. These clubs are in operation in every state of the United States as well as in the District of Columbia, Puerto Rico, and the Virgin Islands. The BPW has approximately 180,000 members. Membership is open to any working woman, and the Federation's membership includes secretaries, lawyers, assembly line workers, clerks, and in short, women engaged in virtually every occupation.

In its 52 year existence, the BPW has been particularly concerned with securing equality of treatment for women under the law. One of its primary policy objectives is to eradicate laws and practices that perpetuate invidious sex discrimination in violation of the guarantee of Equal Protection of the Laws. The BPW has long been a supporter of the proposed Equal Rights Amendment to the United States Constitution, and has testified on behalf of its adoption before both the House and Senate Committees on the Judiciary. As an advocate of the strict enforcement of the sex discrimination prohibition of Title VII of the Civil Rights Act of 1964, BPW filed an *amicus* brief in *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969).

The cases at bar involve the direct application of the Equal Protection Clause of the Fourteenth Amendment to State laws which patently discriminate against women on the basis of sex. The proper application of the Equal Protection Clause is of immediate and substantial importance to the BPW, to the purposes which it endeavors to serve, and to women throughout the United States.

#### STATEMENT OF FACTS

Both cases at bar involve constitutional challenges under the Fourteenth Amendment to State laws that systematically exclude women from the full and equal exercise of certain rights because of sex.

In *Reed v. Reed*, No. 70-4 appellant, as the mother of an intestate decedent, filed her petition for probate of the estate. Decedent's father, appellee herein, also petitioned for letters of administration. Both parties were equally entitled to letters of administration under § 15-312, Idaho Code. The probate

judge ruled in favor of the father on the grounds that § 15-314, Idaho Code, required that males must be preferred to females as between persons equally entitled to administer an estate. The probate court order was reversed by the Fourth Judicial District Court of Idaho which held that I.C. § 15-314 violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The Idaho Supreme Court, reversing the district court, upheld the constitutionality of I.C. § 15-314.

In *Alexander v. Louisiana*, No. 70-5026, petitioner's conviction by the District Court for the 15th Judicial District in Lafayette Parish, Louisiana, was affirmed on appeal by the Supreme Court of Louisiana. Petitioner challenged the validity of the original indictment on the ground, among others, that women were systematically excluded from the grand jury list and venire and from the grand jury empaneled. The evidence below established that women were totally excluded from juries in Lafayette Parish because of the operation of Article 402, Louisiana Code of Criminal Procedure, which prohibits the selection of a woman unless she has filed a written declaration of her desire to serve. The Supreme Court of Louisiana rejected petitioner's challenge to the grand jury venire, relying on *Hoyt v. Florida*, 368 U.S. 57 (1961), to uphold the exclusion of women. Petitioner contends that the indictment against him was invalid and illegal because it was returned by a grand jury empaneled from a venire made up in violation of the Fourteenth Amendment to the Constitution of the United States.

#### SUMMARY OF ARGUMENT

Sex discrimination is a massive affront to our fundamental concepts of equality. It imposes a massive psychological and economic burden on American society. In those areas in which the costs can be documented—for example, average annual income—and in its immeasurable impact on personal dignity, sex discrimination may well take an even greater toll than racial discrimination.

Much of the discrimination stems directly from State action. Federal, State, and local governments employ more than 20% of the labor force, and their practices are followed by many other employers. Despite the fact that these institutions ought to serve as a model of nondiscriminatory employment, available studies indicate that women are relegated almost exclusively to the lowest grades of government service. State action in the area of education shows a clear and persistent pattern of discrimination against women, both in admissions and in access to teaching and supervisory positions. Some States continue to discriminate against women in their criminal laws. The vast majority of States continue to enforce archaic laws—"protective" labor legislation, limitations on the right to contract and the right to enter business, and so forth—which severely restrict women who wish to advance and earn promotions in their work.

This Court has never struck down any law on the ground that it denied the Equal Protection of the Laws to either sex. Instead, in a line of cases beginning in 1872, the Court has determined that State action fostering or permitting sex discrimination is constitutionally permissible if it appeared "reasonable"—and the Court has found every instance of sex discrimination with which it has been presented to be "reasonable." As a result of these cases, the Equal Protection Clause has been effectively rendered a nullity as far as sex discrimination is concerned.

Today there is increasing recognition in all parts of our society that it is neither constitutionally permissible nor morally justifiable to subject the majority of our population to second class status. Employment opportunities have been expanded under de-

visions construing the sex discrimination provisions of Title VII of the 1964 Civil Rights Act. In addition to action in the courts, there has been substantial action in State legislatures and by State Attorneys General, important changes in private institutions and customs, and even increased pressure for fundamental constitutional change—all directed at the problem of sex discrimination in our society. Moreover, a number of courts have challenged the wisdom of—and in some cases effectively overruled—this Court's earlier decisions in cases directly attacking the constitutionality of State laws discriminating on the basis of sex. These cases implicitly—and on occasion explicitly—rejected the premises on which this Court's earlier decisions rested.

At the same time, a series of Supreme Court cases has struck down other forms of personal discrimination by requiring that all such discrimination be "subject to the most rigid scrutiny" under the Equal Protection Clause. The Court has recognized that when "fundamental" and "individual and personal" rights are involved, "strict scrutiny" must be exercised by the courts lest such important rights be abridged or infringed. This standard of review has been used by the Court to overturn discrimination in voting power, discrimination against aliens, discrimination against the poor, and most importantly, instances of racial discrimination.

Women, too, are entitled to Equal Protection of the Laws under the Fourteenth Amendment. Sex discrimination has as substantial an adverse impact on our society as the other forms of discrimination which this Court has struck down. Women have as great a claim to the benefits of the Equal Protection Clause as do aliens, indigents, and members of racial minorities. The same premises of human dignity and fundamental equality that give rise to the Fourteenth Amendment demand that its full protection be extended to strike down discrimination on account of sex.

In the cases at bar, both the Idaho law which automatically prefers males over females in the administration of estates, and the Louisiana law under which women are effectively precluded from jury service discriminate entirely on the basis of sex, without regard to the personal capabilities or circumstances of the individuals involved. Accordingly, neither can survive the "most rigid scrutiny" mandated by the Equal Protection Clause of the Fourteenth Amendment, and both decisions below should be reversed.

**ARGUMENT—I. SEX DISCRIMINATION IS A MASSIVE AFFRONT TO FUNDAMENTAL HUMAN LIBERTY AND DIGNITY, WITH PERSISTENT AND DEMONSTRABLE ADVERSE IMPACT ON OUR SOCIETY**

The evidence is overwhelming that persistent patterns of sex discrimination permeate our social, cultural, and economic life. Much of this discrimination is directly attributable to State action, both in maintaining archaic discriminatory laws and in tolerating and perpetuating discriminatory practices in employment, education and other areas. The social and economic cost to our society, as well as the individual psychological impact of sex discrimination, are immeasurable. That the majority of our population should be subjected to the indignities and limitations of second-class citizenship is a fundamental affront to personal human liberty. We submit that State action which in any way perpetuates this invidious sex discrimination should be subject to the strictest application of the Equal Protection Clause.

Startling as the revelation might be to many Americans, it is a fact that sex discrimination takes an even greater economic toll than racial discrimination. In 1968 the median earnings of white men employed year-round full-time were \$7,396, of Negro

men \$4,777; of white women \$4,279, of Negro women \$3,194. Women with some college education, both white and Negro, earn less than Negro men with eight years of education.<sup>1</sup> That sex discrimination was eloquently demonstrated by Congresswoman Shirley Chisholm in her testimony on the Equal Rights Amendment: "I have been far oftener discriminated against because I am a woman than because I am black." Hearings on the Equal Rights Amendment Before the Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary, 91st Cong., 2d Sess., at 35 (May 1970).

Federal, State, and local governments bear a substantial responsibility for perpetuating these pervasive patterns of sex discrimination. Through discriminatory employment practices, through financial support of public institutions such as universities, and by permitting archaic discriminatory laws to remain in effect, government at all levels is implicated in subjecting women to second-class treatment. The effect of governmental involvement in sex discrimination is magnified far beyond its actual scope since governmental policies have traditionally set a standard for practices in the private sector.

**Sex discrimination in employment**

Although the vast majority of the labor force is employed in the private sector, State, local and federal governments, including the military, employ more than 15,000,000 people—more than 20 percent of the labor force.<sup>2</sup> More important than the actual numbers suggest, governments are often looked to by private employers as models in relation to employment practices. Therefore, it is especially disturbing that studies of government employment practices reveal patterns of sex discrimination as pervasive as those in the private sector.<sup>3</sup> For example, although women constituted 34 percent of all full-time white collar federal Civil Service employees in 1967, they filled more than 62 percent of the four lowest grades and only 2.5 percent or less of the four highest grades.<sup>4</sup> In October, 1969, of the 665,000 women in full-time white collar Civil Service positions (33.4 percent of the total), 77.8 percent were in the six lowest grade levels. In the three-year period 1966-1969, women's share of jobs in grade levels GS-13 and above rose only slightly, from 3.5 percent to 3.8 percent.<sup>5</sup>

Equally pervasive patterns of sex discrimination persist in the private sector.<sup>6</sup> Whatever the occupation, there is a dramatic differential in earnings between men and women at every level. The median salary income for women is only 60.5 percent of that earned by men. The gap in earnings is largest for sales workers; women in this category earn less than half—41 percent—of what men doing similar work earn. While the wage gap is smallest in clerical, professional, and technical fields, women still earn only 65 percent of what men earn in those same fields. In 1969, less than 5 percent of all full-time women workers earned over \$10,000 a year, compared with 35 percent of all male workers. At the lowest end of the salary scale, 14.4 percent of women, but only 5.7 percent of men, earned less than \$3,000.<sup>7</sup>

Women have traditionally been employed in jobs which have less prestige or policymaking power than those to which men have access.<sup>8</sup> In 1969, women constituted 59 percent of all service workers, exclusive of private household employees.<sup>9</sup> A survey of industry conducted the same year revealed that while women account for more than 40 percent of all white collar jobs, they hold only one in ten managerial position and one in seven professional jobs.<sup>10</sup>

The startling disparities in income and employment opportunity between male and female workers cannot be explained by differences in education. In 1968, the median number of years at school completed by wo-

men in the total work force was 12.4 compared with 12.3 for working men.<sup>11</sup> Yet, women with four years of college education made only slightly more than men with an eighth grade education.<sup>12</sup> Nor can the disparities be explained by the assumption that women work only for their personal interests, rather than for their livelihood. In 1969, at least 12 million women, or 40 percent of working women, were self-supporting; further, 5.4 million families were totally dependent on the earnings of women.<sup>13</sup> The conclusion is inescapable that the inferior economic position of working women is the direct result of pervasive sex discrimination in both the private and the public sector. This discrimination has massive adverse impact on the economy of the entire nation, as well as on the lives of working women and on the people who look to them for economic support.

**Sex discrimination in education**

Another area in which state action contributes directly to sex discrimination is in the educational field. Colleges and universities have a critical role in determining employment opportunity for women by providing access to professional training and careers. Yet widespread patterns of sex discrimination are found in the admissions policies and hiring practices of institutions of learning throughout the country.

Such discriminatory practices are inextricably tied to government both at the state and federal level, in that even privately endowed institutions receive substantial federal assistance directly through specific grants or indirectly through service contracts, research grants, and student loan programs. Further, the vast majority of college graduates come from state supported institutions, some of which expressly discriminate against women. The University of North Carolina at Chapel Hill, for example, published in the fall of 1969 a "Profile of the Freshman Class" which stated that "admission of women on the freshman level will be restricted to those who are especially well qualified." At Texas A & M, a land-grant, state-supported university, women students are admitted only for summer school sessions, and never to the regular academic curriculum, unless they are related to employees or students, and they wish to pursue a course of study otherwise unavailable.

Discrimination against women does not end with admission to college or graduate school; it pervades every level of the teaching profession. Although more than two-thirds of the teachers in public elementary and secondary schools are women, they constitute only 22 percent of the elementary school principals and only 4 percent of the high school principals. A recent survey by the National Education Association reported that of 13,000 school superintendents, only 2 were women.<sup>14</sup>

At the college faculty level, sex discrimination becomes even more pronounced. A report on the distribution of women faculty at ten high endowment institutions of higher education in 1960 showed that the proportion of women faculty ranged downward from 9.8 percent of instructors to 2.6 percent of full professors.<sup>15</sup> A survey of 188 major departments of sociology revealed that women accounted for 30 percent of the doctoral candidates, but comprised only 4 percent of full professors and 1 percent of departmental chairmen.<sup>16</sup> Similar studies conducted in public and private colleges and universities throughout the country confirm this dismal picture of pervasive sex discrimination in the academic world.<sup>17</sup>

**Sex discrimination in State regulatory and criminal laws**

Although shockingly archaic in the second half of the twentieth century, State laws which severely restrict the activities of married women in the business and professional

Footnotes at end of article.

world continue to exist. Four States require a married woman to obtain a court order before establishing an independent business. Eleven States place special restrictions on the right of a married woman to contract. In three States, a married woman cannot become a guarantor or surety. In only five States does she have the right to establish her own domicile. In seven of the eight community property States, the husband has control over the community property.<sup>18</sup>

State laws also discriminate against women in other ways. In many States, only a woman can be prosecuted for prostitution, and only her conduct, not her male partner's, is criminal. Female juvenile offenders are also subjected to a double standard; in New York State, for example, they can be declared to be "persons in need of supervision" for non-criminal acts until age 18, while boys are covered by the statute only until age 16.<sup>19</sup> Yet most States permit girls to marry without parental consent at an earlier age than boys, presumably because of some State determination that early marriage is more appropriate and proper for women than for men.

Similar assumptions are reflected in State criminal laws which discriminate against women. In Arkansas, for example, a woman can be sentenced to 3 years in jail for habitual drunkenness, while a man can receive only 30 days for the same offense.<sup>20</sup> In Texas and Utah, the defense of "passion killing" is allowed to the wronged husband, and not to the deceived wife.<sup>21</sup>

The provisions of Idaho and Louisiana laws challenged in the cases at bar are further examples of invidious sex discrimination perpetuated by State action. In light of the pervasive nature and adverse effect of sex discrimination throughout American society, such laws should be subjected to the most rigorous judicial scrutiny under the Fourteenth Amendment.

#### II. IN THE PAST, THIS COURT HAS SANCTIONED SEX DISCRIMINATION WHENEVER IT WAS THOUGHT TO BE BASED UPON SOME "REASONABLE" GROUND

Since the ratification of the Fourteenth Amendment in 1868, numerous cases challenging State practices and laws perpetuating sex discrimination have been brought before this Court. Yet despite evidence that sex discrimination is at least as invidious, pervasive, and damaging as racial discrimination, this Court has never struck down any law because it denied the Equal Protection of the Laws to either sex. Because this Court has found every instance of sex discrimination to be "reasonable" and therefore—according to its standard—constitutional, the Equal Protection Clause has been effectively rendered a nullity as far as sex discrimination is concerned.

The first significant case involving sex discrimination was *Bradwell v. Illinois*, 83 U.S. 130 (1872), in which the Court upheld only the refusal of the Supreme Court of Illinois to allow women to practice law.<sup>22</sup> Although the Court relied on the Privileges and Immunities Clause of the Fourteenth Amendment and not the Equal Protection or Due Process Clauses, the presumptions and attitudes which were to govern later decisions sanctioning sex discrimination were already apparent:

"The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. . . . The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the

Creator." (Bradley, J., concurring, 83 U.S. at 141)

Two years later, the Court held that the Fourteenth Amendment did not confer on women citizens the right to vote, in *Minor v. Happersett*, 88 U.S. 162 (1874), a position which stood until ratification of the Suffrage Amendment in 1920.

The test of "reasonableness" for determining the validity of sex discrimination under the Fourteenth Amendment was first expressly stated in the landmark case of *Mueller v. Oregon*, 208 U.S. 412 (1908), which upheld an Oregon maximum hour law for women. It is ironic that *Mueller*, which represented the most progressive thinking of its time, should have become the cornerstone of a judicial philosophy which upheld almost all forms of discrimination against women as "reasonable," and therefore not in violation of the Equal Protection Clause.

In *Mueller* the Court was responding to the demonstrated need for legislative protection of working conditions, a protection which it subsequently upheld for both men and women. *Bunting v. Oregon*, 243 U.S. 426 (1917). Yet the assumptions about women on which the Court based its decision in *Mueller* have become firmly entrenched in judicial doctrine. Finding that the apparent difference in physical endurance and strength between men and women justified the State's restriction on women's right to work, the Court stated:

"That woman's physical structure and performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious . . . as healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race . . ." 208 U.S. at 421.

Under similar reasoning, the Court sustained other restrictive labor laws for women in subsequent years as "reasonable" under the Fourteenth Amendment. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) (minimum wage law for women upheld as reasonable exercise of State's police power); *Radice v. New York*, 264 U.S. 292 (1924) (law prohibiting night-time employment of women in restaurants not unreasonable or arbitrary classification); *Miller v. Wilson*, 236 U.S. 375 (1915) (women's eight-hour labor law not an arbitrary invasion of liberty of contract nor unreasonably discriminatory).

Applying the standard of "reasonableness," the Court failed to find constitutional fault with later labor laws which appeared to have little if any reasonable justification. A good example is the case of *Goesart v. Cleary*, 335 U.S. 464 (1948), in which the Court upheld a Michigan statute prohibiting all females—other than the wives and daughters of male licensees—from being licensed as bartenders. The Court reasoned that,

"Bartending by women, may, in the allowable legislative judgment, give rise to moral and social problems against which it may devise preventive measures. Since the line drawn is not without a basis in reason, we cannot give ear to the suggestion that the real impulse behind the legislation was an unchivalrous desire of male bartenders to monopolize the calling." 335 U.S. at 466-467.

The Court in *Goesart* assumed that such patently discriminatory legislation could be sustained if it were "reasonably related to the State's objective in making such a classification. The Court did not even explore the possibility that a more rigorous constitutional standard should be applied. It specifically refused to consider whether the statute might reflect an "unchivalrous desire" of males to monopolize the bartending trade—as the Court itself noted. Moreover, the Court's concern for protecting women from the noxious "moral and social" influences of the barroom was misplaced, since Michigan permitted women to work in bars,

prohibiting them only from employment as bartenders. Furthermore, the statute itself exempted the wives and daughters of bartenders from its supposed protection.

More recently, in *Hoyt v. Florida*, 368 U.S. 57 (1961), the Court upheld a Florida statute providing that no female would be called for jury service unless she had registered to be placed on the jury list. The Court found that such discrimination was permissible under the Fourteenth Amendment, since it was reasonable

" . . . for a state, acting in pursuit of the general welfare, to conclude that a woman should be relieved from the civic duty of jury service unless she herself determines that such service is consistent with her own special responsibilities." 383 U.S. at 62.

