By Mr. ANDERSON of California:

H.R. 11084. A bill to increase the Government National Mortgage Association purchase limit in high-cost areas; to the Committee on Banking and Currency.

By Mr. ASPIN:

H.R. 11085. A bill to prohibit the transportation in other than vessels of the United States of Alaska crude oil and products made therefrom; to the Committee on Merchant Marine and Fisheries.

By Mr. ASPIN (for himself, and Mr. BADILLO, Mr. BINGHAM, Mrs. CHISHOLM, Mr. CONTE, Mr. DENT, Mr. DRINAN, Mr. GIBBONS, Mr. HALPERN, Mr. HANLEY, Mr. HECHLER of West Virginia, Mrs. HECKLER of Massachusetts, Mr. KOCH, Mr. LENT, Mr. MATSUNAGA, Mr. MORSE, Mr. PIKE, Mr. ST GERMAIN, Mr. STOKES, and Mr. TIERNAN):

H.R. 11086. A bill to prohibit the export of domestically extracted crude oil, and any petroleum products made from such oil, unless Congress first approves such exportation; to the Committee on Banking and Currency.

By Mr. BENNETT (for himself, and Mr. FISHER, Mr. FULTON of Pennsylvania, Mr. BARING, Mr. PERKINS, Mr. HALEY, Mr. FASCELL, Mr. QUIE, Mr. DENT, Mr. NIX, Mr. DANIELS of New Jersey, Mr. NELSEN, Mr. UDALL, Mr. GIBBONS, Mr. MATSUNAGA, Mr. CARTER, Mr. DUNCAN, Mr. VIGORITO, Mr. BLACKBURN, Mr. BRINKLEY, Mr. GALIFIANAKIS, Mr. BIAGGI, Mr. CHAPPELL, Mr. MCCORMACK, and Mr. BAKER):

H.R. 11087. A bill to provide Federal grants to assist elementary and secondary schools to carry on programs to teach moral and ethical principles; to the Committee on Education and Labor.

By Mr. EDWARDS of Alabama:

H.R. 11088. A bill to amend title XI of the National Housing Act to authorize mortgage insurance for the construction or rehabilitation of medical practice facilities in certain areas where there is a shortage of doctors; to the Committee on Banking and Currency.

By Mr. EDWARDS of California (for himself and Mr. DELLUMS):

H.R. 11089. A bill authorizing the Secretary of the Army to establish a national cemetery at Camp Parks, Calif., for northern California; to the Committee on Veterans' Affairs.

By Mr. FUQUA:

H.R. 11090. A bill to repeal the manufacturers excise tax on farm trucks; to the Committee on Ways and Means.

By Mr. GOODLING (for himself, Mr. DINGELL, Mr. KARTH, Mr. MCCLOSKEY, Mr. CONTE, Mr. NEDZI, and Mr. Moss):

H.R. 11091. A bill to provide additional funds for certain wildlife-restoration projects, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. HALEY:

H.R. 11092. A bill to provide for reconveyance of the original Indian donors, their heirs, or devisees, of lands that are surplus to tribal needs, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. HALL:

H.R. 11093. A bill to amend section 403(b) of the Internal Revenue Code of 1954; to the Committee on Ways and Means.

By Mr. KEE:

H.R. 11094. A bill to amend the tariff and trade laws of the United States to promote full employment and restore a diversified production base; to amend the Internal Revenue Code of 1954 to stem the outflow of U.S. capital, jobs, technology, and production, and for other purposes; to the Committee on Ways and Means.

By Mr. MIKVA:

H.R. 11095. A bill to amend the District of Columbia Unemployment Compensation Act in order to conform to Federal law, and for other purposes; to the Committee on the District of Columbia.

By Mr. PEPPER (for himself, Mr. BEGICH, Mr. BRADEMAS, Mr. BRASCO, Mr. DELLUMS, Mr. EILBERG, Mr. FORSYTHE, Mr. HANNA, Mr. HARRINGTON, Mr. HAWKINS, Mr. HORTON, Mr. KEE, Mr. METCALFE, Mr. MITCHELL, Mr. MOSS, Mr. RANGEL, Mr. ROSENTHAL, Mr. ST GERMAIN, Mr. SCHEUER, and Mr. CHARLES H. WILSON):

H.R. 11096. A bill to promote the public welfare; to the Committee on Rules.

By Mr. PRICE of Texas:

H.R. 11097. A bill to amend section 103 of the Internal Revenue Code of 1954; to the Committee on Ways and Means.

By Mr. ROBISON of New York:

H.R. 11098. A bill to amend the Federal Voting Assistance Act of 1955 in order to enlarge the class of persons provided the opportunity to vote in Federal, State, and local elections by absentee ballot; to the Committee on House Administration.

By Mr. WALDIE:

H.R. 11099. A bill to provide for the care, housing, education, training, and adoption of certain orphaned children in Vietnam; to the Committee on the Judiciary.

By Mr. BOB WILSON:

H.R. 11100. A bill to amend the Public Buildings Act of 1959, as amended, to provide for financing the acquisition, construction, alteration, maintenance, operations, and protection of public buildings, and for other purposes; to the Committee on Public Works.

By Mr. WYATT (for himself and Mr. ESCH):

H.R. 11101. A bill to amend the Economic Stabilization Act of 1970 to permit the maintenance of prices, rents, wages, and salaries at levels contracted for prior to August 15, 1971; to the Committee on Banking and Currency.

By Mr. DELLUMS:

H.R. 11102. A bill to ban the manufacture and the military use and procurement of napalm and other incendiary weapons; to the Committee on Armed Services.

H.R. 11103. A bill to suspend the production and deployment of multiple independently targetable reentry vehicles (MIRV's), antiballistic-missile systems (ABM's), and related site construction until the conclusion of the strategic arms limitations talks (SALT); to the Committee on Armed Services.

H.R. 11104. A bill to amend the Voting Rights Act of 1965 to provide for the registration of students at the institutions of higher education where they are in attendance; to the Committee on House Administration.

H.R. 11105. A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to require the establishment of certain standards with respect to light banks, governors, and speed-control panels; to the Committee on Interstate and Foreign Commerce.

H.R. 11106. A bill to ban from commerce toys which are copies of or resemble firearms or destructive devices; to the Committee on Interstate and Foreign Commerce.

H.R. 11107. A bill to amend section 402 of title 23 of the United States Code relating to informational, regulatory, and warning signs, markings and signals; to the Committee on Public Works.

H.R. 11108. A bill to increase servicemen's group life insurance coverage to a maximum of $50,000, to liberalize coverage under the GI life insurance programs, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. MIZELL (for himself and Mr. THOMPSON of Georgia):

H.J. Res. 914. Joint resolution authorizing the President to designate the first week in March of each year, as "National Beta Club Week"; to the Committee on the Judiciary.

By Mr. PRYOR of Arkansas:

H. Con. Res. 416. Concurrent resolution extending congratulations and greetings to the University of Arkansas on its 100th anniversary; to the Committee on the Judiciary.

SENATE—*Tuesday, October 5, 1971*

The Senate met at 9 a.m. and was called to order by the President pro tempore (Mr. ELLENDER).

PRAYER

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

Our Father God, on this International Day of Bread, we thank Thee that in the creative process fertile fields have brought forth grain and grain has been transformed into flour and flour into bread, the staff of life from the beginning even until now. We thank Thee for the bread of history, for the bread of daily ration, and for the bread of hope.

As Thou didst send manna to Thy people in the wilderness long ago so in the wilderness of this present world with its anxiety, its fear, its want, and its war, send mankind bread from heaven. May we pray as the Galilean taught "Give us this day our daily bread" and give bread to those who do not have it. While we eat the bread which sustains the body may we be fed in spirit by one who said "I am the bread of life, he that cometh to Me shall never hunger."

In the name of the Divine Provider. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, October 4, 1971, be dispensed with.

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations placed on the Secretary's desk, under New Reports.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDENT pro tempore. The nominations placed on the Secretary's desk under New Reports on the Executive Calendar will be stated.

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE COAST GUARD

The legislative clerk proceeded to read sundry nominations in the Coast Guard which had been placed on the Secretary's desk.

The PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc; and, without objection, the President will be immediately notified of the confirmation of these nominations.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

ORDER OF BUSINESS

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

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Illinois (Mr. PERCY) is now recognized for 15 minutes.

REVITALIZING THE AMERICAN ECONOMY

Mr. PERCY. Mr. President, I very much appreciate this special order this morning. I realize that the Senate faces a very heavy schedule, but one of the most important current tasks of the Congress is to respond creatively and positively to the President's efforts to find a basis for economic recovery in America. For that reason, I felt it important today to try to put before the Senate as comprehensive a statement as I possibly could on the underlying factors that we face in revitalizing the American economy. I hope that this will provide some insight into the complexities of the problems that we are going to have to resolve. I trust that we shall work together with the President to meet a national challenge to revitalize the American economy.

Mr. President, a strong national economy is the prerequisite for meeting our country's pressing goals. The decade of the 1970's has begun badly. Our economic strength has been impaired by a continuing high rate of inflation, high unemployment, stagnant productivity, weakened consumer confidence, excessive interest rates, and a crisis in financing State and local governments. We have lacked the elemental economic strength to pursue with adequate vigor our most important domestic economic and social objectives.

During the decade of the 1970's our goals must be to achieve a high rate of real economic growth with stable prices, the fullest possible employment, high rates of productivity growth, and full and efficient use of our material resources—all within the context of a newly vigorous free, competitive economic system.

We know, however, that economic prosperity for itself is no longer enough. We cannot be content with satisfaction only about the rate of growth of the economy, numbers of people employed, the size of our gross national product. These numerical values are significant, but we must measure our new prosperity, instead, in the quality of the lives of our people and the degree to which we can fulfill more important human objectives.

The President's declaration in August of bold, creative, and badly needed new economic initiatives provides us now with an unprecedented opportunity to solve the nagging problems of inflation and unemployment and to build the base for more lasting prosperity. This will not be an easy task. The roots of the economic dislocations with which we began the decade extend deep into the 1960's.

I think it will be helpful to review briefly the genesis of today's economic problems.

INFLATION

Inflation, the central problem, began in 1964. Spurred by increasing consumer purchasing power and higher Government expenditures, the inflationary spiral took firm hold in 1966, when the demands of a full-scale foreign war caused product shortages and other economic distortions. These were intensified by the failure of the Johnson administration to take restrictive fiscal policy action through tax increases.

The period was marked by a speculative exuberance in financial markets that has probably never been equaled. The stock market saw unprecedented activity. Speculative interest in "go-go" stocks with high technology orientation, to the exclusion of shares of tested companies worthy of long-term, sound investment, was intense, and helped fuel the great upsurge of corporate mergers that marked the late 1960's. Corporations permitted ratios of debt to equity to increase dramatically, while liquid asset holdings dropped sharply. The commercial paper market expanded enormously.

Prices reflected the full force of demand-pull inflation. The Consumer Price Index, which in the period from 1961 to 1964 rose from 89.6 to 92.9, increased from 94.5 in 1964 to 116.3 in 1970. Soaring prices soon led to demands for large wage increases in all sectors of the economy. Thus, toward the end of the 1960's the foundation was laid for the broad-based, pervasive cost-push inflation that has refused to respond to the dampening policies of the past several years, and which has led to the current wage-price freeze.

We should not, however, let continued inflation disguise the real achievements of President Nixon's initial economic program. As his anti-inflationary economic policies began to take effect, artificially high exuberance about speculative shares disappeared and investors began to examine the real worth of hastily formed conglomerates. When mismanagement of the Nation's largest rail carrier, the Penn Central, created a crisis in the commercial paper market and a liquidity scare, the Nation's business and financial institutions began to reassess old policies in earnest. Vigorous efforts to restore sound financial operations got underway.

Corrections in financial markets have been matched by great improvements in business operations. Corporations have moved to increase profits, which during the late 1960's had dropped markedly. Stringent efforts were made to bring costs under control, and new attention was given to paring uneconomic ventures that had been kept alive by the euphoria and exuberance of inflation. Efforts to restore productivity growth, which had ceased entirely during 1969 and the first quarter of 1970, were begun. The result was a sudden increase in output per man-hour in the second quarter.

The President's preliminary economic program was entirely successful in correcting major elements of instability. Demand-pull inflation was killed, and other improvements were made. As Dr. Arthur Burns, Chairman of the Federal Reserve Board, said in a much noted speech at Pepperdine College on December 7, 1970:

> Widespread changes in business and financial practices are evidence that genuine progress is being made in the long and arduous task of bringing inflationary forces under control. We may now look forward with some confidence to a future when decisions in the business and financial community will be made more rationally, when managerial talents will be concentrated more intensively on efficiency in processes of production, and when participants in financial markets will avoid the speculative excesses of the recent past.

I have explored this history at some length because I think it is important, in the present highly charged political climate, to remind ourselves of the extremely unhealthy economy that this administration inherited. A virtue of hindsight is that it lends clarity. As I review the economy of the late 1960's, I am struck by its serious instabilities and its potential for grave economic crisis.

President Nixon had no choice but to implement deflationary policies, and they took effect. By definition a deflation is unpleasant. It does mean lessened economic activity, and potentially a loss of jobs. I have little patience with those who were themselves responsible for permitting the forces of inflation and disequilibrium to generate and to gain such dangerous momentum, and who now criticize the President for "permitting" unemployment and not "ending" inflation.

Admittedly the economic policies of the last several years have not cured all the economic ills, but the major disease, rampant inflation, is an especially serious one. Unemployment has risen too high, and inflation has continued too long, but there are no simple or quick solutions to such problems. Our economy is an exceptionally complex one, and

economic policy is at best an arcane and imprecise art—much more an art than a science. If one lesson has become clear in the past 3 years, it is that the long-accepted standard tools of fiscal and monetary policy are not very effective against pervasive cost-push inflation. Their failure led the President to resort to administrative intervention in the marketplace.

NEW ECONOMIC POLICY

The key elements of the new economic policy are to stimulate business investment in order to generate economic activity, control wages and prices in order to stop inflation, end the sale of gold for dollars in order to prevent balance-of-payments crises, stimulate consumer buying, and restore confidence in the American economy.

ECONOMIC STIMULUS

Stimulation of business investment is important because, in the period immediately before August 15, investment in new plant and equipment, a key to economic recovery, was stagnant. Business investment was slow to expand for at least two reasons: The existence of substantial excess capacity, and the profit equeeze of the past few years. In addition, economic recovery was being impeded by lack of consumer spending. Retail sales had shown a significant improvement in April 1971, but this indicator failed to sustain its growth.

Thus, in August it was clear that the recession had ended, but that recovery was sluggish at best. The August edition of the Chase Manhattan Bank's "Business in Brief" said:

> Restoration of the Federal investment tax credit would strengthen and speed up the recovery in capital investment, *which is the key ingredient for a broad-based, more rapid restoration of economic growth* (emphasis added).

Before the announcement of the President's plan, independent economic analysts had indicated that activity in the investment sector was the most important requirement for broader economic recovery. I stress this because it is, in part, the answer to those in Congress and outside who have attacked the investment tax credit so sharply for being an inordinate windfall for business. These critics have argued that existing excess capacity should be more fully used before creating new capacity, and that, instead, stimulation of consumer demand is the sole key to generating broader economic recovery.

These criticisms are, in my view, unsound. Consumers in general have adequate purchasing power. In the second half of 1970 and first half of 1971 savings at commercial banks by individuals increased $5.6 billion. Savings at mutual savings banks increased in about the same proportion. Savings at savings and loan associations increased more than $16 billion in the same period, a very striking increase. Saving as a percent of disposable income was 7.9 percent in 1970, and 8.1 percent in the first half of 1971, compared to an average rate of 6.3 percent in the period 1961–70.

These remarkable jumps in savings reflected both a lack of consumer confidence and a return of more prudent consumer financial behavior. Simply generating additional consumer spending power through broad, nonearmarked tax cuts, for example, would not of itself lead consumers to spend and might not generate economic activity if confidence were still lacking. It might, instead, generate a backlog of potential consumer spending that at some future point could be quickly released with overstimulative effects and thus a regeneration of demand-pull inflation.

Finally, economists have testified, and empirical evidence leads to the conclusion, that the investment credit approach will have a job-creating effect. It is not a windfall to business whose sole effect will be to increase business profits, though this may well be one effect. Perhaps I should reiterate that the credit can only be claimed for sums spent on capital equipment. New orders for capital equipment, such as machine tools and trucks, will lead to new activity and jobs in those industries, and will open up new jobs in existing industries as a result of the installation of new processes and new product lines. It will help reduce unit costs of production, enable wage increases to be absorbed, and increase the international competitiveness of American products.

These are the reasons why I defend strongly the quick enactment of the investment tax credit at an effective level. The administration argued that the credit should be 10 percent the first year in order to give a strong spurt of impetus to investment, then be cut back to 5 percent. Others argued that this would result in an unhealthy downturn at the end of the first period, creating a situation of feast and famine in capital equipment industries. I believe that a constant level of 7 percent is entirely acceptable, and, moreover, I believe that it should be maintained as a permanent part of the tax code.

I have several reasons for this view. First, turning the credit on and off creates dislocations that are often unfair to industry, and which in the past have seemed to create unplanned-for and unwanted distortions by taking effect at the wrong time. Second, the credit is likely to be very important to maintaining an internationally competitive economy.

As Dr. Robert Roosa, one of the originators of the 1962 investment tax credit, argued before the Joint Economic Committee on September 20, the investment tax credit is needed on a long-term basis as an offset to the competitive disadvantage that occurs because of particularly high U.S. labor costs.

In sum, then, the investment tax credit is needed as a protection against the cost-push inflationary pressure of constant wage increases, as a measure to make the United States more competitive internationally, as a spur to productivity, and, particularly at this moment, as a necessary stimulant that will help create new jobs and industrial activity. It should cease to be used in a haphazard way, and should become a lasting feature of the U.S. tax structure.

My support of the 7-percent tax credit does not, however, extend to its "Buy American" clause, patriotic in sound but actually anti-American in its ultimate effect. I am seriously concerned about this proposal, which would have several adverse effects.

First, for those industries that depend on foreign suppliers of capital equipment, the buy American provision combined with the 10-percent import surcharge will provide a strong disincentive to invest and will discourage modernization. And it is doubtful that our new restrictions will result in purchases of U.S.-made equipment, which may not be comparable or appropriate. It is significant that both France and Germany do not apply their border taxes to imported capital equipment in order not to discourage their industries from purchasing the best, most modern equipment available, much of which is made in America. In 1970 the United States had a $10 billion surplus in capital goods trade with the rest of the world.

Mr. President, I ask unanimous consent to include in the RECORD at this point a table showing U.S. exports and imports of capital goods including trucks and buses in the period 1964–1970.

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

U.S. EXPORTS AND IMPORTS OF CAPITAL GOODS (INCLUDING TRUCKS AND BUSES) 1964–70

[Value in millions of dollars]

Capital goods, including trucks and buses	1964	1965	1966	1967	1968	1969	1970
Exports	7,820	8,375	9,259	10,325	11,504	12,878	14,926
Imports	1,063	1,502	2,310	2,683	3,259	3,934	4,512
Favorable U.S. balance	6,757	6,873	6,949	7,642	8,245	8,944	10,414

Source: U.S. Census Bureau.

Mr. PERCY. Second, it adds a triple element of disadvantage to a foreign supplier. Imagine the frustration of a German supplier of machinery when faced with substantial revaluation of this currency, a new U.S. import tax of 10 percent, and an additional discrimination in the form of the tax credit. I suggest that an American supplier of machinery to Germany consider how strongly adverse his reactions would be to similar actions by that country, and how quickly he would urge his own government to retaliate.

Third, since the 1967 Kennedy round

of trade negotiations, one of the key items on the U.S. trade agenda has been to change the "buy national" provisions maintained by European countries. Foreign countries both, first, maintain more discriminatory national buying provisions than the United States, and second, very often do not publish them or otherwise make them known, whereas the U.S. provisions, which are in general modest, are published in law and administrative rulings. I suggest that a new American buying provision of this kind will impede progress toward a truly international solution of this complex nontariff barrier to trade. Our objective should be to create an international code of acceptable standard practices governing national buying, similar to the International Antidumping Code. This important long-term objective should not be impaired for any short-term payments effect the tax credit's Buy American provision might bring.

The House Ways and Means Committee, in its decisions on the President's tax proposals which were reported to the House last week, gave the President the power to suspend the Buy American provision under certain narrow conditions. Nonetheless, it remains linked to the import surcharge. I think this is dangerous because it will have the effect of strengthening any movement to retain the surcharge, and thus make its removal more difficult. This provision should be eliminated from the bill, and I will vigorously oppose its enactment by the Senate. At the very least, we should give the President the power to eliminate the Buy American provision at his discretion, in order to avoid the serious economic distortions that would occur in the unfortunate event that the surcharge is retained for any substantial period.

ACCELERATED DEPRECIATION

For years I have argued for a modernized depreciation schedule. I am very pleased that the schedule proposed by the Treasury in 1970 has been in effect since June of this year, although I can understand why businessmen have been hesitant to use it pending the settlement of suits contesting the legality of the Treasury's action and possible congressional action on it.

Significant evidence has been presented to show that the old U.S. schedules were not permitting adequate depreciation. As Dr. Henry Wallich testified to the Joint Economic Committee on September 21, 1971:

> Prior at least to the introduction of the new depreciation rules, business was underdepreciating its capital equipment at a rate of perhaps 15 percent below replacement requirements.

The U.S. schedules, outdated by economic change, had fallen well behind those of our foreign competitors prior to the Treasury's action. The President's Task Force on Business Taxation reported that U.S. rules permitted a cost recovery allowance of only 7.7 percent in the first year, against a first year write-off of 16.5 percent for West Germany, 20 percent for Italy, 21.5 percent for France, 34.5 percent for Japan, and 57.8 percent for the United Kingdom in the period 1967–68. It seemed to me, therefore, that the Treasury's proposed change in the "first year convention" to permit fuller depreciation of assets in the first year was necessary to make U.S. practice more comparable to foreign practice. And, the Treasury's action in shortening guideline lives by 20 percent was a necessary modernization of the schedules to reflect the many economic changes that have occurred during the past decade. I believe, as I testified at Treasury hearings, that these changes are necessary to increase our rate of reinvestment, which was 16.5 percent of GNP in 1967–68, compared with 23 percent in West Germany and 34 percent in Japan in the same period.

Mr. President, I ask unanimous consent, to include in the RECORD at this point a table prepared by the Office of Tax Analysis of the Treasury which compares capital costs of manufacturing machinery and equipment, as influenced by income tax policies, in 10 major industrial countries. This interesting table shows that, in 1970, the United States without accelerated depreciation and the investment tax credit, gave far less favorable treatment to recovery costs of manufacturing equipment than these major competitors. With the accelerated depreciated allowance as implemented by the Treasury in June this year and the 10-percent credit, U.S. practice becomes much more comparable. With accelerated depreciation as modified by the Ways and Means Committee, and a 7-percent investment tax credit, U.S. practice becomes somewhat more comparable with other countries, but not as favorable as, for example, Japan.