It is this predetermined, generalized conception of the nature and role of women that underlies the Court's past decisions finding sex discrimination a "reasonable" exercise of the State's police power. Women as a group have been judicially viewed primarily as being limited to the home and family. Further, they have been regarded as weaker in strength and endurance than men and as less able to protect themselves against moral corruption and economic exploitation. While this view may be accurate for some women, it might also be accurate for some men. As a generalization, it is clearly inapplicable to the vast majority of women in our society today. Because of the continued application of this outdated conception of the role and nature of women, the majority of our population has been subjected to massive discrimination in the labor market, in education, and in virtually every significant aspect of American life.

In the 63 years since *Mueller* was decided, there has been great progress in securing adequate protection for all people in the labor force. The need for government to establish protective discriminatory legislation has been overcome by progress in the private sector, primarily through the recognition and use of collective bargaining to protect the interests of workers. The benevolent intent of *Mueller* is no longer needed today; in fact, the sex discrimination which the Court upheld in *Mueller* has become a pernicious force in excluding women from the full range of opportunity available to men. The Equal Protection Clause is flexible enough to incorporate this change. State action which perpetrates sex discrimination should no longer be subjected to the test of "reasonableness;" rather, it should be subjected to the most rigorous judicial scrutiny under the Fourteenth Amendment.

#### III. THERE IS INCREASING RECOGNITION IN THE COURTS AND THROUGHOUT AMERICAN SOCIETY THAT SEX DISCRIMINATION CAN NO LONGER BE JUSTIFIED

In the past few years, there has been significant and substantial recognition throughout our society that sex discrimination can no longer be tolerated. Increasingly, the American people have come to recognize that it is neither constitutionally permissible nor morally justifiable to subject the majority of our population to second-class status. This growing trend to reject sex discriminatory practices is apparent in the following areas:

##### Title VII enforcement actions

In August 1969, the Equal Employment Opportunity Commission, which administers Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e (1964), ruled that State laws which restrict the employment of women are invalidated by Title VII. 29 C.F.R. 1604.1 (1970).

Following the lead of the Commission, the Federal courts have struck down a number of State restrictive laws and private discriminatory practices. Although Title VII does not apply "in those certain instances where . . . sex . . . is a bona fide occupational qualification

Footnotes at end of article.

tion reasonably necessary to the normal operation" of a particular business or enterprise, 42 U.S.C. 2000e-2(e) (1964), the Court of Appeals for the Fifth Circuit, in the landmark case of *Weeks v. Southern Bell Telephone & Telegraph Co.*, 408 F.2d 228 (5th Cir. 1969), construed this exemption very narrowly. The Court held that the company could not rely on an arbitrary weight limit to justify its refusal to promote women unless it could show "that all or substantially all women would be unable to perform safely and efficiently the duties of the job involved."

The Court stated that hiring and promotion rules differentiating on the basis of sex were generally unacceptable under Title VII: "Moreover, Title VII rejects just this type of romantic paternalism as unduly Victorian and instead vests individual women with the power to decide whether or not to take on unromantic tasks." 408 F.2d at 236.

The Seventh Circuit Court of Appeals followed the *Weeks* lead in *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969). The Court held that Title VII proscribed a company-imposed weight restriction applied to women only, and specifically stated that the company could retain the weight lifting limit only if it were applied as a general guideline to all employees, male and female alike.

Perhaps the most significant decision in this area is *Phillips v. Martin Marietta Corporation*, 400 U.S. 542 (1971). The Court of Appeals for the Fifth Circuit had held below that Title VII allowed an employer to refuse to hire mothers of pre-school age children, since sex was not the only factor involved in the decision. 411 F.2d 1 (5th Cir. 1969). This Court granted *certiorari*, making *Phillips* the first case of sex discrimination under Title VII to be heard by the Supreme Court. In a unanimous decision, this Court ruled that the Fifth Circuit had erred in interpreting Title VII as permitting one hiring policy for women and another for men—each having pre-school age children. In remanding for a fuller development of the record, the Court held that Title VII requires persons of like qualifications be given employment opportunities irrespective of their sex. Like *Phillips*, the cases at bar present another fundamental question of degree in dealing with substantial allegations of sex discrimination.

Within the past few months, the Court of Appeals for the Ninth Circuit *Rosenfeld v. Southern Pacific Company*, 3 FEP Cases 604 (June 1971), has struck down a California weight and hours law which applied only to women, finding that Title VII was intended to invalidate just such discriminatory laws. The Court stated, "The premise of Title VII . . . is that women are now to be on an equal footing with men . . . Equality of footing is established only if employees otherwise entitled to the position, whether male or female, are excluded only upon a showing of individual incapacity." 3 FEP Cases at 608.

Another important recent decision from the Ninth Circuit in the area of employment discrimination is *Mengelkoch v. Industrial Welfare Commission*, 437 F.2d 563 (9th Cir. 1971).<sup>23</sup> While remanding a challenge to a California maximum hours law for women brought under both the Fourteenth Amendment and Title VII, the Court struck a blow at the continuing viability of *Mueller v. Oregon*, *supra*. It pointed out that the employment conditions which led to the *Mueller* decision are no longer wholly relevant today. As the Court stated, "Women still differ physically from men and still perform maternal functions. It may be seriously questioned, however, whether some or all of the other conditions referred to in the *Mueller* opinion exist today or, if they do exist, whether they have the same importance as

was attributed to them sixty-two years ago." 437 F.2d at 567.

The Federal District Courts have also struck down a number of State restrictive labor laws applicable only to women on the ground that such laws conflict with Title VII and are therefore invalid under the Supremacy Clause of the United States Constitution.<sup>24</sup>

As the Courts have recognized in striking down sex discrimination in employment, working conditions have improved dramatically in the past 63 years. Since 1908 when *Mueller* first established the validity of restrictive labor laws for women, the overriding and understandable concern for protecting women and children from harmful working conditions has been the motive force in leading the Courts to avoid a strict application of the Fourteenth Amendment to sex discrimination. It is undeniable, however, that collective bargaining has become an effective means of protecting workers from exploitive employer practices. Thus, the cases which have arisen under Title VII in the past few years should be viewed not only as interpretations of Title VII; they should also be viewed as implicitly giving judicial recognition to the fact that "protective" legislation for women is no longer necessary or appropriate. The United Auto Workers, one of the largest and most progressive labor unions in the country, has long recognized that State protective laws have been used by employers to deny women as a class opportunities to work overtime, to bid on certain jobs, work in certain departments and on certain shifts, regardless of the fact that an individual woman might have had the seniority, skill and ability which should have been recognized in any of these situations. See UAW Administrative letter, Vol. 21, No. 10, Nov. 6, 1969, reprinted in Hearings on the Equal Rights Amendment Before the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary, 91st Cong., 2nd Sess., at 595 (May 1970). The UAW has urged strict enforcement of Title VII and has strongly supported all efforts to eradicate sex discrimination, especially through the adoption of the Equal Rights Amendment. Mrs. Olga Madar, Vice-President of the UAW, testifying for the adoption of the Equal Rights Amendment, stated that ". . . a very strong tide is running in behalf of the proposition that American women, while they may like candy and roses, really need basic rights still denied them. Rights not roses is the watchword for an increasing number of American women . . ." *Id.*, at 611.

#### Sex discrimination held unconstitutional

In the past few years, courts across the country have increasingly recognized the unconstitutionality of State action which perpetuates sex discrimination. Many of these decisions are based squarely on the ground that sex discrimination must be reviewed under the strictest Fourteenth Amendment standard and that seldom if ever can such discrimination withstand careful judicial scrutiny.

Perhaps the most striking progress in eradicating sex discrimination is in the area of occupational restrictions. In effect, this Court's decision in *Goesart v. Cleary*, 335 U.S. 464 (1948), has been rejected by the Supreme Courts of New Jersey and California, and by the Federal District Court for the Northern District of Illinois. Each of these cases involved challenges to laws prohibiting women from employment as bartenders, laws which were similar to the Michigan statute sustained by this Court in the *Goesart* decision, held that the sex discrimination embodied in such occupational restrictions could not be sustained under the Fourteenth Amendment. *McCrimmon v. Daley*, 2 FEP Cas. 971 (N.D. Ill. 1970); *Sail'er Gun, Inc. v. E. J. Kirby*, 3 CCH Employment Practices Decisions, para. 8222 (Cal. Supreme Court, 1971); *Paterson Tavern & Grill Owners Ass'n*

*v. Borough of Hawthorne*, 57 N.J. 180, 270 A. 2d 628 (1970).

Some of the principal cases striking down sex discrimination in other areas can be grouped in the following categories:

(1) *Criminal law*: Longer prison terms for women than for men convicted of the same crime have been declared unconstitutional under the Fourteenth Amendment. *United States ex rel. Robinson v. York*, 281 F. Supp. (D. Conn. 1968) (differential sentencing laws for men and women constitute "invidious discrimination" against women in violation of the Equal Protection of the laws guaranteed by the Fourteenth Amendment), *Commonwealth v. Daniel*, 430 Pa. 642, 243, A.2d 400 (1968) (statutory scheme fixing the maximum term of imprisonment for women but not for men convicted of the same crime creates an arbitrary and invidious discrimination in violation of the Fourteenth Amendment).

(2) *Public accommodation*: Exclusion of women from liquor licensed public taverns has been held to violate the Fourteenth Amendment. *Sidenberg v. McSorleys' Old Ale House, Inc.*, 308 F. Supp. 1253 (S.D.N.Y. 1969). See also, *Mollere v. Southeastern Louisiana College*, 304 F. Supp. 826 (E.D. La. 1969), in which a federal court held unconstitutional a requirement that unmarried women under 21 live in the State college dormitory when no such requirement was imposed on men.

(3) *University exclusion*: Exclusion of women students from state-supported "prestige" institutions has been held to violate the Fourteenth Amendment Equal Protection guarantee. *Kirstein v. Rector and Visitors of University of Virginia*, 309 F. Supp. 184 (E.D. Va. 1970).

(4) *Mandatory maternity leave*: A regulation requiring a female teacher to leave her job in the fifth month of pregnancy has been held to violate her right to Equal Protection. *Cohen v. Chesterfield County School Board*, Civ. Action No. 678-79-R (E.D. Va. May 17, 1971).

(5) *Exclusion from promotion examination*: The exclusion of policewomen from the examination required for promotion to sergeant solely because of sex has been struck down as an impermissible denial of constitutional rights. *Matter of Shpritzer v. Lang*, 234 N.Y. Supp. 2d 285 (1st Dept. 1962), *aff'd* 13 N.Y. 2d 744, 241 N.Y. Supp. 2d 869, 191 N.E.2d 919 (1963).

(6) *Inheritance tax*: Inheritance tax imposed on certain property when devised by husband to wife, but not when devised by wife to husband, has been held to violate the Equal Protection guarantee. *In re Estate of Legatos*, 1 Cal. App. 3d 657, 81 Cal. Rptr. 910 (1969).

(7) *Jury service*: The statutory exclusion of women from jury service has been held to violate the Fourteenth Amendment's Equal Protection Clause. *White v. Crook*, 251 F. Supp. 401 (N.D. Ala. 1966).

The judicial trend apparent from even this small sample of cases is clear. Courts across the country are beginning to recognize that laws or practices which subject women to differential or inferior treatment because of their sex are no more constitutionally permissible than other forms of invidious discrimination, particularly racial discrimination. In striking down sex discrimination, some courts have adopted the "rigid scrutiny" test of the strictest Fourteenth Amendment Equal Protection standard.

#### Increased pressure for adoption of an equal rights amendment to the United States Constitution

The growing recognition that fundamental changes must be made in the legal status of women in this country is reflected in the widespread support for an Equal Rights Amendment. Although such an amendment

Footnotes at end of article.

has been introduced in Congress for the past 48 years, the mounting pressure in recent years to eradicate sex discrimination resulted in its adoption last year by the House of Representatives. The Amendment failed in the Senate by only a narrow margin.

Much of the motive force behind the proposed Amendment is due at least in part to the past unwillingness of this Court to apply the Fourteenth Amendment Equal Protection guarantee to cases of sex discrimination, as demonstrated by *Goesart v. Cleary*, 335 U.S. 464 (1948), and *Hoyt v. Florida*, 368 U.S. 57 (1961). As a result, many women feel that the right for full legal equality cannot be won in the courts. As Congresswoman Martha Griffiths stated in her recent testimony in support of the Equal Rights Amendment:

"You may ask why a constitutional amendment is needed to correct the problem of unfair sex discrimination. Why won't the Fourteenth Amendment do the job? Because the Fourteenth Amendment has been with us since 1868, and in all those years the Supreme Court has never once held unconstitutional a law which discriminated on the basis of sex. No woman has ever won a case before the Supreme Court on the Fourteenth Amendment." Hearings on the Equal Rights Amendment Before Subcomm. No. 4 of the House Comm. on the Judiciary, 92nd Congress, 1st Session, ser. 2, at 41 (March 1971).

Many other women who testified in support of the Equal Rights Amendment expressed similar views on the Court's unwillingness to strike down sex discrimination under the Fourteenth Amendment. They also recognized, and we agree that when this Court does act to end sex discrimination, an Equal Rights Amendment would still be desirable, if only because of its immense symbolic value. As Caroline Byrd, author of "Born Female," has stated:

"Even if the equal rights amendment did nothing but state the principle, it would be worth it . . . the time has come when this . . . amendment is both needed and politically feasible. Women are beginning to see their situation. They can never go back so we must all go forward." Hearings on the Equal Rights Amendment Before Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary, 91st Cong., 2nd Sess., at 347 (May 1970).

#### State legislative action to end sex discrimination

An equally significant indication of the growing recognition that sex discrimination can no longer be tolerated in our society is the increasing number of States that have voluntarily rescinded or invalidated restrictive labor legislation which applies only to women. In 12 States attorneys general have ruled that Title VII and state fair employment practices legislation supercedes state legislation restricting the employment of women. Since the effective date of Title VII, July 2, 1965, eight States and the District of Columbia have amended or repealed discriminatory legislation, thereby substantially expanding employment opportunities for women.<sup>25</sup> It seems clear that State governments as well as federal and State courts are coming to recognize that sex discrimination is anachronistic and unjustifiable both because of the broad application of Title VII and because of the unconstitutional nature of such discrimination.

#### Elimination of sex discrimination at all levels of American society

Women now participate in occupations and activities which were unthinkable in even the recent past. They serve as pages in the U.S. Senate, work as professional clowns and jockeys, and even play professional football. The U.S. Army and Air Force have re-

cently sworn in the first women Generals. The Executive Protection Service, an arm of the United States Secret Service, has hired a woman agent. Many religious orders are opening their highest ranks to women.

The trend towards eliminating sex-role stereotypes has increased the number of opportunities available for men as well as for women. Men now work as nurses, airline attendants, and nursery school teachers, professions previously considered to be particularly limited to women.

Organizations and institutions which have traditionally been almost exclusively male have begun to recognize the need to afford women greater representation. Only this year, the National Press Club admitted women members for the first time in its 50 year history. The New York Stock Exchange, exclusively male for 176 years, now permits a woman to hold a seat on the Exchange. The Democratic National Committee recently adopted a resolution that women be represented in State delegations in reasonable relationship to their presence in the populations of each State. The Republican National Committee last month recommended that each State delegation have equal representation of men and women. The American Bar Association has established a new committee on rights for women.

In short, there has been significant, substantial recognition throughout our society, that sex discrimination can no longer be tolerated. Increasingly, the American people have come to recognize that women, like all citizens, must be accorded equal treatment under law and equal access to opportunities in every field of endeavor. In harmony with these developments, this Court should explicitly hold that State laws discriminating on the basis of sex will be subjected to the "most rigid scrutiny," as required by the Fourteenth Amendment.

#### IV. THIS COURT SHOULD REVIEW CASES INVOLVING SEX DISCRIMINATION WITH THE "MOST RIGID SCRUTINY," IN ORDER TO STRIKE DOWN STATE ACTION WHICH DISCRIMINATES ON THE BASIS OF SEX, JUST AS THIS COURT HAS STRUCK DOWN OTHER FORMS OF PERSONAL DISCRIMINATION AFFECTING FUNDAMENTAL HUMAN FREEDOMS, PARTICULARLY RACIAL DISCRIMINATION

The Fourteenth Amendment forbids any State to "deny to any person within its jurisdiction the Equal Protection of the laws." State power to prescribe regulatory laws, including laws which determine the right to administer an estate and the right to serve on juries, is limited by the Equal Protection Clause. This Court has traditionally recognized that when fundamental individual rights are infringed by State action, such action must be "carefully and meticulously scrutinized" under the Fourteenth Amendment.

Thus, in *Reynolds v. Sims*, 377 U.S. 533 (1964), the Court held unconstitutional a State apportionment scheme not based substantially on population, stating that

"A predominant consideration in determining whether a State's legislative apportionment scheme constitutes an invidious discrimination violative of rights asserted under the Equal Protection Clause is that the rights allegedly impaired are individual and personal in nature. . . . (A)ny alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. 377 U.S. at 561-62.

"Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race, *Brown v. Board of Education*, 347 U.S. 483, or economic status, *Griffin v. Illinois*, 351 U.S. 12, *Douglas v. California*, 372 U.S. 353." *Id.* at 566.

One year after *Reynolds*, this Court struck down a State limitation on voting qualification in *Carrington v. Rash*, 380 U.S. 89 (1965), reasserting the principle that State action

which infringes "matters close to the core of our constitutional system" cannot be sustained under the Equal Protection Clause. The Court stated ". . . By forbidding a soldier ever to controvert the presumption of non-residence, the Texas Constitution imposes an invidious discrimination in violation of the Fourteenth Amendment." 380 U.S. at 96.

The standards of Equal Protection are not static, but move with the times. Thus, in *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), in which the Court held unconstitutional the Virginia poll tax, the Court stated

"The Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are constitutionally discriminatory, we have never been confined to historic notions of equality. . . . Notions of what constitutes equal treatment for the purposes of the Equal Protection Clause do change." 383 U.S. at 669 (emphasis in original).

Notions of what constitutes equal treatment for the purposes of the Equal Protection Clause have changed dramatically in the past 50 years. Within the expanding concept of Equal Protection, this Court has subjected an increasing number of State laws which impair the exercise of fundamental rights to the strictest Fourteenth Amendment review. Further, this Court has recognized that State infringement of fundamental rights cannot be justified when such limitation of personal freedom is applicable only to one specific group within the community.

Thus, in *Truax v. Raich*, 239 U.S. 33 (1915), this Court invalidated a State law which discriminated against aliens in private employment. In *Takahashi v. Fish & Game Commission*, 334 U.S. 410 (1948), the Court held that California could not prohibit aliens from making a living by fishing off the State shore line, stating that

"The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide 'in any state' on an equality of legal privileges with all citizens under non-discriminatory laws." 334 U.S. at 420.