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

COMPARATIVE CAPITAL COSTS OF MANUFACTURING MACHINERY AND EQUIPMENT AS INFLUENCED BY INCOME TAX POLICIES: CORPORATION INCOME TAX RATES, DEPRECIATION ALLOWANCES, AND INVESTMENT ALLOWANCES AND CREDITS; MAJOR INDUSTRIAL COUNTRIES, 1971

[Country, comparative cost of capital, and United States, 1970=100]

United Kingdom	79.1
Japan	81.1
Italy	81.9
West Germany	82.8
Sweden	83.0
Belgium	84.7
France	89.7
The Netherlands	94.1
Canada	97.2
United States (1970)	100.0
United States with ADR	95.6
Plus 5 percent investment credit [1]	88.9
Plus 7 percent investment credit [1]	86.2
Plus 10 percent investment credit [1]	82.1
United States with ADR, less modified first-year convention	96.6
Plus 5 percent investment credit	89.8
Plus 7 percent investment credit	87.1
Plus 10 percent investment credit	83.0

[1] Effective credit assumed to be unaffected by income limitation for purposes of international comparisons.

Office of the Secretary of the Treasury, Office of Tax Analysis, September 21, 1971.

Mr. PERCY. Mr. President, I am pleased that the Ways and Means Committee adopted, with the exception of the broadened first year convention, a major part of the Treasury's changes. I regret the new first year convention was not included, because I believe that, even with the investment credit, it is desirable to achieve greater equalization of U.S. and foreign practice in this area. I will work to reinstate this provision in the Senate.

In summary, therefore, I believe that reinstatement of the investment tax credit and modernized depreciation regulations is appropriate and necessary to U.S. competitiveness and productivity. It is true—even as modified by the Ways and Means Committee—they will represent a loss of taxpayer liabilities totaling some $5.3 billion in calendar year 1972—$3.6 billion for the investment credit and $1.7 billion for modified ADR. But I argue that they will materially broaden the base of economic activity and thus generate additional tax revenues. The two measures provide a necessary stimulus in the most important job-creating sector of the economy.

DOMESTIC INTERNATIONAL SALES CORPORATION—DISC

The DISC proposal as recommended by the administration would permit businesses to establish separate corporations for the purpose of their export trade. Taxes on export income—which must be 95 percent of the receipts of a DISC—would be deferred as long as used in the corporation's export business, loaned to export producers or invested in certain assets, and not paid out to shareholders. Upon payout, the income would be fully taxed.

Opponents of DISC have argued that one bad effect of the provision as proposed by the administration would be to permit companies which are already significant exporters to create a DISC, and, without increasing export sales, to obtain the benefits of tax deferral. In this sense the proposal would provide additional immediate income to a corporation without commensurate gain for the Government. One advantage of DISC would be to treat income earned from sales of U.S. exports in foreign markets in the same way as income earned by U.S. corporations physically located in those markets.

Another disadvantage would be a loss of Treasury revenues, approximating $600 million per year, according to a 1970 staff study of the Congressional Joint Committee on Internal Revenue Taxation. The joint committee estimated that if the entire tax saving of $600 million were passed on in the form of reduced export prices, U.S. exports would increase by only $300 million. And, other doubts have been raised about the effects of the tax deferral and the possible encouragement of new foreign tax havens.

Though I favored the DISC proposal when Congress considered it as a part of the 1970 trade bill, I do not now support it as proposed by the administration. More fundamental economic adjustments hopefully will make it unnecessary. There have already been substantial revaluations of foreign currencies, and there are likely to be further revaluations. Such currency changes make U.S. exports cheaper in terms of other currencies and should therefore stimulate

our exports. Moreover, application of the investment tax credit and ADR will help increase U.S. productivity and international competitiveness. I am more inclined to support the DISC provision as modified by the Ways and Means Committee to apply essentially to additional exports. This change cuts the tax cost of the DISC provision to a negligible amount in 1972, only $100 million in 1973, and $200 million in 1974.

Mr. President, I ask unanimous consent that tables showing the costs of the President's proposed tax bill as opposed to the Ways and Means Committee's bill be included in the RECORD at this point. These statistics relate to the above discussions of the investment credit, depreciation rules and DISC, and also to personal and excise tax changes which I will discuss below.

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

TREASURY PROPOSAL [1] VERSUS PRESENT LAW

[In billions of dollars]

	Calendar year of liability					Fiscal year receipts	
	1971	1972	1973	1974	1975	1972	1973
Investment credit	−1.6	−4.5	−2.9	−2.7	−2.9	−2.7	−4.1
DISC		−.3	−.6	−.6	−.6	−.1	−.4
Eliminate first year convention in ADR							
Increase minimum standard deduction							
Increase standard deduction		−.3				−.1	−.2
Increase exemption		−1.9				−.8	−1.1
Repeal automobile excise tax	−.8	−2.2	−1.9	−1.8	−1.9	−2.2	−2.0
Repeal tax on pickup trucks							
Correction of withholding schedules							
Total	−2.4	−9.2	−5.4	−5.1	−5.4	−5.9	−7.8

[1] Does not include ADR or import surcharge as they were done by administrative action and are present law.

Note: Figures are rounded and will not necessarily add to totals.

EFFECT OF WAYS AND MEANS COMMITTEE ACTION (AS OF SEPT. 22, 1971)

[In billions of dollars]

	Calendar year of liability					Fiscal year receipts	
	1971	1972	1973	1974	1975	1972	1973
Investment credit	−1.5	−3.6	−3.9	−4.2	−4.5	−2.4	−3.6
DISC		−.1	−.2	−.2	−.2	(1)	−.1
Eliminate first year convention in ADR	+2.1	+1.7	+1.5	+1.2	+1.2	+2.5	+1.7
Increase minimum standard deduction	−.4	−1.0	−1.1	−1.2	−1.2	−.9	−1.1
Increase standard deduction		−.3				−.1	−.2
Increase exemption	−.9	−1.9				−1.7	−1.1
Repeal automobile excise tax	−.8	−2.2	−1.9	−1.8	−1.9	−2.2	−2.0
Repeal tax on pickup trucks	−.1	−.3	−.3	−.3	−.3	−.2	−.3
Correction of withholding schedules						+.2	+.6
Total	−1.7	−7.8	−5.9	−6.5	−6.9	−5.0	−6.1

[1] Less than $50,000,000.

Note: Figures are rounded and will not necessarily add to totals.

WAGE-PRICE CONTROLS

Mr. PERCY. Perhaps the most important part of the balanced package of measures taken by the administration on August 15 was the "freeze" on wages and prices. I was opposed to controls prior to August 15 and would be now if they were imposed without companion measures. But I believe that the stringent domestic controls were essential because they showed our trading partners that while we were taking steps to cut imports sharply and end convertibility of the dollar to gold, we were taking equally strong medicine at home. It is largely for this reason, I believe, that other countries did not immediately retaliate against our trade measures.

The wage-price freeze will likely break the back of the inflationary spiral, which continued to grow because of two elements: The push of accelerating costs, notably wages, and the inflationary psychology which leads businessmen to plan in terms of increased prices, and wage earners to think in terms of constantly increasing wage settlements. John Kenneth Galbraith has defined inflationary psychology as "the tendency to do all business in the self-fulfilling expectation of more inflation."

PHASE II

It is clear that the 90-day freeze can neither be continued as is, nor ended entirely. An effective replacement, planned with great care to avoid inequities, must be found.

Essential to the success of a continued wage-price restraint program is overwhelming popular support, for literally millions of economic decisions are involved. Americans have shown great self-restraint and enormous cooperation in the present freeze period. To a great extent future success of the program will depend on the attitudes of organized labor, and to a very large extent these attitudes will be shaped by the degree to which labor believes the burdens of the freeze are being properly shared. Labor leaders have made clear that they do not believe a "fair sharing" now exists, and ask for limits on interest, dividends, and profits as part of the economic restraint system.

In my view there is a great deal of justice in this request. Though it is true that the 1970 Economic Stabilization Act does not extend authority to the President to implement controls on interest and dividends, the President could request such authority. A policy of restraint must embrace not only wages but also other forms of income—interest, professional incomes, capital gains, bonuses and other forms of compensation. In this respect I think corporations are to be commended for their quite effective, voluntary freeze on dividends.

The problem of excess profits does not seem likely to become a very real one. Profits of U.S. manufacturing corporations, as measured by profits on sales and ratios of earnings to equity, have been below average in the last several years. In 1970, profits on sales after taxes—in cents per dollar of sales—were 4 cents and in the first two quarters of 1971 were 4.2 cents. By comparison profits per dollar of sales averaged 5.2 cents in the period 1965–69. In 1970, the ratio of profits after taxes to stockholder equity was 9.3 percent, and in the first two quarters of 1971 was 9.8 percent. By comparison, the ratio of profits to equity in the period 1965–69 averaged 12.3 percent.

Statistics prepared by the Federal Reserve Board shows that, on a historical basis, profits as a percent of gross national product have, since 1969, been well below average.

I ask unanimous consent that the comparison table be printed in the RECORD.

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

CORPORATE PROFITS AS A PROPORTION OF GNP

[In percent]

	Before taxes	After taxes
1929	9.69	8.36
1930	4.09	3.16
1931	−.49	−1.14
1932	−3.98	−4.64

	Before taxes	After taxes
1933	1.72	0.78
1934	3.61	2.46
1935	4.98	3.66
1936	7.68	5.98
1937	7.50	5.84
1938	4.69	3.47
1939	7.78	6.18
1940	10.05	7.20
1941	14.23	8.12
1942	13.64	6.41
1943	13.12	5.77
1944	11.47	5.31
1945	9.32	4.26
1946	11.79	7.42
1947	13.60	8.73
1948	13.66	8.80
1949	11.28	7.23
1950	14.97	8.73
1951	13.38	6.58
1952	11.27	5.66
1953	11.14	5.58
1954	10.49	5.63
1955	12.21	6.78
1956	11.65	6.48
1957	10.69	5.89
1958	9.25	4.99
1959	10.78	5.88
1960	9.87	5.30
1961	9.68	5.24
1962	9.89	5.57
1963	10.06	5.60
1964	10.56	6.08
1965	11.36	6.78
1966	11.23	6.66
1967	10.05	5.87
1968	10.1	5.5
1969	9.1	4.8
1970	7.7	4.2
1971—1st quarter	7.7	4.2
1971—2d quarter	8.0	4.4

Mr. PERCY. One of the objectives of the new economic policy is to increase business profits; but it would be inequitable for businesses to reap "excessive" profits because wages and other costs were held down, while productivity increased.

Senator PROXMIRE has pointed out that corporations with assets of over $1 billion increased profits by 18.8 percent in the first quarter of 1971 over levels a year earlier, while profits of all other manufacturers fell by 16.2 percent in the same period. Firms with assets under $1 million sustained a 40.4 percent drop in profits. Senator PROXMIRE concluded from this data that the "political clout" of the industrial giants is responsible for this profit performance. I suggest that before drawing conclusions from aggregate data of this kind we consider that such corporations have increased resiliency, because of their multiple product lines, and especially their foreign operations. For many multinational companies, sales in foreign markets have grown in recent years while U.S. sales have not, and profits from foreign operations have bolstered U.S. income.

Nonetheless, the need for equity in the administration of a wage-price control system seems to demand that we at least consider whether some sort of control on profits is needed. A number of suggestions have been made. One that is frequently heard, is the creation of an excess profits tax—one that would tax all profits above some determined level. Such taxes are uneconomic and unfair because they put the entire burden of tax on the most efficient and rapidly growing firms. This has the effect of stifling growth, particularly of those companies that might be the most innovative, aggressive, and productive.

Another suggestion is to relate profits to productivity; the percentage rate of increase of after-tax profits per unit of capital would be limited to the percentage growth rate of productivity. Another tax would be one that would limit profits to a ratio of earnings to stockholder equity. An average ratio, consisting of annual earnings/equity ratios for some representative period, could be established. Industry profits over this amount would be taxed—perhaps put in an escrow fund to be repaid beginning in the first quarter of a year in which the ratio dropped below the average. Repayments would never exceed the target ratios, until all the funds in escrow had been paid back.

Another possibility which seems more attractive would require corporations to use "excess profits" for socially desirable programs. Many companies do already engage in such programs, either through corporate giving or direct involvement in projects like training the hard-core unemployed. In this way businesses would be encouraged to develop creative new programs to use their "excess" resources.

Each of these proposals has serious drawbacks, and, as any such interference in normal marketplace functions must have, would create undesirable economic distortions. On the other hand, in the next year our most pressing national economic objective is to achieve price stability. We may have to accept some distasteful means, of a purely temporary sort, to achieve this objective.

Other key issues relating to the administrative structure of the control system, and other matters, also must be resolved. A possible system for administering restraints would be to set up a Wage Board and a separate Price and Profits Board. Both would be established under the guidance of the Cost of Living Council, which would have the final power of approval of the decisions of the two subsidiary panels.

The boards should exercise direct surveillance only over those industries that have the most market power. Selecting these industries will be difficult, but in general I believe that effective controls can be maintained only over a limited sector of the economy. Another group of large companies in industries with significant market power could be required to file frequent reports on changes in wages and prices. Finally, the vast majority of unions and businesses would remain uncontrolled and unencumbered by reporting procedures. They would be expected to be responsive to national policy, public opinion and the threat that any price and wage increases could be rolled back through Government action in the courts. A special effort must be made to appeal to the service sector, particularly health-related professions, to restrain price increases.

These proposals and others must be further explored. Broad public acceptance of phase II policies must be developed. Extensive hearings by the Joint Economic Committee since the inception of the new economic policy have been an invaluable forum for the expression of views and discussion of issues raised by the wage-price freeze and other aspects of the new economic policies. The chairman of the committee, Senator PROXMIRE, and its ranking Republican members, Congressman WIDNALL and Senator JAVITS, have been performing a valuable service.

We should have an additional opportunity to explore Phase II wage-price control proposals in further Senate hearings. One of the proposals that should be examined is a bill that would establish a National Commission on Wages and Prices, which was introduced on August 4 by a group of 14 Senate Republicans. Hearings on this bill should be scheduled soon. They would provide an excellent opportunity for expression of views of all sectors of the economy on wage-price controls, and would be very helpful in generating a public consensus about the nature of future restraints.

I urge the administration to seek every possible opportunity to express its own thinking on Phase II programs and to be advised by the views of others. I commend the President and his advisers for their active efforts to meet with leaders and groups representative of the public. This program has been successful and should be continued. It can and should be supplemented by public hearings.

One very compelling reason why the administration should use hearings and other public forums effectively is that it must secure extension of the 1970 Economic Stabilization Act when it expires in April 1972. The nature of the further powers given the President by Congress to control wages and prices under this act, will be very important, and it is already clear that some changes in the law will be proposed.

PRODUCTIVITY AND A FREELY COMPETITIVE ECONOMY

High rates of productivity are the best way to guarantee increased wages, stable prices, ample profits, innovation, and international competitiveness. Our recent productivity record has been very poor. Output per man-hour grew by an average of only 2.1 percent in the period 1965 to 1970, while hourly compensation increased by 6 percent and unit labor costs increased by 3.9 percent. By contrast, output per man-hour increased 14.2 percent in Japan, and, though hourly compensation rose 15.1 percent, unit labor cost increased only 0.8 percent.

On the other hand, during the period 1960 to 1965, U.S. output per man-hour grew on the average of 4.3 percent a year, hourly compensation grew 3.7 percent and unit labor costs actually decreased 0.7 percent—one reason for our export success in those years.

Mr. President, I ask unanimous consent to include in the RECORD at this point tables showing comparative unit labor costs in leading industrial countries during the period 1960–70.

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

UNIT LABOR COST COMPARISONS

[Average annual percent change]

Country	Output per man-hour	Hourly compensation	Unit labor costs: National currency	Unit labor costs: U.S. dollar basis
Rates of change in output per man-hour, hourly compensation, and unit labor costs, 1960–65:				
United States	4.3	3.7	−0.7	−0.7
Belgium	5.4	9.0	3.4	3.4
Canada	4.7	3.8	−.9	−3.0
France	5.0	9.0	3.8	3.8
Germany	6.5	9.7	3.0	3.9
Italy	6.8	13.6	6.3	6.3
Japan	8.5	13.1	4.3	4.3
Netherlands	5.1	11.0	5.6	6.4
Sweden	7.3	9.5	2.0	2.0
Switzerland	2.3	7.6	5.2	5.2
United Kingdom	3.7	6.2	2.4	2.4
Rates of change in output per man-hour, hourly compensation, and unit labor costs, 1965–70:				
United States	2.1	6.0	3.9	3.9
Belgium	6.8	8.4	1.4	1.4
Canada	3.5	8.3	4.6	5.1
France	6.6	9.5	2.7	.6
Germany	5.3	8.7	3.2	4.7
Italy	5.1	9.1	3.8	3.8
Japan	14.2	15.1	.8	.8
Netherlands	8.5	11.1	2.5	2.5
Sweden	7.9	10.6	2.5	2.5
Switzerland	6.2	6.2	0	0
United Kingdom	3.6	7.6	3.8	−0.2

Note: Percent changes computed from the least squares trend of the logarithms of the index numbers. Data relate to all employees in manufacturing (wage earners only in Switzerland).

Source: Arthur Neef, "Unit Labor Costs in Eleven Countries", Monthly Labor Review, August 1971.

Mr. PERCY. Productivity growth in the United States during the last half of the 1960's has been hampered by a number of factors. One of them has been increasing worker dissatisfaction with assembly-line jobs which provide no personal satisfaction or human reward. This is reflected in high rates of absenteeism and a poor quality of work, both of which adversely affect productivity.

This is an exceptionally complex problem. Abandoning mass assembly methods of production would be impossible. But improving on-the-job-work practices and conditions may be a meaningful partial answer, one which unions might help bring about.

PROFIT SHARING

A more fundamental solution is increased use of meaningful profit-sharing plans. Perhaps the best way to increase output and give employees a first-hand interest in the productivity and efficiency of a company is to give them a direct share of the rewards. Shortly after becoming president of a major American company, one of the most important innovations I made was to establish a corporate profit-sharing plan, that contributed significantly to our growth. I urge business and labor to look to profit-sharing plans as one fundamental answer to the productivity problems we are seeing today.

Action on several fronts is needed to promote productivity. First and most important is the need to recognize it as a national problem of top significance, and to create a national awareness of the need to improve it. I have proposed that we use the wage-price control period to give special emphasis to the problem by administratively creating productivity advisory councils that would study productivity in each industry. These councils would do three things: They would help larger phase II wage and price control mechanisms determine guidelines for wages and prices in those industries, they would identify the obstacles to increased productivity in each major industry, and they would recommend changes to remove productivity bottlenecks. I am pleased that United Auto Workers President Leonard Woodcock agreed at Joint Economic Committee hearings on September 20 that his union would cooperate in such councils if they fairly represent labor.

The temporary councils would be established by Executive order under the direction of the Secretary of Commerce, using the resources of the Bureau of Domestic Commerce which has direct competence in specific industrial sectors, and the Office of Business Economics. The councils would operate under guidelines set by the Council of Economic Advisers and the Cost of Living Council staff, including professional economists and others, who would be drawn from the Commerce Department and from other departments and agencies when necessary. Business and labor representatives would sit on the councils, which would be linked with the phase II mechanisms established to continue wage-price restraint in the period following the freeze.

Industries would be asked voluntarily to implement, through unions, trade associations and other industry organizations, the Productivity Council recommendations. The Joint Economic Committee could conduct a review of these findings and recommend to the legislative committees of Congress any legislative steps necessary to implement its findings. A national productivity effort would then be fully under way.

In the longer term, however, we will have to give much greater attention to the difficult, political issue of over-concentration of union and business power. Our goal is to reestablish a stable economy free of controls on both domestic and international economic activity. This will require a determination to eliminate many of the structural obstacles that have become fixed into the economy. Among these are over-concentrated monopolistic or oligopolistic industries, which, for example, have the ability to determine prices often with little relationship to market forces, and powerful unions, which, for example, have the ability to control access of workers to jobs and perpetuate inefficient practices that stifle growth and productivity.

THE DOLLAR, GOLD, AND FOREIGN TRADE

For the rest of the world the most shocking elements of the economic policies announced on August 15 were the end of gold sales for dollars, and the 10 percent surcharge on imports. Both steps raise extremely important questions of great complexity and, now, heightening sensitivity.

At the outset these steps were greeted with commendable calm and restraint by the many countries whose internal economic health is inextricably linked with that of the United States. It is their awareness of this linkage, and of our own stringent efforts to stabilize our domestic economy, that in my view initially prevented retaliation, and, at least to date, has prevented our trading partners from taking major, harmful unilateral steps to protect their trade from serious deterioration.

We have now reached a critical moment in our international economic relationships that could threaten more basic political relationships. After August 15 major foreign countries expected the United States to begin negotiations to resolve the problems our moves had brought to a head. In spite of shock and confusion there was an atmosphere of understanding and cooperation. But this attitude of cooperation changed to irritation and even anger as the United States demonstrated an unwillingness to begin negotiations quickly and talked in terms of an indefinite surcharge.

Secretary Connally's speech last Thursday at the IMF opened the bargaining on monetary and trade issues, and was a welcome development. The Secretary's clear indication that the import surcharge could be quickly removed, pending international agreement on several issues, and significantly improved the international climate. The Secretary's request that other countries let their exchange rates be freely determined by the market is a clear statement of a U.S. objective that helps clarify the debate and gives the monetary powers a clear objective to shoot for. Nonetheless, the administration should be much more specific about the trade concessions it seeks as part of the foreign offer. This can well speed the negotiations toward early removal of the surcharge, and the discriminatory provision of the tax credit.

I discussed the significance of the IMF meetings more fully in a letter to the editor of the Washington Post on October 3, which I ask unanimous consent to include in the RECORD at this point.

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

SENATOR PERCY ON THE SPIRIT OF THE IMF MEETING

At the close of the annual meeting of the IMF Friday, Washington had witnessed one of the most historic and dramatic events in international economic policy since the war.

Exactly a week ago the major countries of the free world—countries that have since World War II worked together in remarkable harmony to build the world economy and to resolve crises mutually—had begun the diplomatic equivalent of a nasty shouting match.

The other major monetary powers in the Group of 10 had unanimously joined against us;

President Pompidou had delared no willingness to meet American needs for changes in currency values and trade terms;

The developing countries particularly our Latin partners had demonstrated real anger;

Our official statements were being interpreted as the U.S. taking an almost cavalier attitude toward the solution of the crisis. In particular it seemed that the import surcharge could become a long-term impediment.

Thus at start of the IMF meetings a week ago Sunday the United States was confronted with the unanimous hostility of the other 117 IMF members. It was the U.S. against the rest of the free world. This dangerous air of tension and animosity worried me, and others in the Senate, very deeply.

However, as the result of the masterful leadership of Treasury Secretary John Connally and Federal Reserve Chairman Arthur Burns, the IMF meetings climaxed Friday with a dramatic change of attitude and the unanimous resolution of the IMF Governor to move quickly toward currency reform.

As I met through the week with individual governors, top U.S. officials and foreign officials and bankers, I was deeply impressed by the marked change in mood and spirit. Hostility had begun to thaw. Understanding of the U.S. position had begun to grow.

The President's meeting with the IMF Director, Pierre-Paul Schweitzer, Secretary Connally's speech on Thursday, and the personal diplomacy of other administration officials including Peter Peterson, Executive Director of the President's International Economic Policy Council, and Undersecretary Paul Volcker, has helped relax the crisis atmosphere.