Just last Term this Court struck down State laws which deny welfare benefits to resident aliens or require them to meet longer residence requirements than citizens in order to qualify for welfare benefits. *Graham v. Richardson*, 39 U.S.L.W. 4732 (1971).

Nor can a State deny fundamental rights to citizens because of their poverty. Thus, in *Griffin v. Illinois*, 351 U.S. 12 (1956), this Court held that Illinois could not block effective appellate review for the indigent by refusing to furnish them trial transcripts without cost. And in *Douglas v. California*, 372 U.S. 353 (1963), this Court overturned a California rule of criminal procedure limiting free counsel for indigent defendants on appeal to those cases in which the court, after a preliminary screening of the case, thought counsel would be useful. More recently, in *Shapiro v. Thompson*, 394 U.S. 618 (1969), the Court struck down a one-year State residency requirement for welfare benefits, stating that

"Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a compelling State interest. Under this standard, the waiting period requirement clearly violates the Equal Protection Clause." 394 U.S. at 638 (emphasis in original).

In *Goldberg v. Kelly*, 397 U.S. 254 (1970), the Court ruled that the State's interest in minimizing administrative costs did not justify the termination of welfare benefits without a prior hearing. And last Term in *Boddie v. Connecticut*, 401 U.S. 371 (1971), the Court held that a State could not deny access to

the courts in divorce cases solely because of a party's inability to pay court costs.

The most significant use of the Equal Protection Clause within the past twenty years, of course, has been in the area of racial discrimination. In response to the clearly adverse economic, social, and cultural impact of racial discrimination on our society, this Court in 1954 announced the landmark decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), which outlawed racial segregation in the public schools. Relying on the Equal Protection Clause, the Court stated:

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." 347 U.S. at 495.

Since the *Brown* decision, the Court has strictly applied the Fourteenth Amendment to all cases involving racial discrimination. Thus, in *McLaughlin v. Florida*, 379 U.S. 184 (1964), the Court struck down a State law prohibiting cohabitation of unmarried couples of different races, stating that

"(T)he central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States. This strong policy renders racial classifications 'constitutionally suspect' and subject to the 'most rigid scrutiny' and 'in most circumstances irrelevant' to any constitutionally acceptable legislative purpose." 379 U.S. at 192.

The Court used similar language about the reach of the Equal Protection Clause to strike down a State anti-miscegenation law in *Loving v. Virginia*, 388 U.S. 1 (1967):

"Over the years, this Court has consistently repudiated 'distinctions between citizens solely because of their ancestry' as being 'odious to a free people whose institutions are founded upon the doctrine of equality.' At the very least, the Equal Protection Clause demands that racial classifications, especially suspect in criminal statutes, be subjected to the 'most rigid scrutiny,' . . ." 388 U.S. at 11 (citations omitted).

More recently, in *Hunter v. Erikson*, 393 U.S. 385 (1969), the Court held unconstitutional a city charter amendment imposing special barriers to the enactment of fair housing ordinances. Reasserting the principle that State imposed deprivations of fundamental rights must be subjected to the most rigorous judicial scrutiny, the Court said

"Because the core of this Fourteenth Amendment is the prevention of meaningful and justified official distinctions based on race, racial classifications are 'constitutionally suspect' and subject to the 'most rigid scrutiny.' They 'bear a far heavier burden of justification' than other classifications." 393 U.S. at 391-92 (citations omitted).

Sex discrimination has had at least a substantial and adverse impact on our society as the other forms of discrimination which this Court has struck down under the Fourteenth Amendment. Women have as great a claim to the protection of the Fourteenth Amendment as do aliens, indigents, and members of racial minorities. As demonstrated above, women have been subjected to pervasive, invidious discrimination in employment, in education, and in every field of endeavor. Their basic rights as citizens have been denied through the operation of archaic, discriminatory State laws and practices which have reduced them to inferior status as second-class members of this society.

Until the Court recognizes women as persons entitled to the full Equal Protection of the Laws, they will continue to be denied the equality of treatment basic to our concept of democracy. The challenged provisions of Idaho and Louisiana law perpetuate the legal inequity accorded women throughout our history: they preclude women from the exercise of basic statutory rights because of erroneous legislative assumptions about the nature and capabilities of women as an entire

class. In harmony with this Court's previous holdings that laws which deny fundamental human rights must be subjected to the most thorough judicial scrutiny, State action which perpetuates sex discrimination should be held unconstitutional.

V. UNDER THE FACTS OF THE CASES AT BAR, AND UTILIZING THE RIGID SCRUTINY DEMANDED BY THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, THE CHALLENGED STATE ACTION MUST FALL

A. *The absolute preference given by section 15-314, Idaho Code, to males over females as between persons equally entitled to administer an estate, is invalid under the equal protection clause*

As indicated by the court below, Section 15-314 embodies a legislative judgment that men are in general better qualified to act as administrators than are women. No evidence was provided, however, that the male contestant, as an individual, was more capable in financial matters than the female contestant, appellant herein. Thus, on the basis of a vast and inaccurate legislative classification, appellant was deprived of the substantive right to administer the estate of her deceased son.

It is precisely this type of sweeping legislative classification based on sex that this Court should subject to the most careful judicial review. Even on its face, the legislative assumption underlying Section 15-314—that women are generally less able than men to administer an estate—is invalid. As discussed above, the participation of women in the business world has grown dramatically in the past decade. Further, women represent an increasingly significant portion of those professions particularly related to financial management. In 1968, women constituted 20 percent of the total number of accountants in this country, 10 percent of the total number of mathematicians, and 33 percent of the total number of statisticians.<sup>28</sup> In light of the demonstrated competence of some women to perform these highly technical jobs, the Idaho legislature was clearly proceeding on unwarranted, inaccurate assumptions about the abilities of women as a class.

Moreover, it is questionable whether extensive business experience is necessary for the performance of the duties of an administrator under the Idaho Code. The Code confers very limited authority upon the administrator, and empowers the court to supervise the estate closely during the entire period of administration. It is probable that most women, many of whom handle the daily financial affairs of their family units, would be as qualified to perform the duties of an administrator as most men would be.

Although the Idaho Supreme Court recognized that Section 15-314 discriminates against women on the basis of sex, it sustained the provision as a legitimate exercise of the State's interest in curtailing litigation over the appointment of administrators. The court stated,

"While this classification may not be entirely accurate, and there are doubtless particular instances in which it is incorrect, we are not prepared to say that it is so completely without a basis in fact as to be irrational and arbitrary." 465 P.2d 635, 638 (1970).

However, Section 15-314 achieves the presumed legislative objective of curtailing litigation *only* when a contest arises between males and females who are otherwise equally qualified under the Idaho Code to administer an estate. In most situations in which there are more than one contestant from the same eligibility class, hearings must be held. In fact, the Idaho Code invites hearings by providing that "any person interested" may challenge the competency of an administrator. Idaho Code, Sec. 15-322. It is only when

one of the contestants within an eligibility class is female that the absolute statutory preference for males operates, thus eliminating the necessity for hearings.

This Court has held that certain basic statutory rights cannot be sacrificed to considerations of administrative efficiency. In *Goldberg v. Kelly*, 397 U.S. 254 (1970), the Court ruled that the Fourteenth Amendment requires that hearings be held before welfare benefits are terminated, even if such hearings cause the State substantial expense and administrative inconvenience. More recently, in *Boddie v. Connecticut*, 401 U.S. 371 (1971), the Court held that the Fourteenth Amendment prohibits a State from denying indigents access to the courts in divorce cases solely because of their inability to pay court fees and costs. The Court reasserted the fundamental principle that:

"The State's obligations under the Fourteenth Amendment are not simply generalized ones; rather, the State owes to each individual that process which, in light of the values of a free society, can be characterized as due." 402 U.S. at 380.

Idaho, by automatically preferring male over female contestants as between persons equally qualified to administer an estate, has denied petitioner the right to a hearing on her individual capabilities as an administrator. This statutory denial of an opportunity to be heard was justified by the court below solely on the grounds of administrative convenience. Such a deprivation of fundamental rights because of sex cannot withstand the strict judicial scrutiny required by the Fourteenth Amendment.

B. *The exclusion of women from juries through the operation of article 402, Louisiana Code of Criminal Procedure, is invalid under the equal protection clause*

The Louisiana statute raises two different but related Fourteenth Amendment issues for the Court's consideration: first, whether the Equal Protection Clause permits a State to establish a different system of jury selection for women than for men; and second, whether petitioner's right to due process was violated by the operation of a State law which systematically excludes women from juries.

The challenged provision places an affirmative burden on women who wish to serve on juries by excluding them automatically from jury duty unless they file with the Court a declaration of willingness to serve. This statutory burden is made even greater by the official interpretation of Article 402. The jury commissioners obtain an initial list of potential jurors from a variety of sources and preliminary questionnaires to determine eligibility. However, questionnaires are deliberately not sent to women. As a result of this official policy, the jury list, the grand jury venire, and the grand jury that indicted petitioner contained no women at all, even though women constitute a majority of the persons eligible to serve in Lafayette Parish. Thus, the effect of the challenged provision is to exclude systematically all women from jury service.

Through the operation of Article 402, all women are placed in an inferior position to exercise their right to serve on juries. Jury service is a fundamental prerequisite of citizenship; it is generally denied only to those groups who are considered to be incapable or untrustworthy, such as felons and mental incompetents. In Louisiana, women are placed in a similarly excepted category. Thus, the effective exclusion of women from jury service clearly labels them as second-class citizens.

Presumably, the legislative assumption underlying the challenged provision is that women as a class are more likely than men to have family responsibilities that would make jury service a hardship. It was precisely such a purpose that this Court found constitutionally permissible in *Hoyt v. Flor-*

Footnotes at end of article.

*ida*, 368 U.S. 57 (1961), holding that a State could reasonably conclude "that a woman should be relieved of jury service unless she herself determines that such service is consistent with her own special responsibilities." 383 U.S. at 62. *Amicus* submits that *Hoyt* was wrongly decided.

Although *Hoyt* also involved a statute which did not absolutely prohibit women from serving on juries, the operation of the Florida statute did not exclude women as systematically as does the challenged Louisiana provision. In *Hoyt* the Court found that there were women on the jury rolls in the county, and that efforts had been made to include all eligible women on the rolls. In the case at bar, no women whatsoever were included on the jury lists, and virtually no effort seems to have been made to solicit their participation. Thus, the Louisiana provision, as interpreted by the State, effectively prohibits women from serving on juries. This case is just as compelling as *White v. Crook*, 251 F. Supp. 401 (N.D. Ala. 1966). There, a three-judge Federal district court struck down an Alabama statute which absolutely excluded women from jury service. The Louisiana statute, like the Alabama statute in *White v. Crook*, should be viewed by this Court as "arbitrary in view of modern political, social and economic conditions . . ." 251 F. Supp. at 409.

The systematic exclusion of all women from juries in order to relieve those women whose family responsibilities might make jury service a hardship cannot be sustained under a strict application of the Fourteenth Amendment. It is precisely this type of vast legislative overclassification based on sex that the Court should not allow. First, many women do not have children to care for. Second, in some cases, as where the father is a widower, the absence of a male parent can be just as detrimental to a child's welfare as the absence of the female parent, and jury duty may place an equally great burden on him. Third, even when both parents are alive and well, the mother is not always the individual primarily responsible for child care. Thus, the Louisiana statute sweeps too broadly in effectively excluding all women from jury service if in fact its purpose is to relieve only those persons whose parental responsibilities would make jury service unduly onerous. A more effective and constitutionally permissible means of achieving this purpose would be to excuse from jury service those persons, male and female, whose family responsibilities preclude them from serving. By discriminating against women as an entire class, the statute effectively denies women the Equal Protection of the laws, and should be struck down.

The operation of the Louisiana statute also denies petitioner his due process right to a jury venire from which no class has been arbitrarily excluded. This Court has specifically recognized that a jury must be "a body truly representative of the community." *Carter v. Jury Commission of Green County*, 396 U.S. 320 (1970). A system of jury selection that totally excludes women cannot be said to be truly representative of the community. In *Ballard v. United States*, 329 U.S. 187 (1946), the Court applied this principle to the administration of federal jury selection statutes, finding that "... a distinct quality is lost if either sex is excluded. The exclusion of one may indeed make the jury less representative of the community than would be true if an economic or racial group were excluded," 329 U.S. at 194. In the case at bar, over half of the persons eligible for jury service were women. The systematic exclusion of this group from jury selection clearly denied petitioner his right to be judged by a cross-section of the community.

The denial of this fundamental constitutional right cannot be justified unless a compelling need for the classification is shown. *Shapiro v. Thompson*, 394 U.S. 618, 634

(1969). As discussed above, the State has not met the burden of demonstrating that the purpose of the statute, which presumably is to exempt women whose family responsibilities would make jury service unduly burdensome, cannot be met by more narrow means that will not result in the denial of basic constitutional rights. On the contrary, the Louisiana provision effectively excludes all women, regardless of their family responsibilities, from jury selection. Accordingly, this Court should strike down Article 402 under the strictest interpretation of the Fourteenth Amendment.

#### CONCLUSION

For the reasons stated above, the "reasonableness" standard for reviewing State action which discriminates on account of sex should be abandoned. Such action should be subject to the very strictest scrutiny under the Equal Protection Clause. The challenged provisions of Louisiana and Idaho law which perpetuate invidious, unjustifiable sex discrimination should be struck down under the very strictest application of the Fourteenth Amendment. In *Reed v. Reed*, this Court should reverse the decision below so that an administrator can be chosen without regard to sex. In *Alexander v. Louisiana*, this Court should reverse the decision below so that petitioner may be indicted by a properly constituted grand jury.

Respectfully submitted.

BIRCH BAYH,

Attorney for National Federation of  
Business and Professional Women's  
Clubs, Inc.  
Washington, D.C.

#### FOOTNOTES

<sup>1</sup> "A Matter of Simple Justice," Report of the President's Task Force on Women's Rights and Responsibilities, 18-19 (1970).

<sup>2</sup> U.S. Bureau of the Census, Statistical Abstract of the U.S.: 1970, Table 325, p. 218.

<sup>3</sup> The discrimination has persisted in spite of Executive Order 11357, 3 C.F.R. § 320 (1967), and Executive Order 11478, 3 C.F.R. § 133 (1970) which prohibit sex discrimination in the executive agencies of the Federal government, in competitive positions in the legislative and judicial branches, and in the government of the District of Columbia.

<sup>4</sup> U.S. Civil Service Commission, Bureau of Management Services, "Study of Employment of Women in the Federal Government, 1967," at 17 (1968).

<sup>5</sup> Statement of Irving Kator, Asst. Executive Director, U.S. Civil Service Commission, Hearings on Sex Discrimination Before the Special Subcommittee on Education of the House Committee on Education & Labor, 91st Cong., 2nd Sess., Part 2, at 728-729 (1970) (hereinafter cited as *Education Hearings*).

<sup>6</sup> Congress has made several major efforts to alleviate some aspects of this discrimination. The Equal Pay Act of 1963, 29 U.S.C. 206(d) (1964), requires that employees engaged in interstate commerce receive equal pay for equal work. The Act does not cover administrative, executive, and professional women, nor government employees. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e (1964), prohibits discrimination based on race, color, religion, national origin, or sex by employers with 25 or more employees, employment agencies which procure employees for an employer, and labor unions which maintain a hiring hall or have 25 or more members. Title VII excludes from coverage instrumentalities of the Federal, state, or municipal governments except for the U.S. Employment Service, and the system of state & local employment services receiving Federal assistance.

<sup>7</sup> U.S. Department of Labor, Women's Bureau, "Fact Sheet on the Earnings Gap" (Feb. 1971).

<sup>8</sup> Recruiting policies are in part responsible for the concentration of women in less prestigious jobs. For example, a 1969 survey

showed that of 208 companies recruiting at Northwestern University, only 63% were considering female graduates. "Special Report: Why Doesn't Business Hire More College Trained Women?" in *Personnel Management—Policies & Practices* (April 1969), reprinted in *Education Hearings*, Part 1, at 174.

<sup>9</sup> U.S. Dept. of Labor, *supra* note 7.

<sup>10</sup> Equal Employment Opportunity Report No. 1, "Job Patterns for Minorities and Women, 1966" (1969).

<sup>11</sup> U.S. Dept. of Labor, Women's Bureau, "Background Facts on Women Workers in the United States" 11-12, 1970.

<sup>12</sup> President's Task Force, *supra* note 1.

<sup>13</sup> U.S. Dept. of Labor, *supra*, note 11; U.S. Dept. of Labor, Bureau of Labor Statistics: Monthly Labor Review (May 1970).

<sup>14</sup> Testimony of Dr. Peter Muirhead, Associate Commissioner of Education, Dept. of Health, Education & Welfare, *Education Hearings*, Part 2, at 644.

<sup>15</sup> See *Education Hearings* for statistical reports & statements on the status of women at the following colleges & universities: Brandeis at 336; Univ. of Buffalo, SUNY, at 212; Cal. State College at Fullerton, at 202; Univ. of Cal. at Berkeley at 1143; Univ. of Chicago at 753, 994; Columbia Univ. at 242, 260; Cornell Univ. at 1077-78; Eastern Ill. Univ. at 1222, 1223; Harvard Univ. at 183; Univ. of Illinois at 1225; Kansas State Teachers College at 1226; Univ. of Maryland at 1024; N.Y.U. Law School at 584; Univ. of Wisconsin at 190.

<sup>16</sup> Rossi, "Status of Women in Graduate Departments of Sociology 1968-69," 5 *American Sociologist* 1, Feb. 1970.

<sup>17</sup> Murray, "Economic and Educational Inequality Based on Sex: An Overview," 5 *Valparaiso U. L. Rev.* 237, 247-268 (1971).

<sup>18</sup> These statistics are drawn from Freeman, *The Legal Basis of the Sexual Caste System*, 5 *Valparaiso U.L. Rev.* 203, 210-216 (1971).

<sup>19</sup> New York Family Court Act, § 712(b).

<sup>20</sup> Ark. Stats. Ann., §§ 46-804, 48-943.

<sup>21</sup> Texas Penal Code 1220; Utah Code § 76-30-10(4).

<sup>22</sup> See also *In re Lockwood*, 144 U.S. 116 (1893), in which the Court held that the Fourteenth Amendment did not prohibit Virginia from denying women admission to practice before the highest state court.

<sup>23</sup> *Mengelkoch v. Industrial Welfare Commission*, 284 F. Supp. 950 (C.D. Calif.), vacated, 393 U.S. 83, rehearing denied, 393 U.S. 993 (1968), rev'd and remanded, 437 F.2d 563 (9th Cir. 1971), rehearing denied, 3 FEP Cases (May 3, 1971).

<sup>24</sup> *Kober v. Westinghouse Electric Corp.*, 3 FEP Cases 326 (W.D. Pa. 1971) (Penn. statute limiting hours of work of female employees invalid); *Ridinger v. General Motors Corp.*, 3 FEP Cases 280 (S.D. Ohio 1971) (Ohio weight and hours law applicable only to women invalid); *Garneau v. Raytheon Co.*, 3 FEP Cases 215 (D. Mass. 1971); (Mass. law limiting maximum hours of employment for women invalid); *Local 246, Utility Workers v. Southern Calif. Edison Co.*, 320 F. Supp. 1262 (C.D. Cal. 1970) (California law prohibiting female employees to lift over 50 pounds invalid); *Caterpillar Tractor Co. v. Grabiec*, 317 S. Supp. 1304 (S.D. Ill. 1970) (Ill. Female Employment Act hours limitation void); *Richards v. Griffith Rubber Mills*, 300 F. Supp. 338 (D. Ore. 1969) (Order of state wage and hour commission setting 30 pound lifting limit for women employees invalid).

<sup>25</sup> These statistics are drawn from Task Force on Labor Standards, *Report to the Citizens' Advisory Council on the Status of Women* 56-58 (1968), and Ross, "Sex Discrimination and Protective Labor Legislation," in *Hearings on the Equal Rights Amendment Before Subcomm. No. 4 of the House Comm. on the Judiciary*, 92nd Cong., 1st Sess., at 186 (1971).

<sup>20</sup> U.S. Dept. of Labor, Bureau of Labor Statistics: Occupational Handbook Bulletin No. 1650 (1970).

### POSTMASTER GENERAL BLOUNT WRITES ABOUT PORNOGRAPHY

Mr. THURMOND. Mr. President, Postmaster General Winton M. Blount has written an excellent article which is featured in the September issue of *Nation's Business*.

Mr. Blount's article, entitled "Let's Put the Smut Merchants Out of Business," puts the business of pornography into proper perspective. As his article indicates, pornography is a very large business. Smut dealers are capitalizing on permissive court decisions and are permeating every aspect of our society with the worst kinds of filth. Their business and the fervor in which they pursue it are increasing at an alarming rate, a rate that will lead us into further decadence if prompt remedial action is not taken.

Mr. President, I urge Members of both Houses of Congress to give Mr. Blount's article their very careful attention. After doing so, I am very hopeful that we will move on to the business of enacting the necessary laws which will effectively protect our society from the continuation of the pornographic filth which is being forced upon us.

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:

#### AN APPEAL FROM THE HEAD OF THE U.S. POSTAL SERVICE: LET US PUT THE SMUT MERCHANTS OUT OF BUSINESS

(By Winton M. Blount)

The first thing that must be understood about smut is that it is a business.

It is a very large business because, though it requires limited capital, it permits enormous markups and therefore enormous profits. According to a recent news article, a \$2 reel of eight mm. color film will sell for \$40 as pornography.

The profits are so high, in fact, that the costs of almost any conceivable legal difficulties under present laws can be included as a virtually negligible part of the already rather negligible overhead.

Pornography is profitable, finally, because it appeals to human weakness in ways which are difficult to define in law, and in a time when the question of civil freedoms—including the freedom of self-abasement—is undergoing lengthy re-examination by opinion-makers in America.

I have faith in the ultimate good sense of even the leaders of America's periodic fads in what passes for thought. But on the evidence alone, I also believe the pornographers can make maximum use of this period of confusion in American jurisprudence.

A great deal of conceivably irreversible damage is being done to the quality of American life. The ultimate irony, of course, is that it is being done under the protection of the First Amendment to the Constitution, originally conceived as the ultimate defense of social, cultural and political quality in American life.

In the shadow of the provision that Congress shall "make no law . . . abridging the freedom of speech or of the press," the dirt merchants have erected a multimillion-dollar empire dedicated to, and predicated on, human degradation.

America's postal system has been used as a major link between the producers of pornography and their buyers.

The number of dealers in mail-order pornography has increased in recent years to something over 400. Of that number, however, only about 20 at any one time are considered major dealers. These are big-league operators, who use direct-mail advertising on a scale comparable to the nation's large mail-order houses.

They regularly send two and three million advertising pieces into American homes during an advertising campaign, frequently with little or no discrimination as to the recipient. As a consequence, young children are commonly subjected to printed and graphic matter of the vilest sort.

However liberal or permissive the protagonists in the pornography issue, it is rare to find anyone willing to argue that smut has a salutary influence on impressionable minds. To the contrary, in any discussion of the problem of pornography, the potentially adverse effect of pornography on the young inevitably emerges as a central issue.

Ultimately, however, the effect on children is not the real question. The real question is, or ought to be, the effect of pornography on any human being, and on the civilization of which each human being is a member.

#### WHAT IT IS ALL ABOUT

If we consider for a moment those values which underlie our country's institutions, we find that what America is all about can be summed up in two words: Human dignity.

We seek freedom for our people because freedom is the condition most conducive to human dignity. For the same reason, we seek security—and prosperity; poverty crushes the human spirit.

At our best we honor diversity—because the right to be what he chooses, to act and live as he chooses, is vital to the dignity of the human being.

As a people we believe each man has a spark of divinity within him; we accept the sanctity of the human spirit and of the human body. And as we preserve and sustain these, we preserve and sustain human dignity.

As we violate these for sensation or for profit, we act against the dignity of man, and against all that we have struggled to build for more than two centuries on this continent.

So pornography is not simply a threat to the best interests of our children. It is an act of violence against the human spirit.

Nevertheless, it is being proposed with disturbing frequency that pornography be legalized.

The arguments of those who favor such a course are numerous and, frequently, specious. One of the most compelling, and least credible, is the argument that censorship of pornography violates the First Amendment's prohibition against interference with freedom of speech and of the press.

If this prohibition were absolute, the argument would be sound. But First Amendment freedoms are not absolute.

It was Justice Oliver Wendell Holmes who pointed out that the First Amendment would not protect a man who falsely shouted fire in a crowded theater. Such an act created the sort of clear and present danger that Congress has not merely the right, but the obligation, to prevent.

In a different way, but to the same effect, we have laws against libel which make freedom of the press relative—not absolute.

The argument that pornography cannot be censored without destroying our civil liberties is fundamentally wrong. We have censored pornography since the nation was established, and there is no evidence of adverse effect on our civil liberties.

There is the argument that we cannot be

sure pornography has an effect on children. But if we are to take this seriously, we then must ask if any book if any picture has an effect on children. Indeed, such a position questions the effect of education itself, for education asks that a child respond to what he is exposed to.

At the risk of appearing simplistic, when we suppose that a good book has a good effect on a child, must not the concomitant supposition be that a bad book has a bad effect?

#### JUST IN THE BEHOLDER'S EYE

The libertarian retort to reasoning of this nature is that it contains a value judgment. The accusation is that filth is in the eye of the beholder and that those who think pictures of people making love are "dirty" must be people with dirty minds.

Without violating the purity of that touching bit of naivete, let me make it clear that "people making love" is not what pornography, circa 1971, is all about. The material in question involves graphic and literal depictions of beatings and other torture for sexual gratification, mass fornication, and bestiality—to name just part of what is under consideration here.

This dismal catalog is by way of indicating that we are not concerned here with "September Morn," but with the most vile, distorted and degraded representations of abnormal and dehumanized behavior.

Are we then willing to accept—in the service of a specious argument about the limits of civil liberty—the argument that we cannot be sure pornography has an effect on children, and that therefore it ought not to be prohibited?

We have the argument that there is no evidence that pornography has an adverse effect on adults. While it may be difficult to establish a cause and effect relationship between an anti-social act and an avid interest in pornography, it is certainly possible to suggest that an inclination toward anti-social behavior may be reinforced and even encouraged by pornography.

In the course of investigating and prosecuting cases for illegal use of the mail, the Postal Inspection Service is constantly exposed to those who traffic in pornography. We find those who enjoy pictures and stories of sadistic behavior and masochistic behavior and who indulge themselves in this behavior.

Which came first—the pornography or the practice?

There is a pornographer who uses pre-teen-age boys in lewd poses for his productions. He has previous sodomy convictions; the record shows a history of indecent behavior with children.

Is there a cause and effect relationship here? And is it necessary to establish a cause and effect relationship before we can agree that he shouldn't be producing pornography with children—or with anyone else, for that matter?

We have the couple who used pornographic material to seduce a young girl. Was pornography a critical factor here? Or would the seduction have occurred anyway?

These are things we are told cannot be determined. I find that difficult to believe, but perhaps it is true. If so, it is because research looks for an absolutely scientific precision in making a determination.

In the clinical context, that is proper. But the potential effect of pornography is not solely of scientific consequence. And the decision to have it or not to have it is not properly a scientific decision. This is a matter of social, political and cultural consequence.

Some have seriously argued that pornography may have a beneficial effect. This is the theory of catharsis; it maintains that pornography provides a harmless outlet for sexual energy which might otherwise be expended in some objectionable manner.

## FISHY REPORT FROM DENMARK

The logic of this position would require that sex crimes should go down as the availability of pornography goes up. All the evidence indicates this doesn't happen.

It is well known that Denmark has lifted certain restrictions on pornography. This has had a dual effect on the United States. It has, on one hand, substantially increased the flow of pornographic material coming into the country. And it has, at the same time, increased the pressure from proponents of the legalization of pornography in America.

Those who argue for legalization make the claim that there has been a drop in the sex crime rate in Denmark.

The evidence suggests that this is largely a statistical trick. Pornography used to be a crime there and now it isn't. Therefore the crime rate dropped.

Statutory rape used to be a crime there; now it isn't. So this contributed to the drop in the crime rate.

Minor crimes, such as indecent exposure, are scarcely even reported.

The "crime rate" argument is a misleading and foolish bit of whimsy. Postal officials have gone to Denmark and talked to the authorities there and found the real sex crime rate has not dropped.

Finally, in the past decade, some of our courts have been persuaded that the virtual impossibility of defining pornography precisely is sufficient reason for granting absolute license.

But there are few, if any, precise definitions in Western jurisprudence. What mathematical formula identifies a "preponderance" of the evidence in a civil suit? At what precisely defined point is guilt established beyond any "reasonable doubt"? And what is a reasonable doubt? What is an unreasonable doubt?

There is a problem here, certainly. We are giving fallible men the responsibility for making judgments that go to the heart of our democratic freedoms.

But it is difficult to suppose that, by weighing the content of a work and the apparent intent of its creator and purveyor, we cannot tell what is pornography and what is not. And where we cannot tell, then let the presumption be in favor of the contested work, and we will still be adequately protected.

The tunnel vision which puts the focus of the defense of pornography on the First Amendment to the Constitution obscures the larger purpose of the Constitution, which is stated at the very outset: "We, the people of the United States . . . in order to . . . promote the general welfare . . . do ordain and establish this Constitution. . . ."

If there is anything conducive to the general welfare in the common availability—or, more precisely, the general unavailability—of the most repulsive filth imaginable, it escapes me. It apparently doesn't escape some of our courts, unfortunately.

## NOT AT ANY PRICE

Perhaps the single greatest contributor to the problem is that fact cited at the outset: Pornography is a very big business. So we have to find a way to reduce the profits of that business and make it impossible for it to operate at any price.

At this point the matter remains in contention, but we are making progress in the courts against pornography, and the Postal Service has been a key factor in bringing these cases to the courts.

The United States Supreme Court recently handed down two important decisions in this area. In the first case (U.S. vs. 37 Photographs), the court upheld the constitutionality of a customs statute that provides for the forfeiture of obscene materials coming into the country from abroad. In the second (U.S. vs. Reidel), the court again upheld the con-

stitutionality of the Postal Obscenity Statute, which makes it a federal crime to send obscenity through the mails.

This is the same statute under which a notorious California dealer in pornography was convicted in 1968. He filed an appeal, however, and continued his mailing. The Postal Service developed new evidence and he was indicted again in September, 1969. Last September, in a significant victory against pornography, the Court of Appeals of the Ninth Circuit Court in San Francisco upheld the 1968 conviction. In February of this year, the man was convicted on the second indictment. He now faces a total of seven years' imprisonment and \$67,500 in fines against him and his corporation.

So the Postal Service is putting a great deal of effort into this battle, and we are having some success.

## THE PRESIDENT'S PROGRAM

In addition, the President has thrown the full weight of his office into the struggle. He has asked Congress to make it a federal crime to put into the hands of anyone 18 years old or under sex materials that are unsuitable for people of that age; to make it a federal crime to exploit a prurient interest in sex through advertising; and to broaden the ability of the homeowner to prevent sexually-oriented advertising material from entering his home through the mail.

Now Congress has begun to respond; it has passed legislation that enables homeowners to protect themselves from unwanted sex-oriented advertising, and it is, we hope, going to enact the remainder of the President's legislative requests in this area.

But the deciding factor is going to be the American public. If the people decide against pornography, we can do away with it. If we refuse to patronize the pornographer, we can put him out of business. Movies show violence because it shows a profit. They show cheap sex because it shows a profit. It is the same with all media. If it isn't profitable, it doesn't play.

I am not suggesting a witch-hunt. It is certain that a lot of heavybreathing crusaders are waiting in the wings for the call to arise.

I think we can, and must, do this job without bringing the lunatics and smear artists out of the woodwork.

Pornography is a symptom of decadence. This is the judgment of history. Civilizations from ancient Rome to Germany in the 1930s, have turned in their decline to sensationalism, to exploitation of man's sexual nature, and to indifference to his humanity.

We are not taking this road.

America has a covenant with the future. We are going to keep it.

## NEED FOR NEW DECLASSIFICATION PROCEDURES

Mr. PROXMIRE. Mr. President, during the congressional summer recess, an article published in Parade magazine for August 22 deserves the attention of every Senator. The article, entitled "What Price Secrecy?", was written by Lloyd Shearer, Parade's editor at large.

The article details the abuses in our Government classification system. There are presently some 20 million papers currently labeled top secret, secret, or confidential. According to one classification expert, 99½ percent of these should not be classified at all. This unnecessary classification is costing the taxpayers \$50 million a year.

In just one branch of the Government—the Armed Forces—there are 31,048 people who have the power to classify documents. All of these people also have the power to declassify documents. How-

ever, once a document is classified—and the decision to classify is made routinely countless times every day—it inevitably remains classified, long after the need for secrecy is past. Classification is routine; declassification is the exception.

Secretary Laird has indicated that he would like to see "as much material as possible be declassified." This Senator could not agree more, and I would strongly support any legislation which might be needed to achieve this.

Mr. President, I ask unanimous consent that Mr. Shearer's excellent article be printed in the RECORD.

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

## WHAT PRICE SECRECY?

(By Lloyd Shearer)

WASHINGTON, D.C.—One of the most shocking snafus in the United States Government is its secrecy classification system.

Like some million-footed, multi-webbed fungus, it grows wild, almost always expanding, practically never contracting.

Would you believe, for example, that someone in the Navy Department has been stamping newspaper clippings "Secret"? and that as a result the Defense Department has had to publish a special directive ordering employees not to classify newspapers?

Would you believe that the Air Force Electronics Systems Division issued the following statement for use on selected documents: "Although the material in this publication is unclassified, it is assigned an overall classification of Confidential?"

Would you believe that no one in government knows how many people in this country have the right to classify government documents Top Secret, Secret, or Confidential? One Defense Department estimate given to a House subcommittee on June 29, 1971, is "hundreds of thousands."

## THE 20 MILLION SECRETS

Would you believe that there are, according to the testimony of William G. Florence, a classification expert with 43 years of experience in government, 20 million classified papers currently held by the government of which 99½ percent should not be classified at all?

Or that unnecessary classification is wasting \$50 million of the taxpayers' money each year?

Or that, according to the testimony of Walter Pincus, a former chief consultant to the Symington subcommittee of the U.S. Senate Foreign Relations Committee, classification is used by the government not only to keep valuable information from the nation's potential enemies but to hide the mistakes of government officials, to prevent documentation of White House errors, and to limit the extent of internal opposition to and criticism of government policy?

Whether one believes it or not, the evidence is sufficient that the Federal government suffers from massive overclassification of information.

There is no penalty for overclassification in this country. The result, in the opinion of some critics, is that a small army of "fearful bird-brains" has grown up who believe in classifying everything—and not without cause. For, as William G. Florence recently testified: "To my knowledge, no one in the Department of Defense was ever disciplined for classifying information, regardless of how much the classification cost for unnecessary security protection or what damage resulted from the restriction against releasing the information to the public. But I have seen how rough a person can be treated for leaving classification markings off of information which he knows to be officially unclassified

if someone 'up the line' thinks that a classification should have been applied."

However one feels about Dr. Daniel Ellsberg and his leaking of the once top secret, still classified Pentagon Papers, the fact is that the disclosure of those papers has made imperative a thorough overhaul of a faculty, outdated classification system.

At this moment, in one branch of the government alone, the Armed Forces, there are 31,048 people who have the original authority to classify documents.

Of this number, 803 have the authority to classify them "Top Secret" originally.

Another 7687 have the authority to classify them "Secret" originally.

And all have the authority to classify them "Confidential."

From these 31,048 persons emanates a derivative classification authority flowing to countless civilians, assistants, consultants, and others connected or under contract to the Defense Department. No one seems to know exactly how many.

#### CAN DECLASSIFY, TOO

In addition to the authority to classify documents, all these 31,048 people have the authority to declassify documents.

"But in most cases," affirms Daniel Z. Henkin, a Defense Department secretary in charge of public affairs, "people are generally too busy to declassify. There are millions of documents still classified 'Top Secret' and 'Secret' which don't belong in that category at all. It is the position of the Secretary of Defense Melvin Laird that as much material as possible be declassified."

History, however, will record Melvin Laird as the Defense Secretary who, from November, 1969, to the end of June, 1971, refused to make available, even on a classified basis, to the U.S. Senate Foreign Relations Committee a single page of the 7000-page-long Pentagon Papers.

At about the time he was publicly espousing declassification, Laird was writing Sen. J. William Fulbright of the Foreign Relations Committee such negotiations as "... Access to and use of this document [the Pentagon Papers] has been extremely limited. It would clearly be contrary to the national interest to disseminate it more widely." (Dec. 20, 1969.)

On April 20, 1970, addressing 1500 people at the annual luncheon session of the Associated Press in New York, Laird said: "Let me emphasize my convictions that the American people have a right to know even more than has been available in the past about matters which affect their safety and security. There has been too much classification in this country."

Months later, Senator Fulbright again asked the Defense Secretary to turn over the Pentagon Papers to the Senate Foreign Relations Committee. Laird ignored the request.