In my opinion, Secretary Connally is exactly correct in asking other countries to let their exchange rates be determined by the market. This is the best way to determine their actual value. I understand why central bankers want to leash their rates to prevent erratic changes. But many rates must move upward more realistically. I am pleased that the Japanese are reportedly letting the value of the yen ease somewhat higher, and are indicating a willingness to remove their restrictions against freer imports of capital and goods.

As for other nations, particularly in Europe, the ball is now in their court. America has, as they wanted, stated its terms more clearly and, most important, has indicated its willingness to negotiate and to remove the surcharge quickly if other countries are forthcoming.

Righteous declarations of "no fault" on the trade front won't help advance the negotiations toward early surcharge removal—which is in everyone's interest. In my view European countries could be particularly helpful by:

Indicating a clear willingness to share meaningfully the costs of NATO troops;

Eliminating their unfair restrictions on Japan's exports, in order to take the pressure off U.S. markets and U.S. payments.

There are many actions the U.S. must take to correct our serious domestic and international economic problems, and these are directly related to actions we properly expect other countries to take.

I will state more completely my ideas for revitalizing the American economy in a comprehensive speech in the Senate on Tuesday. But I believe it is important now to recognize the the giant step we have just taken toward solutions of the crisis, and to move very quickly in the next few weeks to capitalize on this new spirit of cooperation. It is time now for other countries to take the next step toward settlement of the major issues and removal of the surcharge.

CHARLES H. PERCY,
U.S. Senator.

WASHINGTON, D.C. *October 3, 1971.*

GOLD AND EXCHANGE RATES

Mr. PERCY. The President had no choice but to close the gold window when he did. The U.S. balance of payments was in serious deficit, foreigners held dollar liabilities an estimated 400 percent larger than the U.S. gold stock, and a run on the bank was well underway. I do not know of a single economist who disputes the necessity of this move.

In boldly "cutting the golden cord," the President created an unequaled opportunity to reform the world monetary system. Such reform must have two key elements: One is a renegotiation and resetting of exchange rates at appropriate and realistic levels; the other is a more fundamental reform of the International Monetary Fund rules regarding the role of gold, the dollar, and special drawing rights—SDR's.

It has been clear for some time that the dollar has been incorrectly valued vis-a-vis other major currencies. The problem, however, is not the overvaluation of the dollar in terms of gold, as some foreign spokesmen have indicated, but the undervaluation of other major currencies in terms of gold. In my view the President is entirely correct and entirely justified in requesting that other countries revalue their currencies, some of them by significant percentages. Japan's currency has been considered undervalued—making Japanese goods artificially inexpensive for U.S. buyers—for at least a decade. As Dr. Paul A. Samuelson said in a statement to the Joint Economic Committee on September 23:

> What is needed ultimately . . . is change in dollar parity relative to the yen of at least 10 to 15 percent. With respect to Western European currencies, perhaps two-thirds of this amount, and with countries in North and South America moving more nearly with the dollar. Currencies of intermediate strength, such as the pound, might aim for a halfway change.

However, revaluing currencies is a politically difficult undertaking. Such steps usually are deflationary for the countries taking them because if the revaluation is significant, the exports of the country in question become more expensive and tend to decline, perhaps even creating recession and unemployment. Thus central bankers and governments are reluctant to revalue. For this reason the imposition of a surcharge on U.S. imports was an important tool to encourage revaluation.

It is only for this purpose that I support the surcharge—only as a temporary device to encourage other countries to undertake certain monetary and trade reforms which ultimately will strengthen the international system.

DEVALUE THE DOLLAR

In a negotiation involving revaluation and removal of the surcharge, our major foreign trade partners are also asking that the United States devalue the dollar by raising the price of gold. There is a strong and growing body of opinion—approaching consensus—in the United States that this is a reasonable and practical price to pay for meaningful foreign currency shifts, and for changes in the international monetary fund rules concerning the roles of gold and the dollar in world payments.

It is difficult to constitute a compelling economic case against a slight devaluation. I would support a modest devaluation, since it is more a matter of prestige, not substance. Those opposed to devaluation argue that it would enrich gold hoarders in foreign countries, such as France, because it would make their gold worth more in terms of dollars. Whether some Frenchmen automatically are richer as a result of our move seems irrelevant to me. Another argument is that South Africa and the Soviet Union, the two major gold producers, would benefit from an increased gold price. But this argument overlooks the fact that their "industrial" gold is sold on the free market, and that even a 10-percent increase in the price of "monetary" gold, to $38.50 an ounce, would not raise it above the present free market price. The United States itself still has the largest gold stock, and would also benefit from an increased gold price.

On the other hand, it is unrealistic to expect a quick dollar devaluation, which must be accomplished by congressional amendment of the 1944 Bretton Woods Act. It is perhaps equally unlikely that a new role for SDR's can be quickly agreed upon. As a possible short-term solution, I agree with the suggestion of Senator JAVITS that the IMF change its rules to permit a fluctuation in the par value of gold of perhaps 5 percent on either side of $35. Such fluctuation is, under current rules, pegged to a maximum range of 1 percent. A wider band of fluctuation would permit an effective dollar devaluation, but it would also permit a drop in the price of the dollar below $35 when the U.S. payments position is restored.

If, as a short-term solution, this suggestion is not viable, we must cooperate in seeking other solutions until more permanent ones can be devised.

IMPORT SURCHARGE

Except for its use as a means of encouraging monetary reforms, the import surcharge is glaringly inconsistent with the thrust of the new economic policy. In a policy designed primarily to reduce inflation and stimulate productivity, the surcharge is inflationary, counterproductive, and anticompetitive. It ignores the fact that a major function of imports during a period of inflation is to moderate that inflation—though this role is less

important in instances of cost-push inflation.

I share the views of the distinguished majority leader, Senator MANSFIELD, who in his excellent, carefully considered report to the Senate on September 14 on his discussions with foreign leaders, said:

> 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, hence, contributes to higher prices at home. It serves as a relief for inefficiency rather than as an incentive to more efficient production . . . In any durable sense, it will do nothing to pump new breath into the international financial position of the United States.

Apart from its inflation-moderating effect, imports do provide, for many sectors of the economy, materials, products, and technology not available here. Because so much of our imports are of raw or semimanufactured materials, a 10-percent increment in the cost of these raw materials is going to put inevitable upward pressure on domestic prices of intermediate and finished goods. The surcharge, of course, applies only to dutiable imports, and many raw materials no longer bear import duties. Nonetheless the surcharge can be significant for a very wide range of products.

An example is zinc alloy, which is used for many types of castings important in many durable and consumer goods. Zinc alloy is made from special high grade zinc slab, a substantial percentage of which is imported into the United States and the remainder supplied from domestic sources by large integrated companies that produce the ore, the slab, and the alloy as well.

The independent alloy producers, an industry of about 30 firms, supply half the zinc alloy used. These producers, very largely dependent on foreign-source slab, suddenly must pay an increased duty, which if retained for a long period will put pressure on prices. This puts the independent producers in a highly vulnerable position, because the large integrated producers of slab and alloy will be able to maintain their prices, thus undercutting the smaller independents.

Inequitable situations like these are arising by the thousands. They raise demands for special exemptions from the surcharge, for the release of stockpiled raw materials, and other forms of relief. Making these decisions becomes an administrative nightmare.

I am deeply concerned about the surcharge for other reasons. When U.S. industries become accustomed to such a large element of protection from world competition, it will be politely difficult, if not impossible, to remove. In addition, the surcharge has the effect of hurting the developing countries. It is possible and entirely consistent with established U.S. policy to eliminate now the surcharge on imports from developing countries.

U.S. BARGAINING POSITION

For all these reasons I urge complete removal of the surcharge and the buy American provision of the investment credit at the earliest possible moment.

I do not think, however, that we can make unrealistic demands on foreign countries in return for surcharge removal. Our bargaining position, and the negotiations with the other major monetary powers, will not be helped by including, as some U.S. officials initially indicated, every trade and payments problem from soup to nuts in the bargaining list, or by expecting an overnight shift of $13 billion in our payments balance.

George Ball, former Under Secretary of State, made a good point in his statement to the Joint Economic Committee on September 9:

> Though we should use every means at our command to correct the present payments imbalances, it would be folly to try to achieve too much within the four walls of the present negotiation.

I propose this basic package of concessions: The United States should exchange removal of the surcharge, a modest increase in the price of gold and elimination of the buy American provision of the tax credit, in return for: First, significant revaluations of major currencies; second, changes in IMF rules; third, sharing by our NATO allies of the burden of U.S. troop costs overseas; fourth, elimination of Japanese quotas and investment restraints; and fifth, removal of European discrimination against Japanese exports.

I do not, however, suggest that all five of these objectives be achieved before the U.S. surcharge is removed.

The import surcharge and the tax credit discrimination should be removed immediately upon agreement on new currency values, and a firm commitment on basic changes in IMF rules to lessen the importance of gold. Satisfactory negotiation of the remaining three points will take more lengthy discussion, and we cannot permit the surcharge to remain in effect throughout this long period. Instead, the United States should be willing to accept concrete, good faith commitments from the major parties to join us in resolving these problems, with a view to achieving the U.S. objectives as soon as possible. I believe this a fair, realistic, negotiable position. It reflects the fact that currency revaluation and reform are the major problems creating the imbalanced trade situation, and should be our highest priority.

I have over the last several years argued consistently for these changes.

Since 1967 the issue of sharing troop costs has absorbed a great deal of my interest and time. As a member of the NATO parliamentarians groups, I have argued strongly that the United States has reached a point at which it can no longer afford to bear a disproportionately large share of the cost of the defense of Europe. Our NATO allies now have the economic resources to enable them to share these costs on a more equitable basis.

I have time and again been discouraged by official U.S. resistance to my burden-sharing proposal.

Now I believe the official resolve exists to correct this problem, albeit belatedly. In my view international economic imperatives finally outweigh political considerations. I believe it should be possible, in the context of the negotiations that are now in progress, to reach accord on the burden-sharing issue.

Elimination of Japan's remaining quotas on imports has been a nagging problem as well. I am very pleased that the Japanese announced last week the elimination of a number of their quotas, reducing the total to 40. These quotas have been inconsistent with the terms of the GATT, and a matter of concern to the United States for years. Lacking has been an official U.S. willingness to press the issue and to enforce the GATT rule. Now, in a crisis atmosphere, the issue has become one of higher priority. Its solution is simple and long overdue. The Japanese should, I believe, give up these restrictions quickly.

At the same time, however, the Common Market and other European countries, which are potentially extremely large markets for Japanese exports, must end their discrimination against such exports. Chairman WILBUR MILLS of the Ways and Means Committee, speaking in Houston on September 12, said:

> Between 1960 and 1969, United States imports from Japan rose from $1.1 billion to $4.9 billion, while the European Community imports from Japan increased from $203 million in 1960 to $664 million in 1969 . . . To those familiar with Japanese businessmen, I am sure you will agree that such trade trends have not been due to the lack of enthusiasm on the part of the Japanese exporter.

Thus, though the rate of growth of Europe's imports from Japan was faster than that of the United States, it is obvious that, by comparison, the United States is taking a huge and disproportionate volume of Japan's exports given the size and importance of the EEC in world trade.

During the past year Japanese representatives negotiated at length but unsuccessfully with the Common Market to reach new agreements to liberalize significantly the EEC's treatment of Japan's trade. There is no excuse for the Common Market's refusal to treat the Japanese fairly, particularly after a revaluation of currencies that would result in higher prices for Japanese goods.

These European restrictions must also be removed because they serve to divert Japan's exports to the United States. This merely strengthens the arguments of those Americans who support U.S. trade restrictions against Japan because they would "equalize" U.S. with European restrictions. Removal of the Common Market's trade restrictions in this—as in other areas—is long overdue, and is now imperative.