#### SENATORS REBUFFED

On June 14, 1971, Sen. Stuart Symington, another member of the Foreign Relations Committee, once more beseeched Laird for the Pentagon Papers on any kind of a classified basis. The committee members, he said, might study and glean from them some truth about our involvement in Vietnam so that they could legislate wisely on that prickly subject. Laird refused again, invoking his judgment which held that allowing a handful of U.S. Senators to see the documents would be contrary to the national interest.

Laird certainly did not read all 47 volumes of the Pentagon Papers before he himself refused to show any of them to the Senate Foreign Relations Committee. Says one of his assistants: "God, he was much too busy for that. I assume someone told him about them or he skimmed some of the papers, then decided against releasing any of them."

Had Melvin Laird declassified some of the Pentagon Papers, a large share of which are

harmless, repetitious and incomplete history, Daniel Ellsberg might never have leaked them to *The New York Times*.

#### COPY TO FULBRIGHT

According to Dr. Ellsberg, he felt that Congress was entitled to know as much about the Pentagon Papers as he who was not a member of Congress. Which, he declares, is why he gave the first copy of the papers to Senator Fulbright in October, 1969. He hoped that Fulbright would get them declassified or made available to members of the Senate Foreign Relations Committee. Instead, Fulbright locked them in his safe and showed them to no one.

Ellsberg waited a year for Fulbright to surface the papers. Fulbright tried. He pressed the Secretary of Defense to release them on any basis. But Laird would not budge. He simply responded to Fulbright with a constant no.

Ellsberg thereupon consulted other members of the government who, themselves afraid to accept the papers, suggested that he leak them to *The New York Times*. Two who accepted the papers were Rep. Paul McCloskey of California and Sen. Mike Gravel of Alaska. Both felt that the people were entitled to some basic truths on how this nation went to war in Vietnam.

It was only after Daniel Ellsberg leaked some but not all of the Pentagon Papers to *The New York Times* two months ago, that Laird finally made the documents available to the House and Senate leadership on a classified basis.

By then two district Federal courts had held that there was nothing in the papers which clearly threatened the national interest, and the Supreme Court held that newspapers could not be restrained, prior to publication, from printing the Pentagon Papers or some similar study on the grounds of national security.

Ironically enough, it was not Robert McNamara, the Defense Secretary who originally ordered the Vietnam study, who classified it "Top Secret."

The Pentagon Papers were so classified by Leslie Gelb, the civilian head of the task force whose members wrote them. Says Gelb, now with the Brookings Institution: "I just assumed I had the right to originally declare them 'Top Secret.' I don't know who gave me that right. I remember discussing it with someone. Since some of the material used in the papers was top secret, I classified all of them top secret. I never knew I also had the right to declassify them since I also had the right to originally classify them. That comes as news to me. I guess I don't know the classification setup too well."

If there are 31,048 persons in the Armed Forces who have the authority to classify documents, how many are there in the State Department, the Justice Department, the Atomic Energy Commission, the Secret Service, the Treasury Department, and hundreds of other government branches and agencies?

Moreover, who are these classifiers? Who chooses them? What are their qualifications?

People in and out of government are given the authority to classify and declassify information not by any law legislated by Congress but by virtue of Executive Order 10501 issued in November, 1953, by Dwight Eisenhower and amended in February, 1963, by John F. Kennedy.

There is no section of the U.S. Constitution which grants the President express authority to issue any such order. One can find implied authority in Article II, Section 3, "... He [the President] shall take care that the laws be faithfully executed." But that is all.

#### EXECUTIVE ORDER 10501

Executive Order 10501 empowers persons in and out of government with classification

authority by virtue of the position they occupy and not by their qualifications.

What about former Presidents of the United States? Are they allowed to take "Top Secret" documents and draw from them in writing memoirs for private gain? Or take Dean Acheson, Secretary of State under Truman and author of *Present at the Creation*—is it permissible for him mentally to declassify top secret information gleaned from top secret papers and incorporate them in his books? Or how about Acheson's son-in-law, William Bundy, who advised Lyndon Johnson on escalating the war in Vietnam? As the editor-to-be of *Foreign Affairs*, will Bundy filter from his mind all the top secret information he obtained while in government?

Presidents have always had broad discretion in selecting the documents, memoranda and other papers they take with them when they leave office. When Lyndon Johnson departed the White House he took 29 truckloads of documents for transplanting in the LBJ Library in Austin.

#### AUTHORITY UNTESTED

"Since the authority for classifying information came originally from the President while he was in office," says a Department of Justice spokesman, "the authority of a former President to declassify documents which originated during his tenure has rarely been questioned and never tested. While the government has strict rules prohibiting officials or former officials of the government from selling information which came to them as a result of their government work, these rules have not been applied to Presidential memoirs."

Neither have such rules been applied to the memoirs of generals, former Cabinet officials, secretaries or anyone else in government.

Lyndon Johnson who received a \$1 million advance for his soon-to-be-released memoirs entitled *The Vantage Point*, was so concerned about what his key White House aides might write about him and his Administration that again, according to the Justice Department, "He gave serious consideration to proposing that his appointees sign an agreement not to disclose information which came to them as a result of their work. Although Justice Department attorneys did considerable research on the legality of such an agreement, the whole project was finally shelved."

#### INCONSISTENCIES NOTED

All this of course is not to argue that the government has no right to or should not classify certain sensitive information. It *must* have that right. What it boils down to is that the government's present secrecy classification system is an undeniable mess riddled with inequity, stupidity and inconsistency.

It is quite in order for Lyndon Johnson, Walt Rostow, McGeorge Bundy, Dean Acheson and dozens of others in and out of government to make use of the raw materials which constitute the McNamara study. But the public is not allowed to see a single page. Reform is in order—is it not?

#### GENOCIDE: WHEN YOU ARE WRONG, YOU ARE WRONG

Mr. PROXMIRE, Mr. President, one of the most memorable lines of dialog from the celebrated film "Z" is spoken by a young leftist who remarks, in explanation of his tactics, that:

You can always blame it on the Americans—even when you're wrong, you're right.

That line of dialog says much about the public image of the United States abroad. This hostility toward us is not

universal. It is not deserved. Nevertheless, anti-Americanism persists as a constant theme of our relations with other peoples.

How can we combat this distrust and disrespect for America?

One concrete step which is clearly within the scope of reality is ratification of the Genocide Convention. Seventy-five nations have become signatories of this treaty; the United States has not. Seventy-five nations have agreed to establish genocide as a crime and to create procedures for trying and punishing violators; the United States has not.

Hence it may seem reasonable for people in other countries to ask why the United States has refused to band itself with other nations under this covenant against mass murder. Why, they might ask, will the United States not formally recognize genocide as a criminal offense? Do the Americans have something to hide? Have they done something to shame themselves in the eyes of the world? Do they consider themselves so superior to the peoples of other countries that they exempt themselves from the protection of international law?

Mr. President, those of us in this body know the answers to these questions. But the mere asking of these questions tends to raise doubts which can serve malignant purposes.

I do not wish to imply that the U.S. failure to ratify the Genocide Convention is the sole cause of anti-Americanism abroad; I would doubt that public consciousness of the treaty is much higher abroad than it is in this country, where it cannot be said that the treaty is a ranking public concern at this time. But it seems to me that Senate ratification of the treaty could do much to enhance America's image abroad, as well as further advance cooperation among nations. Ratification would come at a time when reaffirmation of our Nation's basic instincts is sorely in need; to outlaw genocide and establish legal procedures to try and punish violators would be completely consistent with the traditional American belief that criminal acts must be punishable by law. Ratification would say to the world that the United States officially condemns genocide as immoral and wrong, and that when you are wrong, you are wrong.

That is why the Senate should ratify the Genocide Convention soon.

#### DRUG ABUSE

Mr. SAXBE. Mr. President, I do not think anyone will deny that our Nation is in the grips of a serious drug abuse problem. It is the kind of tragic problem that will only get worse if we try to pretend it doesn't exist; if we tend to look the other way: if we underestimate its proportions.

Mr. President, in an eloquent speech prepared for delivery later today at the United Nations, TV entertainer Art Linkletter demonstrates one way of meeting the drug problem—head on. Mr. Linkletter serves as president of the nonprofit, independent, Washington-based National Coordinating Council on Drug Education.

In his speech, he noted that drug abuse is not an American problem, but one that is worldwide. He said that past reliance on treaties, agreements, and enforcement has not curbed worldwide drug abuse, and that new emphasis should be placed on behavior, life styles, and human motivation in finding an answer to addiction.

Mr. Linkletter called on the world body to use its resources in a total global investigation of the underlying causes of drug abuse. Such research, he said, would enhance the work of specialists in medicine, sociology, law enforcement, and human development.

Mr. President, I ask unanimous consent that some of the key excerpts of Mr. Linkletter's fine speech be printed in the RECORD.

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

#### SPEECH BEFORE THE UNITED NATIONS ASSEMBLY BY ART LINKLETTER

May I begin with a word of deep gratitude for your invitation to speak here today. I believe sincerely that the United Nations is a repository for man's highest ambitions—the focus for the world's will to live at peace with itself.

And what is so remarkable about the United Nations, and the generous invitation to talk with you, is that I am here *not* as an official of my country, *not* as a minister of any cabinet or chief of any bureau. Yes—a great strength of this global organization is its sensitivity to one voice. So I come here today as a concerned citizen of the world, and a member of the human family—nothing more.

My mission is to focus our attention on the members of our human family who are caught by drug misuse or abuse. . . .

Most of my generation had fixed ideas about drug addicts and dope that have been radically altered through research and knowledge based on fact—not myth. Until recently, we thought that marijuana was addictive and invariably led to narcotics. We thought all "pushers" were evil criminals sent to school yards to entice small children into becoming dope fiends. We thought that people who took any drugs for excitement and fun, or to forget their problems, were criminals and should be put in jail.

Today, we have learned that excessive users and abusers of psychotropic or narcotic drugs are sick people and only incidentally criminals. We have learned that pushers are often our own children searching for status or thrills or extra money. We have found out that you cannot stop drug abuse or making stricter laws, bigger jails, or by hiring more policemen. We have learned that drug abuse is a complex, perplexing subject that can never be simply, miraculously solved by some new drug or by some push-button method. And we have learned that it is not a passing fad that will go away with acid rock music or mod clothes. Drug abuse is on the doorstep of the world to stay. It is no new problem. . . .

There was a time when an American would look at other nations with disdain, and conclude that the rest of the world was going to ruin. But, not now. Now, as an American, I must report to you that drug abuse is every bit as damaging in my country as in yours—perhaps more so.

Drug abuse is as complex and contradictory as it is damaging. It has been easy in the past to pose a simple cause-effect-solution syndrome. For example, we say, "The person took drugs. The person met with tragedy. Eliminate the drugs, and you have eliminated the possibility of tragedy."

I can report to you from my experience

that such a simplistic model is invalid. There are too many factors at work, too much uncertainty about human behavior and human interaction, to dismiss the drug abuse problem by talking only about the drugs.

The phenomenon of drug abuse touches our hearts, our minds, our courage and our imagination. A simple answer simply will not do. . . .

It will not be easy to map out a worldwide plan to combat drug abuse. Perhaps it is wisest to begin by taking note of some of the things we should *not* do, some of the pitfalls we should avoid, as we begin to attack the problem.

First, let no nation speak with arrogance or false wisdom on the subject of drug abuse. Chauvinism and political pride have no place in our deliberations. My country has made this mistake in the past, and our present crisis makes a mockery of our boasts. I am confident that the United States will learn from its own mistaken attempts to prescribe drug abuse cures for the world, and I am equally confident that other nations will exercise good judgment in this regard.

Second, let no nation be guilty of what we call "passing the buck"—that is, ducking out from responsibility with the lame retort that "it's somebody else's business." No nation in the world is free from at least some form of drug abuse and no nation should attempt to excuse itself from the worldwide effort to combat it.

Third, let us avoid secrecy and intrigue in our work. The medical, scientific, academic and law enforcement communities of the world must be allowed to cooperate freely if we are to make any headway. There is nothing to be gained by refusing to share resources and insights with each other. In fact, there is everything to lose.

Fourth, let us refrain from making wrong-headed assumptions about alleged "character flaws" on the part of one people or another. It might be popular in some circles for one country to dismiss another's drug abuse problem as the result of ethnic or cultural deficiencies. Clearly, though, it would be incorrect. If any character is being tested, it is the spirit and strength of the whole human family.

Finally, let us not fall prey to those who would use drug abuse as an excuse to divide the world. Let us resist the fear-mongers and the wall-builders. I do not think there is much chance for success in a worldwide campaign of repression, recrimination and revenge. Nor do I think the people of the world would tolerate any attempt to drive wedges between countries or hemispheres. . . .

My list of things we must *not* do is based on the belief that rational men everywhere do not want to waste any more time arguing fault, blame, position, stature, advantage. Instead, rational and compassionate men want to get on with the urgent business of saving lives.

Indeed, our whole focus now should be on life—on the mystery and awesome complexity of human life. We know so much about the stars and the planets, and so little about ourselves. Our best effort must now be directed at finding out how, and why, drugs become so tragically intermixed with human life.

I think we do this by looking at the people, not the drugs. It seems to me that the challenge before us is to get to know each other, and ourselves, so that we can begin to understand how drug misuse and abuse can happen.

This kind of global investigation cannot be deferred to another time, nor delegated to another group. The United Nations, through the Economic and Social Council and the World Health Organization, must seize this moment to act with imagination and courage. Only an organization as comprehensive and prestigious as the United Nations

can carry out the kind of quest I have in mind.

On April First of this year when the United Nations fund for drug abuse control was established, a cheer went up from all of us who are so personally motivated in this crusade. You will recall that Secretary General U Thant appointed Carl Schurmann, former ambassador of the Netherlands to Washington, as his personal representative in charge of the fund, and George Bush, permanent representative of the U.S. to the United Nations, pledged two million dollars for 1971 as this nation's first contribution.

Yet, in spite of the global nature of drug abuse, and the universal admission that this menace is spreading throughout the developed as well as the developing countries all over the world, to date there have been contributions from only two other countries: Turkey and the Holy See.

I consider this significant because too often I find the same situation in my travels throughout the United States of America. In small towns or big cities I have found that there is unanimous "head nodding" to my warning statements but too often no action. Until you have personally been touched by the degradation and death that follows drug abuse, the inclination is to "Let Joe do it." The defensive statements from every segment of our society are repudiated by what I like to call "universal" guilt. All of us, in one way or another, are partly responsible for the drug abuse epidemic.

To begin with, we are living in a drug-oriented world. Especially in the United States we find people of all ages, and from every walk of life, increasingly turning to chemicals for relief from stress. Advertisements in the mass media cajole us into believing that there is a pill for every ill . . . real or imagined. Doctors, pharmacists, and drug manufacturers have reinforced our hope that relief from any kind of anxiety is only a swallow away. In this country, it would be safe to say that four out of every five adults use some kind of mood-inducing chemical regularly: Nicotine . . . alcohol . . . caffeine . . . amphetamines for a pick-up . . . barbiturates to tranquilize or put us to sleep . . . and in the last few years, hallucinogens of every imaginable type to shut out grim reality and transport us to a fantasy dream world. With this as their model, is it any surprise that our young people have turned to drugs in ever increasing numbers? . . .

America is aroused. America is doing something about it.

But trying to get people to stop taking drugs just because society decrees them illegal is trying to ball the Atlantic with a teacup.

Perhaps a better way of stating it would be to compare the drug scene with a dangerous intersection where cars are crashing into each other and causing death and destruction. What we are doing now is like putting up danger signals . . . stop signs . . . warning lights . . . hiring more policemen . . . giving prompt attention to the wounded and dying with doctors and ambulances . . . and holding driver education courses in safe driving. What would be more effective and less costly in the long run would be to engineer and build an overpass so the intersection would be eliminated.

However, this is like asking for a restructuring of society to eliminate the injustice . . . poverty . . . ignorance . . . and hunger we see about us. Much of the drug abuse springs from this malaise of living. Perhaps it is too much to expect. But we can try.

We must try. Because we are obligated to do everything in our power to save our young people from the worldwide curse of drug abuse.

I recommend that the Economic and Social Council begin at once to find answers to the basic questions we must face if we are to put an end to drug abuse. These questions have

to do not with methods of detection, or techniques for investigation, or codified approaches to human behavior; instead, they are questions about human life.

How do drugs become a part of daily life for millions of people? We know that some people reject drug abuse while others are caught by it? Why does this happen?

What about human goals and aspirations? Is there anything left to accomplish, or have we done everything there is to do? Is drug abuse a substitute for other risks we no longer need to take?

How do dangerous drugs get a death-grip on young people in underdeveloped nations, and in slum neighborhoods of rich nations? If an empty, agonizing life drives people to drugs, how do we change that life?

Why are there so many suicides in the world? Why do so many people arrive at a personal crisis unable to face it, resolve it, overcome it? Why is drug abuse so often a part of the tragic picture?

Is life boring? In the final analysis, do we turn to drugs because life holds so little challenge, so little meaning?

Can we talk to each other anymore? Some have said that communication is easier now than ever before, because of technology. But has technology helped us communicate, or has it merely hastened the flow of empty words over the great gulf that divides us?

These are the kinds of questions that must be answered if we are to do away with the abuse of drugs. I do not pretend that finding the answers is all that we must do, but it is certainly the first thing we must do.

The United Nations, through the Economic and Social Council and the World Health Organization, will serve all mankind if it begins the dialogue on these compelling questions. Working in this way, you will be going to the heart of the drug abuse crisis, and the results of your labors will enrich the understanding of the specialists in medicine, sociology, education, law enforcement and human development.

An independent council I head may serve as an example of this point. This national council combines the energies and skills of more than 100 diverse groups, agencies and institutions. It allows its member organizations to share information and resources, and by so doing, develops an interdisciplinary approach to our struggle with drug abuse education and treatment.

The operating philosophy of the council is that no one approach is likely to be sufficient in the face of the staggering complexity of the problem. Therefore, a multidisciplinary approach is required, one in which a sharing of insights and skills is not only necessary, but possible.

I would recommend this operating philosophy to the United Nations, because I believe it holds the most promise for our work: it is based on cooperation and interaction, and its goal is material improvement in the programs we develop to combat drug abuse.

But it matters little how you organize your attack on drug abuse if you do not begin with love and concern for the human family.

I began by saluting you for listening to the individual voice, and I will close by asking you again to hear the small sounds of the people. Listen carefully to the cry of the drug abuser. Consider what he is saying to us by his actions.

For the sake of the human family, the United Nations must reach out to those in trouble. Our world is torn by great debate, but the outcome will not matter if our children are wasted. Our scientists chart our course to the heavens, but we need not make the trip if we leave behind a world in pain.

Drug abuse is human misery compounded by human misunderstanding. Your great organization can begin to end the misery by

cutting away the misunderstanding. My personal and professional energies are yours to use in this work. The United Nations says "We Believe" and I ask you now to believe, to care and to help.

#### THE 50TH ANNIVERSARY OF THE GAO

Mr. RIBICOFF. Mr. President, this year marks the 50th anniversary of the establishment of the General Accounting Office. In recognition of this event, the Sunday magazine of the Washington Star, Washington, recently published an excellent article by Miriam Ottenberg describing some of the current activities of the GAO.

The article points out that much of GAO's work is shifting from review of financial management practices in Government to evaluation of the effectiveness of Federal programs. The GAO is also emphasizing efficiency and economy in the procurement of the many civilian and military items which the Government buys.

Mr. President, I commend the GAO on its 50 years of service to Congress and the Nation, and ask unanimous consent that the text of the article be printed in the RECORD.

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

#### SMILE, SMILE, THE GAO

(By Miriam Ottenberg)

The young trainee handed over a tube of the stuff that killed babies. "I found it in a store right in downtown Washington," he said, "and there was more on the shelf." His chief was looking at the first hard evidence of killers at large. Until then, he had a paper case and he knew it. This wasn't a scene at police headquarters but, of all places, at the General Accounting Office. The fiscal sleuths are coming on strong in a new role—as the consumer's protector—after half a century of exposing the myriad ways that government agencies manage to waste the taxpayers' money.

More than a score of GAO studies either in the works or recently completed affect the everyday life of people—the meat and poultry they eat, the water they drink, the trains the ride, the drugs they use, the pesticides they spray, even the air they breathe. A new investigation deals with the processing of fruits and vegetables.

GAO gets into the act because, somewhere along the line, government money is being spent. It is GAO's job to see the money is spent legally, efficiently and as Congress intended.

In the case of the baby killer, GAO had wanted to find out whether the Agricultural Research Service was carrying out its regulating of pesticides the way Congress had in mind when it passed the basic consumer protection law in the area of pesticides—the Federal Insecticide, Fungicide and Rodenticide Act. The GAO inquiry precipitated a congressional investigation, and control of pesticides moved from the Agriculture Department to the Environmental Protection Agency.

It all started with Morton A. Myers, now assistant director of the GAO civil division, leafing through Agriculture Research Service reports with the critical eye of the investigator. How, he asked himself, could 150 people in the agency's pesticide regulating division register and police 60,000 pesticides—each one a potential killer?

On "location" in Agriculture's south wing, he and auditor Richard Chervenak studied

the agency's procedures, pored over reports, asked questions and became convinced the job couldn't be done—not the way the pesticide regulators were doing it.

The regulators were sampling pesticides in retail stores, not at the wholesale level. If they found misbranded, adulterated or contaminated pesticides, they could take action to get them off the shelf; but they never got the shipping records that told them how much of the same poisonous stuff was going elsewhere—or where they could find it.

Myers started following the trail of products made with the chemical thallium—used mostly for rat and roach killers. There were those reports from the Public Health Service that thallium products had poisoned 400 children during 1962 and 1963—even after the Agriculture Research Service had limited the amount of thallium in pesticides. Finally, in August, 1965, the agency cancelled the registration of all products containing thallium.

It was two years later when Myers gave a GAO trainee named Cameo Zola \$10 to go shopping. Zola came back with a tube of thallium-heavy rat killer and reported another 100 packages on store shelves. He handed over other long-banned products, and GAO had proof that the public wasn't being protected. When it reported to Congress, GAO particularly noted that the agency hadn't cited any violators to the Justice Department for prosecution in 13 years—even where major violators repeatedly flouted the law.

That was the report that triggered congressional action. It also demonstrated that GAO has become so involved in protecting the interests of consumers that it's even willing to see Congress spend more money in their behalf. Much of the justification for increasing the GAO budget request for pesticide regulation from \$3.9 million to \$6.7 million was based on GAO reports.

In its traditional role of checking on how government money is spent, GAO devotes 40 percent of its manpower to military spending, because that's where the largest chunk of the money goes. But GAO is getting more and more involved in consumer-oriented projects because Congress is getting more and more interested.

"We're attempting to identify areas of major concern to Congress, and we see consumers as one of them," says Comptroller General Elmer B. Staats, the head of the GAO. "We also see the interest of Congress in the environment, so we look at how environmental protection programs are being run. A third area of congressional interest is the cost of medical and welfare programs."

An investigation can be precipitated by a committee that is planning hearings, by a senator worried about defense spending or by a congressman tipped off by a constituent. Or it can be launched by the GAO on its own initiative.

Since GAO frequently gets far more requests for investigations than it can handle—particularly in January, when congressmen come back to work loaded with ideas—some priorities have to be established. That is done by Deputy Comptroller General Robert F. Keller and the three attorneys of GAO's Office of Legislative Liaison. The importance of the request and the requestor is measured in determining which investigations come first. Needless to say, the chairman of the Senate Appropriations Committee is likely to get action before a first-term congressman.

GAO says it doesn't use paid informants in its investigations, but it does get some mileage out of public complaints, inquiries and tips. The most reliable source, however, is the GAO auditor on the scene, the member of the team assigned to a department where a lot of public money gets spent.

"The longer you're in, the more you hear, the more you pick up," said Myers, whose pesticide investigation required endless ques-

tioning. "We spend a lot of time on location, try to maintain a professional attitude, avoiding fraternization, going back again and again to interview. The cooperation we get is variable."

Sometimes, the cooperation is nonexistent. Agencies will claim "executive privilege" and balk at giving information, or they'll delay until they think congressional interest—and GAO interest—has evaporated. In the end, they're forced to fork over the information, and GAO's report on the case in one of its variously feared and admired blue books will say just what roadblocks it encountered. Usually, GAO summarizes its difficulties in a single paragraph. But there was one Air Force slowdown, unbeknownst to the high command, that the GAO took a full page to report.

Rarely does GAO find attempts to cover up a situation. That's not very easy to do in any case since the agency doesn't know exactly what GAO is looking for when the team arrives. GAO does announce its visit ahead of time, but not its actual target.

A GAO team once was looking into the newly computerized payroll procedures of the Department of Health, Education and Welfare for 106,000 employees from coast to coast. In the course of the investigation, a GAO auditor noticed an unlocked file drawer. When he opened it, his eyes popped. The drawer was full of money. There was over \$500 in cash, but most of the money was in check form—checks where the payee couldn't be found, personal checks from workers trying to return overpayments, 1,661 checks in all totaling \$308,000. He didn't stop to count it all then. Instead, he ran back to tell his boss. In the few minutes he was away, the file drawer was moved out of the room. HEW finally returned it at GAO's insistence, but the 1968 report on that caper was pretty rough.

GAO is no longer a collection of green-visored accountants crowded into one Washington office, devoting its time exclusively to finding out how government agencies spend the taxpayers' money. Now GAO's missions take its people all over the world. They can be found ducking bombs in Viet Nam, diving in a submarine in the South Atlantic, checking on foreign-aid spending in Nigeria, auditing an Air Force contract at Thule, Greenland, observing the Navy's combat readiness from the flight deck of an aircraft carrier in the Mediterranean.

While GAO devotes 40 percent of its time to checking defense spending and 10 percent on international programs, the remaining 50 percent is allotted to the civil division, covering all the other federal departments and agencies. That can take a team into a mid-west meat plant before dawn to see whether the steak destined for a dinner table has been processed under sanitary conditions. Dan Statler, audit manager of GAO's Kansas City regional office, was one of the 3 a.m. risers during the GAO's big meat investigation.

"We're not veterinarians," Statler explained. "I wouldn't know a diseased animal if I saw one. What concerned us was whether the plants were complying with the Agriculture Department's Consumer and Marketing Service standards in effect, how well the C&MS inspectors were carrying out their sanitation duties. We saw meat hanging from rusty hooks, water dripping from coolers, cockroaches and mice, dirty equipment in use, carcasses contaminated with hair. We found enough to conclude these conditions didn't happen overnight, that whatever the inspectors were doing wasn't enough."

The GAO men went the rounds with Consumer and Marketing Service supervisory inspectors, hitting 40 federally inspected plants and eight non-federally inspected plants receiving federal grading service. As they later reported to the Agriculture Department and Congress, they found that at almost all the plants, animals were being slaughtered and

meat food products were being processed under unsanitary conditions. And at most of them, the meat was contaminated.

The Agriculture Department, concerned by both the meat report and GAO's equally critical poultry report earlier, stepped up efforts to strengthen its inspection service, discontinued federal inspection at some plants, which put them out of action, and stopped providing grading service at others, because they couldn't meet sanitation standards. Most of the plants were brought up to standard, and the Agriculture people met with the major meat packers to get the industry to shape up.

Investigating nursing home care isn't the sort of thing GAO would have done a decade ago; but Congress is interested now in how Medicare and Medicaid money is spent. Checking one nursing home, the GAO man noticed a number of patients had been transferred to another home. From talking to nurses on the floor, he found that the transfers weren't prompted by better care in the other home. Instead, the patients were transferred because the attending physician had a financial interest in the other home.

The GAO turns up case after case where nursing homes continued to get Medicaid money for patients who were dead. Or the GAO men examine misleading ads for nursing homes, depicting facilities that don't exist and boasting fully equipped physical therapy rooms where investigation discloses only a set of parallel bars. In that case, GAO got on HEW to assure California that somebody cared what kind of advertising the nursing homes put out. Or GAO looks into how a nursing home takes care of its patients' own money, usually the monthly pension check. When GAO found the money was being stuffed into envelopes with no record made of money put in or taken out, GAO recommended that nursing homes be required to set up records for keeping track of the money.

Sometimes, GAO finds itself in a person-to-person relationship with a recipient of government benefits—or nonrecipient. For some reason, when they don't know where to turn, they write GAO.

One old man wrote the Comptroller General that he hadn't gotten his welfare check and that he was having a terrible time trying to get through to anybody. A GAO auditor met with the man and then with the welfare agency. It turned out that the check had been stolen and he was getting a runaround. He got the check.

In the last fiscal year, GAO issued 1,168 reports stemming from its work in Washington, across the country and around the world. Of the reports, 203 were sent to Congress by GAO on its own initiative; 321 were made for congressional committees or individual members, and 644 reports on less significant matters were addressed to officials of government departments and agencies.

Although the conclusions are often sharp, they are not as scathing as they used to be in the way they are phrased. That has led some to describe GAO as a "one-eyed watchdog of Congress" or the "toothless watchdog." The language may be blander, but GAO denies it has lost its punch. And in that it is supported by such stalwarts as Sen. William Proxmire, D-Wis., chairman of the Joint Economic Committee, and Sen. Abraham Ribicoff, D-Conn., who heads the executive organization subcommittee of the Senate Government Operations Committee.

Neither Proxmire nor Ribicoff believes the GAO was defanged, as some contend, by a set of hearings that took place in 1966. Rep. Chet Holifield, D-Calif., now chairman of the House Committee on Government Operations, which is GAO's parent committee, headed the subcommittee which went after GAO for blasting defense contractors.

GAO had been turning up numerous cases of excessive prices, improper reimburse-

ments, overstated costs, wasteful practices and unwarranted charges. And GAO said so publicly. They exposed the contractors one by one, naming them and sometimes suggesting that the Justice Department should look into certain deals. Hollifield, whose constituents include many defense contractors, contended GAO was being too tough, too biased.

The hearings were the roughest that GAO had encountered in its long honeymoon with Congress. The leadoff witness, Assistant Secretary of Defense Paul R. Ignatius, contended that GAO was in effect violating the integrity of the government's contracts by coercing contractors into voluntary refunds. The Pentagon, he said, would not seek the refunds in a number of cases where GAO had recommended them. A parade of contractors charged GAO with using sensational language which could easily give the misleading impression that most military procurement was unsound and there might even be—heaven forbid—some profiteering.

Before the inquisition was over, Comptroller General Joseph Campbell resigned, giving ill health as the reason. President Johnson replaced him with Staats, who had been deputy director of the Bureau of the Budget under four presidents. He became the fifth comptroller general of the GAO.

New to GAO, Staats was an old hand at government. He sees government in terms of the effectiveness of the whole program, not an isolated segment. Even if Hollifield hadn't complained about naming individual contractors and issuing reports about each of them, Staats wouldn't do it that way. If 20 contractors are overcharging, one report now takes care of all of them. Individual contractors are now named only in flagrant cases. Staats prefers the broad-gauge approach, because what concerns the GAO is what the involved government agency did and not especially what the contractor did.

Although a recent *Washington Monthly* magazine article criticized Staats for "timidity" about demanding Defense Department records wanted by Proxmire on the controversial C-5A contract with Lockheed, Proxmire says he got a lot of information about C-5A through the GAO, and "it's done so much for us."

A Phi Beta Kappa man with a master's degree and a Ph.D., Staats believes in getting many different areas of training into the GAO. Just as GAO grew from one little office in Washington to a block-square edifice at Fourth and G Streets NW, 15 regional offices and five offices overseas, so its staff has expanded from a few hundred accountants to 3,000 professional men from a variety of disciplines. The bulk are still accountants, but last year only half of GAO's college recruiting was for accountants. The other half was for economists, engineers, mathematicians, statisticians and operation research specialists to join the ones already on the job.

Currently, GAO has about 4,500 employees, and its operating expenses last year amounted to \$71.7 million. Usually, Congress gives GAO what it asks, because what it collects and its "measurable savings" for fiscal 1970 amounted to over three times what it cost to run GAO. The savings that counted up to \$250,101,000 ran from multi-million-dollar saves to those that added up to only a few thousand.

This year the "watchdog of Congress" celebrates its 50th anniversary. GAO was established in 1921 in the same measure that created the Budget Bureau, because Congress was becoming increasingly concerned about how the money was being spent in the aftermath of World War I. Actually, the country had a money-watching comptroller in the Treasury as far back as 1789, but the 1921 act abolished that post and created the

GAO, headed by the Comptroller of the United States. It started out by auditing virtually every document sent in by all the departments and agencies. Those early accountants were on the lookout for erroneous or illegal expenditures. But, as government spending got bigger, as the New Deal expanded government to ever larger dimensions, as Congress became uncomfortably aware of possibilities of waste as well as fraud, GAO's role changed.

The Legislative Reorganization Act of 1946 directed the GAO to analyze expenditures of every executive agency annually and report on "whether public funds have been economically and efficiently administered and expended." A 1950 act broadened the GAO role further by giving GAO specific authority to verify that agencies carried out the intentions of Congress in spending their money. In fact, GAO had already started these "performance" reviews, which are becoming their mainstay. The 1970 Legislative Reorganization Act spelled it out a little further by directing GAO to "review and analyze the results of government programs and activities carried on under existing law, including the making of cost-benefit studies."

Now, Sen. Ribicoff wants to give GAO even more authority, plus changing its name to "Office of the Comptroller General of the United States." The measure passed the Senate last fall and has been reintroduced in the new Congress. It would give GAO more and better paid professional employees, enlarge its authority to audit government contracts, particularly in the defense industry, and empower it to go to court to protest certain federal expenditures.

"For years, the GAO has assured the honesty of the federal government's financial dealings," said Ribicoff in reintroducing his bill. "Now it is time to expand its mission—to bring its resources and unquestioned competence to bear on the legislative problems of the '70s.'"

#### AHEAD OF HIS TIME

Mr. SAXBE. Mr. President, I have often contended that cooperative medical practices, instead of individual practices, are one answer to the pressing manpower shortages in the health field today.

I was gratified to read recently a speech on that subject by Dr. D. C. Houser, of Urbana, Ohio, near my home in Mechanicsburg. Dr. Houser notes that cooperative practices would, among many other things, lure some of our young doctors into smaller cities where they could set up their business. He went on at considerable length, and I shall place his speech in the RECORD.

Incidentally, Dr. Houser delivered his speech at the 85th annual meeting of the Ohio State Medical Association, on May 12, 1931. To say that his ideas were ahead of their time is putting it mildly.

I ask unanimous consent that Dr. Houser's speech be printed in the RECORD.

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

#### INDIVIDUAL, CO-OPERATIVE AND GROUP MEDICINE

(Inaugural Address of the Incoming President, D. C. Houser, M.D., Urbana)

It is not an easy matter to choose a subject as a basis for an address, on an occasion like this, as about all phases of organized medicine have been extensively discussed in the last decade.

It is not my thought that I will be able to bring to your attention anything new or original, but I hope to say some things in such a way that you will, at least, give them some consideration.

I have chosen as my subject: "Individual, Cooperative and Group Medicine".

*Individual practice of medicine of an earlier age was largely the service rendered by the individual practitioner without the aid or assistance of other physicians. At the present time, even the most individualistic practice includes and requires consultation with other physicians and the reference of patients to specialists.*

*Co-operative practice may be defined as a modern development of professional relationship through which physicians, by the interchange of facilities, through the development of mutual assistance, such as those located in the same or neighboring buildings, or attached to the same hospital staffs, promote the same end, i.e., the alleviation of suffering and the cure of disease. Even in such co-operative practice, each physician works more or less independently, establishes his own fees, and makes his own collections for services rendered, not on a partnership or specialized clinic practice basis.*

*Group practice may be defined as that arrangement wherein several physicians, usually specializing in separate branches of medicine, are united in a partnership or clinic, usually with proportionate interests in property and with an arrangement for a proportionate distribution of income from services rendered.*

Individuals have administered aid to the sick since the dawn of civilization; however, but little was known about disease in ancient times. In fact most people of that time believed that sickness or indisposition was due to some sin which had been committed by the one afflicted or by some relative. The sick person possessed of an evil spirit, visited some healer, who had the supposed power to relieve him. As time advanced individuals began treating the sick with various concoctions of crude drugs.

Time advanced and more and more was learned about drugs and other methods of treatment.

It is not my intention to trace the development of medicine from its beginning by naming the advances made in the perfection of drug and other modes of treatment down to the present era. Time would not permit, and it would be presumptuous for me to recite the history of the development of medicine to an audience like this. Medicine as you well know, was old in the days of Hippocrates.

Its beginnings were lost in the dim prehistoric period of the Greeks, but in that intellectual period of Grecian life when Phidias carved his magnificent sculptures; when Sophocles and Euripides wrote their immortal tragedies and Aristophanes his comedies; when Socrates and Plato represented philosophy and Herodotus and Thucydides recorded history, medicine could hardly have remained at a standstill.

However, it is my intention to call to your mind the tremendous developments and progress which medicine has made, and remind you that individualistic practice of medicine is being replaced more and more by co-operation in practice, and incidentally to prophesy that if co-operative medicine does not remedy the economic conditions confronting physicians today, then we may expect complete State Medicine to be developed.

The health of a people is one of the prime objectives of civilization, and some system whereby the best medical and surgical attention can be given to all who are ill probably will come eventually. *Salus populi su-*

prema est lex. (The welfare of the people is the supreme law.) The nation may shape its health problems if the medical profession does not do so.