Japan's restrictions on direct foreign investment are another long-standing problem capable of being resolved quickly. Though many U.S. firms have extensive and highly successful business relations in Japan and Japanese firms, Japan still retains a limitation of 50 percent on foreign investment, except in those areas in which Japan is completely dominant, such as shipbuilding and steel, where it would be impossible for a foreign firm to gain a foothold. Each investment decision must receive government approval. Frequently the investing company must agree to restrict the product lines it will produce or in-

troduce, and agree to limit its enterprise to certain markets in Japan. These restrictions are outdated and unnecessary, and a truly significant liberalization of them must be made.

PERSONAL INCOME TAX EXEMPTIONS AND FEDERAL EMPLOYEE CUTS

Measures to increase consumer purchasing power, and to reduce government personnel and budget expenses, comprise the final elements of the economic package.

The President, in his August 15 message and in legislation subsequently submitted to Congress, requested several measures to increase consumer purchasing power. First, he proposed that the personal exemption from Federal income tax be increased from $650—where it stands now—to $750 in 1972, rather than 1973. Second, he proposed an increase in the standard deduction from Federal tax to 15 percent, with a maximum deduction of $2,000, beginning January 1, 1972. Third, he proposed removal of the 7-percent excise tax on automobiles.

This package of proposals would have had the effect of decreasing personal tax bills, and Federal revenues, by an estimated $4.4 billion in calendar year 1972.

The House Ways and Means Committee last week reported a bill that would increase the cost of this package of cuts to the Treasury. The personal exemption was increased to $675 retroactive to January 1, 1971, the standard deduction was increased to $2,000, the low-income allowance was changed to give additional relief to low-income families, and the excise tax on light trucks of 10 percent was repealed, in addition to repeal of the 7-percent tax on autos.

At the same time, the committee altered the investment tax credit and Domestic International Sales Corporation provisions of the administration's bill, and made changes in the accelerated depreciation range previously adopted by the Treasury.

The committee's bill, combined with the effects of the 1969 Tax Reform Act, actually increased corporate taxes by $3.8 billion over calendar years 1969–73, according to Treasury Department estimates. By contrast, total taxes of individuals would be reduced by $36.9 billion in this period. If the effects of the 1969 Reform Act are excluded, the committee's tax package would reduce corporate taxes by $11.3 billion in the period 1971–73, and would reduce individual taxes by $14.2 billion. It should be clear that the tax package as it now stands does not provide a bonanza to business.

Mr. President, I ask unanimous consent to include in the RECORD at this point two tables prepared by the Office of Tax Analysis of the Treasury. The first shows the total effect on tax liabilities of the three revenue measures now taking effect or proposed: The 1969 Tax Reform Act, the accelerated depreciation range, and the Ways and Means Committee's bill. The second compares the estimated revenue effects of the tax proposals adopted by the Ways and Means Committee on September 22, and the Treasury's initial proposals.

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

ESTIMATED EFFECT OF 1969 TAX REFORM ACT, ADR AND WAYS AND MEANS COMMITTEE ACTION ON CALENDAR YEAR LIABILITIES DIVIDED BETWEEN INDIVIDUALS AND CORPORATIONS

[In billions of dollars]

	Individual								Corporations							
	1969 act		Committee action						1969 act		Committee action					
Calendar year	Reform and relief	Termination of investment credit	ADR	Eliminate ADR 3¼ year convention	Income tax reduction	Excise tax relief	New investment credit	Total	Reform and relief	Termination of investment credit	ADR	Eliminate ADR 3¼ year convention	New investment credit	DISC	Total	Total individuals and corporations
1969		+0.4						+0.4		+0.5					+0.5	+0.9
1970	−1.4	+.6						−.8	+1.0	+1.9					+2.9	+2.1
1971	−5.2	+.6	−0.6	+0.4	−1.4	−0.9	−0.3	−7.4	+1.1	+2.5	−2.2	+1.7	−1.2		+1.9	−5.5
1972	−8.1	+.6	−.7	+.3	−3.2	−2.5	−.7	−14.3	+1.2	+2.7	−2.7	+1.4	−2.9	−0.1	−.4	−14.7
1973	−10.8	+.6	−.8	+.3	−1.1	−2.2	−.8	−14.8	+1.3	+2.9	−3.2	+1.2	−3.1	−.2	−1.1	−15.9
Total	−25.5	+2.8	−2.1	+1.0	−5.7	−5.6	−1.8	−36.9	+4.6	+10.5	−8.1	+4.3	−7.2	−0.3	+3.8	−33.1

Office of the Secretary of the Treasury, Office of Tax Analysis.

COMPARISON OF THE ESTIMATED REVENUE EFFECT OF TAX PROPOSALS ADOPTED BY THE WAYS AND MEANS COMMITTEE AS OF SEPT. 22, 1971, AND THE TREASURY PROPOSALS FOR COMPARABLE ITEMS

[In billions of dollars]

	Calendar year liabilities					Fiscal year receipts	
	1971	1972	1973	1974	1975	1972	1973
Ways and Means Committee action as compared with present law [1]	−1.7	−7.8	−5.9	−6.5	−6.9	−5.0	−6.1
Treasury proposal as compared with present law [1]	−2.4	−9.2	−5.4	−5.1	−5.4	+5.9	−7.8
Committee actions versus Treasury proposal	+.7	+1.4	−.5	−1.4	−1.5	+1.0	+1.7

[1] Neither line contains the import surcharge as it is present law and was an administrative action not acted upon by the committee. The change made by the Ways and Means Committee in ADR is included in the committee action but the remainder of ADR is not included in either line because it is present law.

Note: Figures are rounded and will not necessarily add to totals.

CAN WE AFFORD MORE PERSONAL TAX CUTS?

Mr. PERCY. A strong argument can be made for the need for income tax relief for individual taxpayers. It has been estimated that a family of four living in Illinois would have had less spending power in 1971 than in 1965, even if its income had increased from $12,000 to $15,240 in that period. This would be the increase necessary to keep pace with the 27-percent increase in cost of living during that time. But the increase in income is eaten away by very substantial increases in social security taxes, imposition of a State income tax, and increased State and local property taxes. In addition, the purchasing power of the 1971 dollar decreased.

Thus while this typical Illinois family has more income in 1971 than in 1965, taxes are taking a bigger share. Total 1965 taxes, for example, were 17.1 percent of 1965 income of $12,000, as opposed to 21.7 percent of 1971 income of $15,240. The Illinois experience may not be exactly comparable to that of other States, but is surely similar to many. The 1971 purchasing power of this typical family's income is less than the purchasing power of its 1965 income, even though it has grown by 27 percent.

The facts have led to calls for increased tax cuts to restore consumer buying power. I would like to see tax cuts in the long run. But to cut taxes too drastically now would be irresponsible. One reason is the tremendous Federal budget deficit in fiscal year 1971 and that predicted for fiscal year 1972. I have argued that increased employment and business expansion will depend to a very large extent on increased investment and on consumer confidence, rather than increases in consumer buying power, which evidence shows is not now being used. At this time, I favor the investment credit and ADR, but do not favor more extensive cuts in personal taxes. The elimination of the 10-percent excise tax on light trucks, however, does seem to be a reasonable move.

Facts about the Federal budget show

the seriousness of the current budget deficit. In fiscal year 1971 the budget deficit on the unified budget basis, which includes transactions from the trust funds, was $23.2 billion. On the more indicative "Federal funds" basis, which excludes the trust funds, the deficit was a staggering $30.2 billion. The central reasons were: First, a planned deficit—initially intended in administration proposals for a "full employment" budget to be only $7.3 billion—and, second, a shortfall of estimated receipts of $13.9 billion, due to a sluggish economic recovery and also to over-optimistic administration estimates. The situation was further worsened, however, by budget outlays of $163.8 billion, rather than planned outlays of $154.9 billion, an increase of about $9 billion.

The extent of the deficit for fiscal year 1972 is still unclear, but it promises to be at least equal to the fiscal 1971 deficit. The Joint Committee on Reduction of Federal Expenditures in its August 16 report—Staff Report No. 7—estimates a deficit of $22.4 billion on the unified budget basis and $31.7 billion on the Federal funds basis. Again, these amounts differ from administration estimates of $11.6 and $23.1 billion, respectively, in good measure because of an inaccurate estimation of receipts, and additional congressional authorizations and appropriations.

The chairman of this joint committee, Congressman MAHON, estimated that a 3-year Federal funds deficit of $80 billion—reflecting a $13.1 billion Federal funds deficit for 1970—is "almost a certainty."

This is a huge amount of new debt in a very short period. It is a serious problem for at least two reasons. This debt must be financed by borrowing the surpluses of the trust funds, which must be repaid with interest, and by borrowing in commercial financial markets. One effect is to increase the money supply, as banks buy Government paper which then becomes the basis of additional loans, and thus new money. Another is to increase the fixed interest cost of carrying the debt, a sum that now totals, according to a preliminary estimate, about $20 billion in 1971, up from $8.1 billion in 1961.

These are the reasons why I am very hesitant to urge additional tax cuts to further reduce Federal revenues and further increase the debt, at this time. Instead, we must look harder for ways to reduce the unessential elements in the budget. If unemployment is reduced and tax revenues are increased, then we will be able to ease personal tax rates. At the present time I fully support the President in urging the Congress to refrain from adding additional tax cuts to the package approved by the Ways and Means Committee.

FEDERAL JOBS AND SPENDING

One of the most desirable, but also most difficult, domestic proposals made by the President is his decision to cut Federal jobs by 5 percent. This would appear to be in direct conflict with other major goals, such as increased employment and increased consumer purchasing power. Cutting Federal jobs hurts both objectives. I urge, however, that the reduced employment be achieved over time by reorganizing the major functions of Government into more efficient, better managed organizational units, where existing manpower can be used more efficiently, and where, hopefully, it can be reduced through natural attrition. Thus I look upon this as an opportunity for the President to put renewed emphasis upon his Executive reorganization proposals, rather than on an across-the-board cut. Such cuts can frequently be too arbitrary, by their nature, eliminating jobs where they are needed as well as where they are in excess.

I applaud the President's decision to cut Federal expenditures by $4.7 billion. This becomes especially important if Congress moves to increase tax cuts and reduce revenue further. An expansionary budget is a standard use of fiscal policy in a time of depression, and some deficit is no doubt necessary as an antirecession measure. But the debt must not be permitted to become too excessive.

With regard to the Federal pay raise postponement, I think the President does have the right to expect Federal employees to be willing to sacrifice to an equal extent with other sectors of the population in cases of national emergency. On the other hand, it does seem too harsh in the present circumstances to expect Federal employees to be much more strictly treated than the public in general. Federal employees should receive the same treatment as other sectors of the economy in the current freeze and in the post-freeze period of wage-price restraint.

CONCLUSION

The long-run health of the American economy depends on a quick return to normal marketplace conditions. After years of disequilibrium and a serious inflation that left major damage in its wake, we will all welcome a return to a period of real economic growth with low levels of unemployment and stable prices. This is the hope that the President's new economic policies hold out.

Very real challenges face us, however. For the long term one of the problems that troubles me most is the growing number of exceptions to our "free market" economy. I do not agree with those who argue that all areas of the economy have become so highly regulated by Government restrictions, concentrations of labor and business power, and other structural obstacles that a free market does not any longer exist. In my view, the vast majority of economic decisions have typically been made in the context of a relatively "free" economic environment. But there are significant exceptions that are troublesome and deserve renewed congressional study and action. Among these are:

Highly concentrated industries which demonstrate inordinately great market power, including the ability to heavily influence prices.

Over-regulation by Government in some areas such as transportation, which has the effect of stifling economic growth, competition, and innovation.