The discovery of antiseptics and anesthesia has enabled the surgeon to make rapid advances until almost every part of the body can now be safely approached. Clinical medicine, by more accurate diagnosis is able to prevent disease, and reduce morbidity and mortality.

Virchow, Cohnheim, Ludwig and many others, by the aid of the microscope, placed physiology, and pathology on a rational basis.

The discovery of the specific cause of tuberculosis led no doubt, to the study of serology and the first great contribution in this field was diphtheria anti-toxin in 1895. The discovery of the Roentgen Ray in 1896 made possible the study of anatomy, and today, when we think of the numerous fields in which the X-ray can be used, we are made to wonder how we ever practiced without it.

The nineteenth century gave to us the birth of public health and preventive medicine naturally followed. Today millions of dollars are expended each year on public health and preventive medicine. Numerous diseases have been almost entirely abolished and scores of others rendered less severe.

Volumes have been written on the developments, discoveries, and inventions pertaining to medicine. It is a far reach of the imagination from the present physician, with his modernly equipped office, containing all the necessary means for diagnosis and treatment, to the physician of even a quarter of a century ago, whose office consisted of one or two rooms, poorly furnished, dimly lighted, perhaps none too clean, containing a few chairs and a table, on which might be found a magazine or two, which had seen better days. He drove over the country with a horse and rig, and was able to carry with him about all that was provided by medicine in his day. He attended the rich and the poor, no call was left unanswered; he was very proficient in clinical symptoms and was able to make diagnoses that seemed almost uncanny.

But the time has passed when the physician can live an isolated life, take no part in medical societies, buy no new text books, take no medical journals, do no post-graduate work or visit none of the clinics in the larger cities. In fact, the successful physician of today is thoroughly awake to all the problems confronting the medical profession.

The numerous inventions and discoveries in medicine have naturally led to specialties, until at the present time one or more specialists may be found in any city of any size in Ohio. This in my opinion is as it should be. The honest, conscientious specialist of today is one of the great advances in medical science. No physician can be proficient in all lines of medical science and art, "Non omnia possumus." (We cannot do all things.)

A fable that comes to us out of an unknown antiquity, states that in the beginning the Gods divided man into men, in order that man might be more helpful to himself. Just as the hand was divided into fingers, the better to answer its ends. Emerson in his American Scholar says: "This old fable covers a doctrine ever new and sublime; that there is one man, present to all particular men only partially or through one faculty; and that you must take the whole society to find the whole man. Man is not a farmer, or a professor, or an engineer, but he is all. Man is minister and scholar, and statesman, and producer, and soldier and physician. In the divided or social state these functions are parcelled out to individuals, each of whom aims to do his part of the joint work, whilst

each other performs his. The fable implies that the individual to possess himself, must sometimes return from his own labor to embrace all the other laborers."

Not so many years ago, each individual physician was qualified to render to his patients about all that was known in the way of treatment and diagnosis. I need scarcely remind you that such is not the case today. The physician of today is divided into many physicians in order that he may better serve mankind. He is not surgeon or internist, or roentgenologist, or bacteriologist, or gynecologist, but he is all, and in the divided state he must do his part of the joint work. It is imperative then that we return from our own labors to embrace all the other laborers, in order to learn what our part is.

We are forced to remember that any profession is as strong and outstanding, as a profession, as its weakest members and not as its strongest members. It behooves us then, in the coming years to pay particular attention to the weaker members in the medical profession and endeavor to correct them or at least render them less weak.

The doctors of the State of Ohio have passed through two periods in the State's development, viz: horseback period and buggy period, and we are now in the automobile period.

In the horseback period the roads were bad, in most places, mud roads only, some places the roads were mere trails. Every hamlet and village had one or more stores, which were trading centers. These stores kept for sale everything needed in the community, hence were known as general stores. In each of these hamlets and villages, a doctor was located, sometimes more than one. The doctor was the big man in the community for he did all that was to be done, and all that was known at that time. These community stores and doctors are practically all gone.

The buggy period saw most of the mud roads, improved by grading and graveling. Stores began to specialize. Some general stores remained, but there were added other stores, viz: hardware, grocery, dry goods, drug stores, etc. As the roads became better, the people were able to extend their horizon.

The automobile period or present time is experiencing a great change in roads. Hard surface roads are seen almost everywhere now, and millions of dollars are being expended each year on new roads and upkeep of the old roads. All class of trade is being centralized, i.e., the people are going to the cities to buy. What has happened to the physicians in hamlets, villages and small towns? Many people are going to larger cities for medical services, especially those who have money. This leaves a greater per cent of those who can not pay in the rural sections.

The rural physician's income has greatly decreased until it has become difficult for him to make a living, and in many instances he has moved to a larger city. Likewise the people are going where they think they can secure the best services. *Tempora mutantur, et mos mutatur in illis.* (The times are changed and we are changed with them.)

Is there any remedy for these conditions? During the horseback period, buggy period, and up to the present time, (the automobile period) in the rural sections the practice of medicine has been mostly individual.

Imagine a town of fifteen hundred people, having a rural radius of about six miles, good roads in every direction, excellent farming community, up to date stores, all streets paved, water works, sewerage system, electric lights, four doctors. Let me tell you about the doctors. Each doctor maintains a separate office, has an X-ray machine, diathermy, violet ray and other up to date appliances. They are all splendid physicians, attend society meetings, take several medical journals, buy new text books, do post-graduate work.

Do they hold the medical work in their community? I would say that they do about 80 per cent of the work in their community, and receive about 50 per cent of the money extended for medical care. They are barely making a living. What is the remedy for the physicians of this town?

I would suggest as the answer—co-operative instead of exclusively individual practice; all located in the same building, central waiting room with attendant, one X-ray, one diathermy, one violet ray and one of all other up to date appliances instead of four. Let each doctor subscribe for two or three medical journals which treat different subjects; each buy a different medical book. Have a library in the building; hire a technician to take care of all X-ray work and other physical appliances, also do simple laboratory work, such as blood count, urine analysis, etc. Country calls may often be attended to by one physician, when in the same direction from town. They should consult together freely, forget all petty jealousies and remember that the people, your people, are demanding the best from you at all times.

Co-operative practice, as described in this town of fifteen hundred, may be applied to all other towns and cities of the state. I have purposely avoided, up to this time, mentioning practice in the larger cities, because much of the medical work is now co-operative or group practice of some sort.

Most specialists of the cities do co-operative practice, and most of the general practitioners do co-operative practice. Why should the doctors of rural sections and smaller cities continue to do strictly individual practice, instead of co-operative?

The clinics of the larger cities are forms of group practice concerning which type of business or commercial organization much has been said in the past few years. There seems to be considerable difference of opinion among members of the profession, as well as among the public, on the development of clinic practice, especially the clinics which are organized frankly for profit. New questions have developed for which the medical profession may be required to find answers in the near future. Among these questions may be listed: What effect are such clinics having on medical practice? How do the people value them? Are they an asset to the profession or the public? Are they increasing in numbers and influence? What good, if any may be expected from them? What are the objections to them and how are they to be overcome?

Of course difficult and serious cases must have the advantage of specialized knowledge.

I am of the opinion that if the rural communities were well organized in co-operative practice, a great many of the younger men would locate in smaller cities.

Complete State Medicine which destroys healthy and friendly competition and pauperizes a people will stand less chance of being adopted, if cooperative practice is more largely instituted throughout the state.

It is true that a large per cent of the practice of medicine will always be individual, but cooperative organization would certainly be a great help, especially economically.

Aristotle was right when he said that "Incredulity is the source of all wisdom." We should think for ourselves closely, carefully, patiently and independently upon everything that may come under our notice, that may be at all cognate to our profession, and never be satisfied that we know enough about anything so long as anything about it remains unknown. Take nothing for granted that may seem inconsistent with correct reason or established facts, simply because someone of acknowledged authority may have said it, and reject nothing as unworthy of our investigation on account of its apparent insignificance, or because it does not

seem to square precisely with the preconceived theories of the faculty. In short, the man who makes himself truly great in any calling is the one who has sense enough to know a good thing when he sees it, and decision of character enough to make it useful whenever he may find it.

Whatever we may accomplish, however, in our professional career, we should make up our minds not to be surprised to find ourselves deprived of much of the credit that may be justly due us. In our profession as in all others,

"Full many a flower is born to blush unseen.

And waste its sweetness on the desert air;" while on the other hand, full many a name shines upon the envied page of history, with a borrowed light to which it is not entitled, and which its owner himself would not pretend to claim.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

#### VISIT TO THE SENATE BY DISTINGUISHED MEMBERS OF THE PARLIAMENT OF SOUTH AFRICA

Mr. McGEE. Mr. President, we have with us in the Chamber today a visiting delegation from our counterpart, the Parliament of South Africa.

I find, in our discussions with them, that they have many of the same kind of problems we have been wrestling with here. This is one of the elements that we find as we talk to our contemporaries in other governments all over the world, regardless of where they may be, and it is one of those factors that brings us closer together in understanding the mechanics as well as the problems of the responsibilities that go with governing.

I ask unanimous consent to make a part of the RECORD a list of the names and the interesting backgrounds that we have of the members among our visiting dignitaries.

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

SENATOR GERHARDUS RENIER WESSELS  
Address: P.O. Box 10327, Johannesburg.  
Date of birth: 7th October, 1912.  
Party and constituency: National Party—Transvaal. Elected to the Senate in 1955.

Marital state and family: Married; 3 children—1 son and 2 daughters.

Profession: Minister of the Church; at present farmer and businessman.

Education: High School; 4 Years theological training.

Special interests: Chairman, Social Welfare Study Group; Chairman, Bantu Affairs; Chairman, Information Study Group; Chairman, Tourist Study Group; Chairman, Sport Study Group; Chairman, Health Group; Member of Labour Group.

Recreation: Swimming, Books and Reading.

General: Founder of various orphanages and homes for elderly people.

MR. LOUIS LE GRANGE, M.P.

Address: 16, North Street, Potchefstroom.  
Date of birth: 16 August 1928.

Party and constituency: National Party—Potchefstroom. Elected to Parliament in 1966.

Marital state and family: Married; 4 children—2 sons and 2 daughters.

Profession: Attorney.

Education: B.A. Political Science and Roman Dutch Law; B.A. Hons.—Political Science; LL.B.

Special interests: Bantu Affairs, Foreign Affairs and Irrigation matters; Secretary—Parliamentary Defence Group; Secretary—Justice Group; On panel of temporary Chairman of Committees of the House of Assembly.

Recreation: Golf, squash and target-shooting.

General: South African National Target-shooting Association—President.

MR. JOHN OSWALD NEWTON THOMPSON, M.P.  
Address: Gwelo Lodge, Newlands Avenue, Newlands, C.P.

Date of birth: 2nd December 1920.

Party and constituency: United Party—Pinelands. Elected to Parliament in 1961.

Marital state and family: Married; 4 children.

Profession: Advocate (Lawyer) (Barrister).  
Education: B.A.—University of Stellenbosch; M.A.—Oxford University, England.

Special interests: Group relations in plural societies; Foreign relations; Secretary—Bantu Affairs Group; Chairman—Sport and Recreation Group.

Recreation: Tennis, Cricket, Rugby, Fishing and Theatre.

General: Opposition Whip; Served S.A. Air Force 1941–1945 (Fighter Pilot); Cape Province Rhodes Scholar; Played rugby for University of Stellenbosch and for England.

MR. HENDRIK HANEKOM SMIT, M.P.

Address: P.G. Box 150, Stellenbosch.

Date of birth: 31st October 1925.

Party and constituency: National Party—Stellenbosch. Elected to Parliament in 1962.

Marital state and family: Married; 4 children—2 sons and 2 daughters.

Profession: Farmer; Chief Information Officer of the National Party.

Education: B. Com.—Stellenbosch University.

Special interests: Defence (Chairman, Parliamentary Study Group).

Recreation: Riding and target-shooting.

General: Ex-journalist; Interested in Education, Youth Affairs and Communication Systems.

DR. GEORGE DE VILLIERS MORRISON

Date of birth: 31st July 1921.

Party and constituency: National Party—Cradock. Elected to Parliament in 1966.

Marital state and family: Married; 3 children—one daughter and 2 sons.

Profession: Medical Doctor.

Education: M.B., Ch.B.—Pretoria University.

Special interests: Member—Study Groups—Bantu Affairs, Health, Defence, Agriculture and Water Affairs. Member—Standing Committee on Bantu Affairs. Member—Standing Committee on Government Land.

General: Hon. Colonel—The Piet Relief Regiment. Member—Council, National Party, Cape Province. Member—Council, University of Fort Hare.

Recreation: Golf, Hunting and Music.

DR. GIDEON FRANCOIS JACOBS, M.P.

Address: 9a, Sturdee Avenue Rosebank, Johannesburg.

Date of birth: 21st January, 1922.

Party and constituency: United Party—Hillbrow, Johannesburg. Elected to Parliament in 1966.

Marital state and family: Married; 3 children—2 sons and 1 daughter.

Profession: Psychologist.

Education: B.A. (Psychology, Economics and Political Science); M.A. (Psychology); D. Phil. (Psychology) (Cum Laude).

Special interests: Defence, Education, Labour, Planning and Foreign Affairs.

Recreation: Mountaineering.

General: Awarded O.B.E. Services World War II; Author of *Prelude to the Monsoon and Anatomy of South Africa*.

#### RECESS

Mr. McGEE. Mr. President, I move that the Senate may stand in recess for 2 minutes so that Members of this body who are available will have an opportunity to meet our colleagues, Members of the Parliament of South Africa.

The motion was agreed to; and at 11:35 a.m. the Senate took a recess.

During the recess, the distinguished visitors were greeted by Members of the Senate.

On expiration of the recess, the Senate reassembled and was called to order by the Presiding Officer (Mr. CHILES).

#### EXTENSION AND REVISION OF THE DRAFT ACT AND RELATED LAWS—CONFERENCE REPORT

The PRESIDING OFFICER (Mr. CHILES). The Chair lays before the Senate the pending business, the conference report on H.R. 6531, the extension of the Military Selective Service Act, which the clerk will report.

The legislative clerk as follows:

The report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6531) to amend the Military Selective Service Act of 1967; to increase military pay; to authorize military active duty strengths for fiscal year 1972; and for other purposes.

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

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

#### THE ARMY

Mr. THURMOND. Mr. President, the U.S. Army in particular, and the Nation's defense forces as a whole, are rapidly approaching a "mission impossible" situation due to the Senate delay in passing the draft bill.

The Members of this body should realize that failure to act affirmatively on the draft bill within a very short time will strain our already weak position in Vietnam and permit our minimum baseline forces in Europe and the United States to fall below strength.

This manpower problem looms because of these three reasons. First, past administration policy of placing force levels at the bare minimum. Second, a 50,000 average year cut of the Army contained in the pending bill. Third, the complete shutoff of draftees after June 30 which resulted from the failure of the Senate to extend the 1967 Selective Service Act.

Mr. President, in supporting my call to the Senate for passage of the draft bill, I wish to briefly discuss each of these three points.

First, the Senate should realize that the Nixon administration has drastically reduced military manpower since coming to office in 1969.

The Army has been cut from 19 divisions to the present 13½, with manpower reductions trimming a total of 1.5 million men in fiscal year 1968 to approximately 1 million men in fiscal year 1972. That represents a reduction of one-third in just a few years.

These reductions are in line with the Nixon doctrine which calls for a reduction of U.S. military personnel abroad, but offers instead firm financial support and military equipment.

It is significant to note that before entering Vietnam we had a baseline force of 16 divisions. Now, although we are still involved in Vietnam, our baseline Army strength is down to slightly above 13 divisions.

Mr. President, there is a serious question in my mind as to whether or not this country can meet likely military contingencies with a standing Army that small.

Indeed, the threat has certainly not diminished in the past 10 years. At a time when we had 16 Army divisions this Nation was clearly superior to the Soviet Union. Today, the Soviets have a decided lead in intercontinental ballistic missiles, a 3-to-1 margin in submarines and maintain a large standing Army which has a decided tank advantage over NATO forces.

Thus, one might ask why we have 13-plus divisions when the threat is so much greater than when we had 16 divisions?

In drawing down our military forces the Defense Department is cutting manpower requirements to the bare minimum in hope of reaching that elusive goal—an all-volunteer Armed Forces. The end year strength set for the Army next June is 942,000—a sizable reduction from the 1.1 million men on hand in fiscal year 1971.

In summary of this first point, let me say that the Defense Department on its own initiative has sharply reduced our military manpower despite the fact we still have men being shot at in Vietnam.

These voluntary reductions by the administration bring me to my second point—the congressional cut of 50,000 average year spaces imposed on the Army in the pending draft bill.

This cut will take the Army below the previously planned end year strength of 942,000. It requires that the Army accelerate its losses. Further, this 50,000 reduction is an average strength reduction and not an end strength reduction. Thus, more than 50,000 men will have to be cut from Army rolls to achieve this average year reduction.

To clarify the average strength reduction I offer this example. Assume the Army is making its previously scheduled reductions during the first half of the 1972 fiscal year, then to meet the addi-

tional 50,000 average year strength cut it would be necessary to cut 100,000 men off the rolls effective December 31, 1971. Since these men will be off the roster only half of the remaining 1972 fiscal year, the cut must be 100,000 to make up for the failure to get those men off the rolls in the first part of the 1972 fiscal year, which in this case is now.

Mr. President, the congressional cut will bring the Army down close to the low point of its manpower between the Korean and Vietnam wars—a total of 856,233 on May 31, 1961.

Although the draft bill containing this reduction remains tied up here in the Senate, the Army has already initiated actions to meet this cutback.

The Secretary of the Army, Robert Freohlke, announced last month that as many as 43,000 GI's scheduled for release between this month and next June will be sent home early.

The majority of these men have already been to Vietnam or Korea and can no longer be sent overseas due to their short time remaining in service. In order to maintain an even flow of men entering and leaving the service, the Army is permitting these draftees to be discharged early rather than cutting off those badly needed new men entering through recruitment or conscription.

Mr. President, it now appears that the 50,000 cut will force the Army to involuntarily release servicemen in order to meet this congressional mandate. This is an unbelievable situation when one thinks of the millions of dollars we are spending to induce people to enter the service voluntarily. It certainly will not picture Army service as an attractive career when men who wish to remain on the Army team are being separated against their will.

The third point impacting on the pending manpower problem involves the fact that since July 1 not one man has entered military service through the conscription process.

In the next few days some will stand on the floor of the Senate and declare that the Army and the other services have met their recruitment quotas for the no-draft months of July and August.

This is generally true, but it leaves a false impression and fails to tell the whole story reference our manpower needs.

The Army needs 240,000 new accessions in fiscal year 1972, some 20,000 per month, to fill spaces of the privates, private first class, and corporals rotating out. These men are the backbone of any ground fighting force.

Voluntary enlistments in the Army during July and August averaged 14,000 each month. These numbers may have met the quotas for those months, but on average they are 12,000 men, or 6,000 men per month, short of the average numbers needed during fiscal year 1972.

The Senate must understand that July and August are usually good enlistment months and that a downtrend in enlistments will set in as the winter months approach. Also, these enlistments

were draft-induced as the draft bill is still pending. If the likelihood of not passing this bill increases through further delay, then some of the potential voluntary enlistees for the months ahead will have second thoughts.

Mr. President, it is important to keep in mind that the sole purpose of the draft is to achieve the size and quality of military force necessary to protect the security interests of the United States.

Even as we wind down our involvement in Vietnam and thus reduce the size of our Armed Forces, a requirement still exists for approximately 240,000 new soldiers this fiscal year for the Army alone to meet its manpower needs. This averages about 20,000 men per month any way you figure it. Later this year, or more likely during the election year of 1972, draft calls will go up sharply.

As the services initiate actions designed to improve the attractiveness of a military career and Congress approves legislation designed to help achieve a volunteer army, reliance on the draft should be significantly reduced. However, forecasts indicate for the remainder of the fiscal year manpower needs will exceed expected enlistments by approximately 80,000.

Already the absence of a draft during July and August, and the possibility of no draft until October has forced the Army to modify its training program and the distribution plan of the new soldiers who enlisted.

There is a 5-month lag between the time a man enters the service and the time he completes training. Without the draft the next few weeks a deficit in deployable lower grade trained enlisted personnel will occur during the December 1971–March 1972 time frame. This deficit will require that soldiers newly assigned within the United States and possibly in European units be reassigned to support our Vietnam commitment. Equally dangerous, this shortfall will not permit the manning of other units to desired baseline levels.

Another significant point should be made reference to the no-draft situation. The draft is responsible for approximately 90 percent of the personnel who enter the Army with a civilian acquired skill adaptable to the Army's needs. Without those individuals in the numbers projected for fiscal year 1972, training programs will have to be revised to avoid a shortage in these critical skill areas.

Of equal importance is the adverse effect that a delayed draft is having on the Reserve components. Already slippages in assigned enlisted strength have occurred since July. A recent survey has indicated that many personnel are responding that they are "not interested" when contacted regarding reserve enlistment.

Enlistment in Reserve and Guard units is clearly in a downtrend. A high-level Army paper shows that based on results of the last 8 weeks the Guard is losing 1,500 men per week—I repeat, 1,500 men per week—a potential 1-year loss of 78,000 men.

This same paper indicates that based on the loss rate during the last 5 weeks, the Army Reserve is losing about 568 men weekly, for an annual loss rate of 29,535.

Since the draft has been a major motivating factor for Reserve component enlistments, unit strength and unit readiness will be adversely affected as the no-draft situation continues.

Mr. President, the House acted favorably on the Selective Service Act extension over a month ago. This matter has been before the Senate since last May. In my remarks today I have already outlined the dangers in allowing the draft to remain inoperative. We must not permit our military strength to drop to a level where "mission impossible" will be the situation facing our military commanders.

In conclusion, Mr. President, I ask unanimous consent that the article entitled "Strain of the Vietnam War Weakens Army Elsewhere," written by B. Drummond Ayres, Jr., in the September 13, 1971, issue of the New York Times be printed in the Record at the conclusion of my remarks.

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

**STRAIN OF THE VIETNAM WAR WEAKENS  
ARMY ELSEWHERE**

(By B. Drummond Ayres, Jr.)

WASHINGTON, Sept. 12.—The tremendous strain placed on the United States Army by the Vietnam war has left many of its units that are stationed elsewhere not only demoralized but also unfit for heavy combat.

Officials here say that at least nine of the 11 divisions on active duty outside Southeast Asia are incapable of waging immediate, full-scale war because of manpower and training shortcomings.

Out in the field, at places like Fort Carson, Colo., and Grafenwohr, West Germany, unit commanders worry aloud about what might happen "if the ball goes up."

"I'm afraid we're quite a long way from the early nineteen-sixties, when we were about as good as an Army can get," says Maj. Gen. Donnelly P. Bolton, a Defense Department specialist in unit readiness.

The best prepared of the Army's divisions are still tied down in Vietnam—the 101st Airborne and the 23d Infantry. But even these units, which give the Army a total strength of 13 divisions and about a million men, are beginning to have trouble as the war grinds down and boredom and restlessness set in.

The two divisions outside Vietnam that also have combat ready ratings are the 82d Airborne and the First Mechanized. But they, too, have certain important limitations.

For example, the 82d can move quickly from its base at Fort Bragg, N.C., but it is a lightly armed division.

As for the First, it is a divided unit, with some of its troops stationed at Fort Riley, Kan., and others in Germany.

Of the nine Army divisions rated and unfit for immediate, full-scale combat, several—such as the Third Armored in Germany and the Second Infantry in Korea—are capable of strong holding actions, though not for long periods. These units have most of their troops but need at least six months of intensive training to work up to first-class condition.

Other divisions with bad fitness reports, such as the Fourth Mechanized at Fort Carson and the 25th Infantry in Hawaii, are incapable even of holding actions. They are at least a year and a half from combat readiness.

**MORALE PROBLEMS CITED**

"About all we can do is stay ahead of our paperwork," says Maj. Nicholas Waddock, a Fourth Division officer whose battalion is at half strength.

While the unpreparedness within divisions like the Fourth stems mainly from shortages in manpower and training, morale and disciplinary problems caused by the unpopularity of the war and the draft have aggravated the situation. So, too, have race and drug problems.

The deterioration in readiness began about five years ago when the Johnson Administration, taking politics and economics into consideration, decided to expand the Vietnam fighting force without calling up the inactive reserves and without huge draft levies.

This meant that men and equipment had to be siphoned from divisions stationed elsewhere, such as Korea and Germany.

As the war has slowed, most of the equipment has been returned. But because of continuing political and economic pressures, many of the men coming back have been discharged rather than sent to units short of troops.

Only recently has the flow been diverted.

**RETRAINING NEEDED**

For instance, early this year many of the battalions and brigades in the four divisions in Germany were down to 60 and 70 per cent of their fighting strength. Since then, however, thousands of replacements have been shipped to Europe, and now the divisions there are up to about 90 per cent of fighting strength.

Still, many of the new men must be retrained. Some units have too many infantrymen and not enough mechanics; others have too many mechanics and not enough infantrymen.

And even after the European divisions have reached full strength and trained individual soldiers in the required specialties, units must be trained as a whole—first at company level, then at battalion and brigade levels and finally at division level.

In the last five years, few Army units other than those headed for Vietnam have conducted much training above battalion level.

Some of the Army divisions stationed in the United States have not yet benefited substantially from the new troop replacement effort. Among these are the 25th in Hawaii, the Second Armored at Fort Hood, Tex., and Fort Carson's Fourth Mechanized.

The Fourth has an authorized strength of 17,000 men but has only 11,000, and a disproportionate number of them are officers and sergeants.

**MANY ARE EMBITTERED**

Thus companies are down to 25 to 40 per cent of their fighting strength. Also, one of every three men is trained in an unneeded military specialty, and one of every two men is a Vietnam returnee, a "short-timer" with less than six months to serve.

The Army says that short-timers seldom acquire any sense of belonging to the Fourth. Many have been embittered by Vietnam and the draft and are willing to soldier only enough to get by until their discharge arrives.

Because it has a large number of returnees, the Fourth turns over about 15 per cent of its strength every month, about double the turnover rate for the rest of the Army.

"Things are so bad here," says Capt. Kenneth King, a company commander, "that we've had to put some of our vehicles and weapons in storage. We try to train one day a week. The rest of the time we just keep house."

Even divisions rated as combat-ready have problems with turnover and returnees. At Fort Riley, Col. R. D. Tice, commander of a First Mechanized Brigade, says:

"We've got all our people. But until the war is over, they're going to be coming and

going so much that we're not going to be as good as we should be."

Mr. THURMOND. Mr. President, I would like to remind the Senate of what Secretary Laird of the Defense Department had to say about the urgency of acting on the draft conference report in a letter to the Senator from Mississippi (Mr. STENNIS), chairman of the Armed Services Committee on the Senate, dated September 10, 1971. I quote certain excerpts from that letter:

We urge prompt adoption of the conference report. Further delay can only impact adversely on our national security.

The need for early renewal of the draft authority is critical and has not diminished. It is my conviction that Department of Defense manpower requirements cannot be met without the prompt extension of the draft authority contained in H.R. 6531.

The conclusion some have reached that the draft is not needed because of favorable recruiting results during the temporary absence of draft calls is grossly in error. Analysis of the lottery sequence numbers of enlistments in July show that about half of the men entering were draft motivated. Young men were acting on the assumption that draft calls would be resumed shortly. Another factor to be considered in evaluating recent recruiting results is that the first quarter of the fiscal year is seasonally the most favorable for recruiting. It is a natural time for young men who have finished high school to start a Service career or to enlist for the purpose of discharging their military obligation under the draft act. It is unrealistic to expect enlistments to hold up after the good recruiting months are past if the authority to draft is delayed or terminated.

The delay has had adverse effects which will show up after the first of the year. The Army will suffer shortages of trained personnel who can be assigned to units. On the average, five months are required to complete initial training and processing. Unless draft calls can be resumed in November, I estimate that the expected shortages will adversely affect the readiness of the Army to a significant degree. In addition, the decline in the quality of personnel needed to meet highly technical training requirements in all Services is likely to continue and worsen. There is no question that the draft authority is needed now in the interest of the national security.

Mr. President, those are the words of the Secretary of Defense, the Honorable Melvin Laird. I ask the Senate to heed those words. He says that our national security is going to be jeopardized unless this draft bill passes promptly. I hope the Senate will not delay the passage of this bill, and will act promptly to enact it into law.

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

Mr. GRAVEL. Mr. President, will the Senator withhold that suggestion?

The PRESIDING OFFICER. Will the Senator withhold, at the request of the Senator from Alaska?

Mr. GRAVEL. Mr. President, I seek recognition.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

Mr. THURMOND. Mr. President, I object at this time.

The PRESIDING OFFICER. Objection is heard. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator from Alaska is recognized.

#### FEASIBILITY OF VOLUNTEER ARMY

Mr. GRAVEL. Mr. President, the past 2 months have given us an unmatched opportunity to see what would happen when young men were not being conscripted into the Armed Forces. As we all know, the authority to induct men ended at the end of June.

Many would have had us believe that enlistments would fall drastically were the draft not there to act as a club in stimulating young men to enlist. The same people have been using this argument to speak against final termination of the draft and against a totally volunteer force.

I am happy to report that the nay sayers have been proven wrong by the experience of the past 2 months. Instead of declining, enlistments actually increased over the number for the same months a year ago.

In July of this year, 35,800 men enlisted compared with 32,200 in July of 1970. In the month of August, 39,500 men enlisted compared with 32,400 the year before. These increases, amounting to 10,700 men, are significant. The experience over the past years indicates that enlistments decline in July and August from a high in June. This year there was such a decline but the actual number who enlisted was higher than the year before.

It is also very significant that the increase in enlistments during August over July this year, of some 3,700 men, is a great deal higher than the increase between the same 2 months last year when it was only 200 men.

These figures are truly surprising. Nothing which the Department of Defense has done can completely explain the increases. In fact, it appears that the factors which are generally seen as motivating enlistments were dormant during these months, and yet the enlistments rose.

What are those motivating factors? And why were they not functioning during these months?

First, the draft can correctly be considered a motivating factor for enlistments, but only in a limited way. The primary effect of the carrot-stick function of the draft is upon the young man who receives an order to report for his physical, knowing that an induction notice would soon follow. He then rushes to his local recruiter to sign up and, hopefully, negotiate for better treatment than he would receive as a draftee.

I need not point out that there was no fear of induction notices being mailed in the months of July and August, and yet enlistments went up appreciably.

Another motivating factor is the paid

advertising program with which the Army has experimented this year. We are told that its effects were considerable—a 600-percent increase of enlistments into the combat arms during the months that the advertisements were seen. The first wave of the program concluded in June. A second wave was postponed. The Department of Defense has explained to me that it was because Congress had not approved the draft bill. The reasoning was that the advertising program was to focus on the pay increases, and since they had not been authorized by Congress, the advertising program was forced into postponement.

This argument does not convince me, and I believe that there are other reasons for the postponement of the advertising. I am unconvinced, because I am sure that advertising would have been in preparation long before the specific dollar amounts were approved by either House of Congress. This would have been necessary if the campaign were to begin in July. Further, what was in preparation must have been based upon the fact of an increase, not specified dollar amounts. The debate in Congress has never been on whether there would be any increase. Rather it has been on the amount of such increase. I fail to see why the advertising program could not have continued especially in light of other steps taken by Selective Service during the same period of time, when the authority was lacking.

These steps include the holding of the lottery for next year's pool of potential draftees and the ordering of young men to preinduction physicals. Further, one new provision in the current unapproved draft bill has already been acted upon. Selective Service Director Curtis Tarr has said that student deferments will not be granted to students entering college for the first time. This is in keeping with a new provision of the draft bill. It is interesting that the President has said he would never eliminate student deferments without specific authorization by Congress. Now, with such authorization pending, but not approved, he has acted.

I do not understand the logic which can permit the Director of Selective Service to anticipate pending law while at the same time an advertising program can not proceed if Director Tarr is not acting illegally, I fail to see how an advertising program based on the fact of a pay raise would have been beyond the scope of the law.

The experience of July and August indicates to me that a volunteer army can be a reality. I am disappointed, however, that the Pentagon did not take advantage of this time to conduct a true experiment on recruiting an entirely volunteer force.

If it had tried to prove that it was possible with aggressive recruitment and the massive advertising campaign which had been scheduled, we may have found that the total manpower needs could have been met in both months without the draft. The intended draft call had been only 16,000 men for the 2 months combined. Considering that 75,000 men

enlisted during those months, it does seem possible that an additional 20 percent could have been attracted by advertising.

Instead, it appears, at least as far as the advertising campaign is concerned, that the Defense Department tried to prove that a totally volunteer force was not possible. Fortunately, such a case was not made convincingly.

Mr. President, I am convinced by the facts which I have related that an all-volunteer force is possible, not next year or the year after, but today. I therefore will do all I can to end the draft now.

#### APPOINTMENT OF A CONFEEE ON PUBLIC WORKS APPROPRIATION BILL H.R. 10090

Mr. BYRD of West Virginia. Mr. President, at the request of the distinguished chairman of the Appropriations Subcommittee on Public Works, the Senator from Mississippi (Mr. STENNIS), I ask unanimous consent that the distinguished Senator from New Mexico (Mr. ANDERSON) be named as a conferee on the public works appropriation bill, H.R. 10090.

The PRESIDING OFFICER (Mr. STEVENSON). 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 second assistant legislative clerk proceeded to call the roll.

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

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

#### EXTENSION AND REVISION OF THE DRAFT ACT AND RELATED LAWS—CONFERENCE REPORT

The Senate continued with the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6531) to amend the Military Selective Service Act of 1967; to increase military pay; to authorize military active duty strengths for fiscal year 1972; and for other purposes.

Mr. STENNIS. Mr. President, I am prepared to proceed with a speech in response to points which have been made which claim to be grounds for not approving the conference report. The material in the speech is condensed but is important. I prepared it for delivery today. However, in view of the hour and the approaching time when we will be going to the funeral services of our late lamented colleague, Winston L. Prouty of Vermont, I think it will be better to pass the opportunity now and wait until more Senators can be present.

I shall therefore make this presentation tomorrow but I did not want the

RECORD to be blank as to why the proponents of the conference report have not made some response to some of the things which have been said.

I have given the reasons why and I hope to have a chance tomorrow, or again on the next day, to make this presentation.

I yield the floor.

#### QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

#### MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1971—JOINT REFERRAL TO COMMITTEE ON COMMERCE AND COMMITTEE ON PUBLIC WORKS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the bill (H.R. 9727) relating to the Marine Protection, Research, and Sanctuaries Act of 1971, which is being held at the desk, be referred jointly to the Committee on Commerce and the Committee on Public Works.

The PRESIDING OFFICER laid before the Senate a bill (H.R. 9727) to regulate the dumping of material in the oceans, coastal and other waters, and for other purposes, which was read twice by its title.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

#### ORDER FOR ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business 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 THURSDAY, SEPTEMBER 16, 1971, AT 10 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until 10 o'clock Thursday morning.

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 second assistant legislative clerk proceeded to call the roll.

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

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

#### ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that immediately following the recognition of the two leaders under the standing order tomorrow there be a period for the transaction of routine morning business for not to exceed 15 minutes with statements limited therein to 3 minutes.

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

#### ORDER FOR CONFERENCE REPORT ON EXTENSION OF THE DRAFT TO BE LAID BEFORE THE SENATE TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that upon the conclusion of the routine morning business tomorrow the Chair lay before the Senate the conference report on the extension of the draft, which is highly privileged.

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

#### ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON THURSDAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Thursday, immediately following the recognition of the two leaders under the standing order, there be a period for the transaction of routine morning business for not to exceed 15 minutes, with statements therein limited to 3 minutes.

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

#### ORDER FOR CONSIDERATION OF CONFERENCE REPORT ON EXTENSION OF THE DRAFT ON THURSDAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of routine morning business on Thursday, the Senate return to the consideration of the conference report on the extension of the draft, which is a privileged matter.

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. I assume this will be the final quorum call of the day.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

(The remarks of Mr. BYRD of West Virginia when he offered on behalf of Mr. WILLIAMS the introduction of S. 2515, and two statements, an analysis, and text of the bill are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

#### PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 12 o'clock noon.

After the recognition of the two leaders under the standing order, there will be a period for the transaction of routine morning business for not to exceed 15 minutes, with statements limited therein to 3 minutes.

Following the period for the transaction of routine morning business, the Senate will return to the consideration of the privileged matter which is before the Senate, the conference report on the extension of the draft.

There will be no rollcall votes on tomorrow. Any votes which would otherwise occur will be put over until Thursday.

During the afternoon of tomorrow, I understand from the distinguished majority leader, the Senate will stand in recess for a brief period while the funeral services are being conducted in Vermont for our late departed colleague, Senator Winston Prouty.

Following the services there, the Senate will resume its consideration of the conference report.

When the Senate completes its business tomorrow, it will stand in adjournment until 10 a.m. on Thursday 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, and as a further mark of respect to the memory of the late Senator Winston L. Prouty, of Vermont, that the Senate now stand in adjournment until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 12 o'clock and 32 minutes p.m.), the Senate adjourned until tomorrow, Wednesday, September 15, 1971, at 12 o'clock noon.

#### NOMINATION

Executive nomination received by the Senate September 14, 1971:

#### U.S. DISTRICT COURTS

William J. Bauer, of Illinois, to be a U.S. district judge for the northern district of Illinois, vice Joseph S. Perry, retiring.