Tight controls on America's farm economy, which have had the effect of supporting inefficient producers in some sectors of the country to the disadvantage of truly efficient, internationally competitive producers in other sectors.

Regulation by successive layers of local government, which, in the case of the housing industry, results in roadblocks to cheaper and better housing.

A tax structure which, even after the 1969 reform act, contains provisions too favorable to narrow groups in the economy.

Labor organization work rules and practices which seem to be stifling productivity, limiting new entries to job markets and maintaining wages at rates higher than productivity and efficiency warrant.

A dangerous, growing trend toward international cartels in large industries such as textiles, which have succeeded in enlisting the U.S. Government in arranging international agreements governing price and supply.

A trend toward restrictive quotas on foreign imports, which cushion the economy from world competition.

Discrimination against minority groups in job hiring, which has the effect of stunting development of human potential and denying to the society and economy a great reservoir of talent and energy.

Increasingly intimate relationships between some businesses and the Nation's Defense Establishment.

These are "structural" obstacles to a free, more competitive economy to which we must turn our attention now. I have stressed throughout this statement the need for increased productivity. As the only sound, long-term assurance of a strong, internationally competitive economy, I suggest that the fundamental way to improve American productivity is to reestablish more competitive economic conditions. The effort to beat the competitor in domestic and international markets has been the motor driving our most vigorously competitive industries. In the long run it will do no good to prop up industries that, for any number of reasons, may once have been dominant economically but are no longer. In doing so—in providing such subsidies—we only create artificial competition with the newer, more dynamic, more progressive industries—competition for capital, labor, and other economic inputs.

By advocating a return to revitalized competition I am in no sense arguing a return to the laissez-faire capitalism of "caveat emptor," in which the individual consumer is damned. In part, real competition will help the consumer by assuring him low prices. But I also believe that judicious regulation of marketplace practices to protect the consumer will help insure fair competition and standards of quality and safety—honest market place standards which are in the interest of both buyer and seller.

The new economic policy provides an opportunity to stabilize the economy, permitting us to give our attention to long-term goals. I appeal to the Senate to expedite legislation implementing these policies, and to avoid a temptation, which I am afraid will be very great, to add irrelevant, extraneous, and costly measures to create a burgeoning Christ-

mas tree. This legislation is too important to become a political football.

I applaud the President and his advisors for the boldness of their moves. Public response demonstrates a real admiration for a President who is willing to take decisive steps. I urge that we take special care, however, to reach settlement of the outstanding international economic issues as soon as possible. The IMF meeting has created a new mood of optimism based on a new clear indication of American willingness to negotiate. I have great confidence that the astute Chairman of the Federal Reserve Board and the very able Secretary of the Treasury will quickly and brilliantly conclude international negotiations on exchange rates and trade and will quiet international concern, restore confidence, and create an international environment for vigorous economic activity and growth.

In conclusion, I would like to comment that yesterday I addressed the Annual Convention of the Illinois State AFL–CIO.

The essence of what I had to say before this great labor group in the State of Illinois was simply that the day has come when no group in this economy can continue to demand more all the time, but give less.

Any wage earner knows that he is simply facing doomsday by demanding more wages and not finding ways to cooperate with management to hold down the cost push and increase output. And that day has come. Inflation hurts everyone and wage increases are meaningless unless accompanied by commensurate increases in productivity.

Management has reached the day when it can no longer take the easy way out any time it gives a wage increase and push prices up without making a commensurate effort to increase productivity. When prices are pushed up, the effect of the wage increase is felt by everyone. Every worker knows it. Every housewife knows it. Anyone in management knows it today.

Mr. President, I yield back the remainder of my time.

PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business for 15 minutes, with the statements limited therein to 3 minutes.

ORDER FOR RECOGNITION OF SENATOR BENTSEN TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on tomorrow, immediately following the recognition of the two leaders under the standing order, the distinguished junior Senator from Texas (Mr. BENTSEN) be recognized for not to exceed 15 minutes.

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

THE SUCCESS OF BLACK EXPO

Mr. PERCY. Mr. President, last evening while returning to Washington from Chicago on a late plane, arriving at Baltimore a little after midnight, I met Miss Bonita Byrd, a very progressive, perceptive, and intelligent black woman, an executive with a black business in Chicago called the Parker House Sausage Co. Miss Byrd was coming to Washington on that late plane to call on the dining rooms of the House of Representatives and the Senate to discuss sales of Parker House products.

This business has grown through the years, because of its quality product, and diligence of young executives like Miss Byrd to present sales of $3.6 million. It now has offices in Milwaukee, St. Louis, Kansas City, Philadelphia, Cleveland, Indianapolis, Gary, and Washington, D.C.

I should also note that the excellence of this young company has been nationally recognized. Mr. Daryl F. Grisham, president of the Parker House Sausage Co., was recognized for his outstanding business accomplishment and promise when he was appointed by President Nixon to the National Business Council for Consumer Affairs.

This brought to mind an editorial that I had just read in the October 4 issue of Chicago Today. It is entitled "The Success of Black Expo."

Black Expo was an extremely successful minority enterprise exposition at the Chicago Amphitheater in Chicago in which more than 400 businesses in Chicago and 22 States gave exhibits to demonstrate the success of black enterprises.

Our Governor, who had addressed Black Expo earlier in Chicago, had said at that time, referring to the State of Illinois:

> We are committed to a program to place solid cash orders with small business, black business and black suppliers. My color today is green. If money isn't everything, it sure beats whatever is in second place. It works wonders in knocking down barriers and opening doors that should have been opened long ago.

I commend this black corporation and this black enterprising woman, who was working as late as possible in coming to Washington to open the doors of opportunity for her company.

I ask unanimous consent that the editorial to which I have referred be printed in the RECORD.

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

THE SUCCESS OF BLACK EXPO

Chicago can take immense pride in Black Expo, the stunning display of minority accomplishment in business and industry. It ended yesterday after a five-day run in the Amphitheater, where hundreds of thousands of visitors came to see exhibits by more than 400 businesses in Chicago and 22 states, and to be entertained nightly by top black performers.

If the smashing success of Black Expo is a justifiable source of pride for minorities, it also supplied a great deal of encouragement for the future. That came in large part from Gov. Ogilvie, who had some fine things to say about the state's attitude toward small business in general and black business particularly.

"We are committed to a program to place solid cash orders with small business, black business and black suppliers," he said. "My color today is green. If money isn't everything, it sure beats whatever is in second place. It works wonders in knocking down barriers and opening doors that should have been opened long ago."

They weren't just words. As Ogilvie pointed out, the state already has a program to help black business men learn how to submit bids to the state, and legislation is in the works that would assure a percentage of state business to all small firms. Another example of Illinois' interest in black enterprise was the creation of a trade mission that negotiated an agreement between black businesses here and those in Ghana and Nigeria. That alliance is expected to be worth $50 million in business within two years.

There's a long way to go before black business shares fairly in this country's economic bounty, but Black Expo is heartening evidence of how far we've come already. And it hasn't been a matter of handouts. It's been done thru initiative and hard work, an attitude best expressed at Expo by the Rev. Jesse Jackson, national director of Breadbasket: "We're not asking you to give us a break. Just open up your minds."

Black Expo is a good indication that that is just what has been happening.

KLM TO CUT FARES FOR "SENIOR CITIZENS" ON ATLANTIC FLIGHTS

Mr. PERCY. Mr. President, in this morning's New York Times, I noticed an article entitled "KLM To Cut Fares for 'Senior Citizens' on Atlantic Flights." I wish to commend KLM and those other airlines who look upon older citizens in the same way as they look upon young people.

Older people have more leisure time. They want to travel and see the world. They are now able to travel on a standby basis. These people who are over 65 years of age and have now retired do not have an earned income but now have a chance to travel.

This is a way to increase business and at the same time to give recognition to our senior citizens, who deserve to be recognized in this and many other ways.

This article brought to mind a bill which I introduced to reduce fares on airline flights for senior citizens just as we have reduced youth fares.

Mr. President, I ask unanimous consent to have the article to which I referred printed in the RECORD.

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

[From the New York Times, Oct. 5, 1971]

KLM TO CUT FARES FOR "SENIOR CITIZENS" ON ATLANTIC FLIGHTS

Introducing a new twist to the spreading price war in trans-Atlantic air travel, KLM Royal Dutch Airlines said yesterday that it would offer a "senior citizen" discount fare between the United States and Amsterdam starting Feb. 1.

Offered to persons 65 years of age and older, the roundtrip rate will be identical to the fare KLM will charge "youth" passengers aged 12 to 21: $228 in the summer, and $198 in the off season that covers nine months of the year. Passengers will not be required to stay abroad for any specified minimum or maximum number of days.

KLM is the latest of many airlines to reduce fares after Feb. 1, although it was the first to say it would introduce a senior-citizen rate. The wave of price cutting was touched off by the Sept. 15 announcement of Lufthansa German Airways that it would disavow, starting Feb. 1, an agreement under which almost all trans-Atlantic airlines charged identical rates.

The lowest fare between New York and Am-

sterdam now is $200 for passengers between the ages of 12 and 26. The lowest current individual rate for which older passengers are eligible is $297, which requires a minimum stay of 29 days and a maximum of 45 days.

Besides youth and senior citizen fares, the Dutch line said it would offer a lower excursion rate to passengers of any age. The rate will be $255 in the summer and $200 in the off season and require passengers to be abroad 14 to 45 days. KLM said it would offer a $170 round-trip fare over the same route to passengers who contract for at least $70 additionally in ground accommodations, travel in groups of five or more, and are gone between seven and 21 days.

KLM's senior citizen fare will apply only to Amsterdam.

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR RECOGNITION OF SENATOR BYRD OF VIRGINIA TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on tomorrow following the remarks of the distinguished junior Senator from Texas (Mr. BENTSEN) the distinguished senior Senator from Virginia (Mr. BYRD) be recognized for not to exceed 15 minutes.

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

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

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

EXECUTIVE REPORTS OF COMMITTEE

As in executive session, the following favorable reports of nominations were submitted:

By Mr. FULBRIGHT, from the Committee on Foreign Relations:

Malcolm Toon, of Maryland, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary the Socialist Federal Republic of Yugoslavia.

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. 2651. A bill to amend the act of June 16, 1933, as amended. Referred to the Committee on the Judiciary, by unanimous consent.

By Mr. EAGLETON (for himself, Mr. MATHIAS, Mr. INOUYE, Mr. STEVENSON, Mr. TUNNEY, Mr. WEICKER, and Mr. BUCKLEY):

S. 2652. A bill to provide an elected Mayor and City Council for the District of Columbia, and for other purposes. Referred to the Committee on the District of Columbia.

By Mr. HATFIELD:

S. 2653. A bill to amend the Internal Revenue Code of 1954 to provide a tax credit for persons 65 years of age or older. Referred to the Committee on Finance.

By Mr. MUSKIE:

S. 2654. A bill to amend chapter 73 of title 10, United States Code, to establish a survivor benefit plan, and for other purposes. Referred to the Committee on Armed Services.

By Mr. STAFFORD:

S. 2655. A bill to amend the Railway Labor Act to provide more effective means for protecting the public interest in national emergency disputes involving the railroad and airline transportation industries, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. MUSKIE (for himself and Mr. MONDALE):

S. 2656. A bill to amend chapters 2 and 21 of the Internal Revenue Code of 1954, and title II of the Social Security Act, to reduce social security tax rates and provide a new method for their determination in the future, to remove the dollar limitation presently imposed upon the amount of wages and self-employment income which may be taken into account for tax and benefit purposes under the old-age, survivors, and disability insurance system (making allowance for personal income tax exemptions and the low-income allowance in determining such amount for tax purposes), and to increase benefits under such system to reflect the new tax and benefit base. Referred to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. RANDOLPH:

S. 2651. A bill to amend the act of June 16, 1933, as amended. Referred to the Committee on the Judiciary, by unanimous consent.

INTRODUCING LEGISLATION PERMITTING COMMERCIAL BANKS TO UNDERWRITE WATER AND SEWER REVENUE BONDS

Mr. RANDOLPH. Mr. President, at the direction of the Committee on Public Works, I am introducing, for appropriate reference, a bill to amend the Glass-Steagall Act—act of June 16, 1933, as amended—to permit commercial banks to underwrite municipal water and sewer revenue bonds.

This somewhat unusual action which I take for the committee is based on our consideration of amendment No. 8 to S. 523, proposed for the National Water Quality Standards Act of 1971. The amendment was submitted by Senator WILLIAM PROXMIRE, of Wisconsin.

The Committee on Public Works, having taken testimony on the amendment, and after having considered it in some detail, came to the conclusion that the issues involved in the amendment were beyond the scope of the Committee on Public Works and, therefore, directed the action which I am taking.

By Mr. HATFIELD:

S. 2653. A bill to amend the Internal Revenue Code of 1954 to provide a tax credit for persons 65 years of age or older. Referred to the Committee on Finance.

OLD AGE TAX CREDIT

Mr. HATFIELD. Mr. President, I send to the desk a bill which I ask unanimous consent be printed in the RECORD at the conclusion of my remarks.

Mr. President, in 1970, there were 20,049,592 people over the age of 65 in the United States. In 1968, which is the latest year for which the following figures are available, there were 8.8 million tax returns filed from households with at least one member over the age of 65. Of these returns, 4.3 million were taxable. During the same year $7.6 billion in taxes were paid by those 65 and over.

In April 1970, the Special Committee on Aging held hearings on income tax overpayments by the elderly. In its report, it pointed out that "2.4 million returns were entitled to refunds, but the total amount—$730 million—was less than one-half of the payments owed at the time of filing." The report went on to point out that in 1967 one-half of the families with a head of 65 or older had income as high as $3,928, approximately 20 percent had incomes below $2,000, and of the elderly living alone or with nonrelatives, one-half had incomes of $1,800 or less and one-quarter had incomes of $1,000 or less.

When comparing the income of the elderly with the young, it is easily concluded that the older members of our society are at a disadvantage. For example, in 1967, of the 711 million families with a head of 65 or older, roughly 10 percent had incomes under $1,500 as compared with 3 percent of the younger families. Approximately, 37 percent of the older families had incomes of less than $3,000 as compared with 8 percent of the younger families, according to the special committee report.

In comparing these figures it is clear that the elderly have been not only at a disadvantage relative to tax problems, but relative to income as well. The special committee also examined problems encountered by the elderly caused by the 1969 Tax Reform Act and concluded that "change is not only possible, it is essential." And it made numerous recommendations to implement change which in the members' opinion would rectify the inequity encountered by the older citizens of our country.

Mr. President, I support the general conclusions and the recommendations of the Special Committee on Aging, but I would like to suggest a change that would simplify the issue to a great extent while moving in the direction of rectifying many of the problems encountered in this area by the elderly. I propose a $150 income tax credit for every member of our society over the age of 65. The potential loss—$645 million in 1970—to the Federal revenue would be insubstantial in comparison to the stimulus it would provide to the economy in terms of spending, particularly during these troubled times, let alone the hope and potential sense of security it would provide to our older citizens.

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

S. 2653

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits against tax) is amended by renumbering section 40 as 41, and by inserting after section 39 the following new section:

"SEC. 40. OLDER PERSONS.

"(a) GENERAL RULE.—There shall be allowed to an individual who has attained the age of 65 a credit of $150 against the tax imposed by this chapter for the taxable year.

"(b) LIMITATION.—The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under section 33 (relating to foreign tax credit), section 35 (relating to partially tax-exempt interest), section 37 (relating to retirement income), and section 38 (relating to investment in certain depreciable property)."

(b) The table of sections for such subpart is amended by striking out "Sec. 40. Overpayments of tax." and inserting in lieu thereof:

"SEC. 40. OLDER PERSONS.
"SEC. 41. OVERPAYMENTS OF TAX."

(c) The amendments made by subsections (a) and (b) shall take effect with respect to taxable years beginning after December 31, 1971.

By Mr. MUSKIE:

S. 2654. A bill to amend chapter 73 of title 10, United States Code, to establish a survivor benefit plan, and for other purposes. Referred to the Committee on Armed Services.

Mr. MUSKIE. Mr. President, I am today introducing legislation to establish a survivor benefit program for retired military personnel. This bill will provide an opportunity, at a reasonable cost, for all career members of the Armed Forces to leave a portion of their retired pay to their survivors. Such survivor benefits would supplement existing social security benefits. The bill will also provide minimum income guarantee for present military widows to assure an income of at least $2,000 per year.

This bill is identical to H.R. 10670 which was introduced as a clean bill by Congressman OTIS PIKE in the House on September 14. H.R. 10670 supersedes H.R. 984 on which hearings were held in the House Armed Services Committee this summer. The new bill incorporates Defense Department recommendations and various technical perfecting changes that resulted from the excellent work done by Congressman PIKE and his colleagues on the Armed Services Committee.

Mr. President, there is at present no universally applicable system which automatically provides for survivors' rights in the retired pay of military personnel. This is one of the few gaps in an otherwise comprehensive program of fringe benefits available to military personnel.

Present programs of survivor protection for retired military personnel are incomplete and inadequate. And since the military man retires relatively early, this is a problem of some magnitude.

This bill provides a viable solution to this problem. It was drafted on the basis of two broad general concepts: to build on the foundation provided by social security, and to parallel, to the extent feasible, the successful survivor benefits program of the civil service retirement system.

This bill provides a fair level of income replacement for survivors. It calls for some cost sharing at a reasonable level by the retiree that meets the Government's obligation to survivors. It is acceptable in terms of its financial demands on the Government. It is generally applicable to all military retirees. And, it can be easily understood by members of the retired community and their dependents.

I hope that the Senate will act on this legislation, which has already been reported to the House by the House Armed Services Committee, to fill this gap in survivor benefits for career members of the U.S. Armed Forces.

By Mr. MUSKIE (for himself and Mr. MONDALE):

S. 2656. A bill to amend chapters 2 and 21 of the Internal Revenue Code of 1954, and title II of the Social Security Act, to reduce social security tax rates and provide a new method for their determination in the future, to remove the dollar limitation presently imposed upon the amount of wages and self-employment income which may be taken into account for tax and benefit purposes under the old age, survivors, and disability insurance system (making allowance for personal income tax exemptions and the low-income allowance in determining such amount for tax purposes), and to increase benefits under such system to reflect the new tax and benefit base. Referred to the Committee on Finance.

PROPOSED PAYROLL REFORM TAX LEGISLATION

Mr. MUSKIE. Mr. President, today I am introducing, with Senator MONDALE, a bill which would make fundamental and far-reaching improvements in the payroll tax. This bill would build into the payroll tax the principles of equity and progressivity which are the foundation of any enlightened tax system. This bill would reduce the amount of Federal taxes paid by 63 million American families.

The present payroll tax system, establishing a flat tax rate of 5.2 percent on earned income up to a ceiling of $7,800, places a disproportionate burden of the financing of social security upon the lower- and middle-income wage earner. For the working man making $7,800 per year, the effective tax rate is 5.2 percent, while for the man making $50,000, the effective tax rate is 0.8 percent. Furthermore, the lack of exemptions and low-income allowance add to the regressive nature of the payroll tax.

Because the burden of the payroll tax is focused on the low- and middle-income worker increases in the payroll tax in recent years have largely eliminated the tax relief Congress attempted to extend to these Americans. Furthermore, at rates proposed by H.R. 1, the payroll tax burden will be larger in 1973 than the personal income tax burden for the average family of four with an income of $13,900 or less.

In order to remedy this situation, we are introducing legislation today to make the payroll tax progressive by eliminating the ceiling on taxable earned income and providing personal exemptions and low income allowance equal to those allowed for income tax purposes. Second, the legislation fixes the level of the payroll tax rate at the rate necessary to bring revenues into annual balance with benefits paid.

The social security system was one of the signal achievements of the New Deal. Instead of facing destitution and the dole, the retiring American now is guaranteed some measure of economic security. Without the benefits provided by the social security system, 19 out of every 20 beneficiaries would have achieved even a moderate standard of living. Social security helps to keep at least 10 million Americans out of poverty. Presently, about one out of every eight Americans receives social security cash benefits every month.

In 1971, more than 26 million families will receive social security benefits. Those benefits will total more than $34 billion. Covering virtually all of the Nation's workers other than Government employees, and railroad workers who receive the protection of separate programs, the social security system guarantees income support on retirement and important medical coverage. It affords financial protection against disability. And it assures aid to the survivors of deceased workers.

Social security did not spring into being in its present form. When he signed the original social security legislation, Franklin Roosevelt called it "the cornerstone of a structure which is far from complete." With broad bipartisan support, subsequent Congresses and administrations have extended that structure and improved it. Much has been done. We can all take very great pride in what has been accomplished.

But that pride in our existing social security system must not lead us to forget that the system can be improved—and must be improved—as our wealth increases and as our understanding of the system and the needs of its beneficiaries grows. In H.R. 1, the House of Representatives recently approved an increase in social security benefits. The Senate has begun its own deliberations on the expansion of social security benefits. I have no doubt that, like the House, the Senate will approve important increases in benefits—and I hope make those increases more substantial. As I have in the past, I intend to support such increases. And, whatever the Congress does this year, urgent need will remain for further attention to the sufficiency of the economic protection which social security affords.

Despite the achievements of the social security system, too many of our elderly citizens are trapped in the prison of poverty, because social security benefits are inadequate to provide a dignified retirement. Sixty percent of our elderly who are living alone are also living in or near poverty. They are three-fifths of a generation who heard a promise made, and

now see the promise falling short. A drastic infusion of funds is needed to rescue many of our senior citizens from a life of poverty. Retirement must be a reward, not a punishment.

To achieve a substantial increase in benefits, I believe that there must be some form of general revenue financing for social security. General revenue financing has been advocated since 1937 when it was recommended by the first Advisory Council on Social Security. Delay in enacting this recommendation has meant needless poverty for millions of elderly Americans. We must work to end that delay, to eliminate that poverty and to provide substantial increases in social security benefits through the use of general revenues.

But today I wish to address myself to a different part of the social security system—not its benefits, but the mechanism by which those benefits are financed. One source of the continuing strength of the social security system has been that a special tax is set aside to finance it—the payroll tax. When a worker is employed in a covered occupation, he knows that with each paycheck he and his employer are contributing to the support of old people, the disabled, and survivors today so that he and his dependents will enjoy the same kind of protection tomorrow.

Small in its first years, the payroll tax has now become one of the largest components of the Federal tax system. It produces more revenue than the corporate income tax. Indeed, it produces more Federal revenue than any tax other than the individual income tax. This year it will raise $47 billion.

The payroll tax achieved its present importance in the Federal tax system very quickly. It is, in fact, the most rapidly growing Federal tax. In 1950, it produced only 5 percent of Federal revenue. Today it has produced to 23 percent of Federal revenue. According to current forecasts, by 1976 the payroll tax will yield more than $80 billion—or 25 percent of all Federal revenue for that year.

While the magnitude and impact of the payroll tax have grown rapidly, the essential structure of the tax has changed very little since the original adoption of social security. The tax is still imposed on the first dollars a worker earns each year up to a specified ceiling. The tax makes no allowance for the size of the worker's family; it applies whether or not the worker's family is below the poverty level; and it does not increase as the worker's earnings rise above the wage base.

The characteristics of the payroll tax created few serious inequities when the tax was first adopted. The tax was then very small. The tax rate applicable to workers was only 1 percent, and the initial $3,000 wage base included 95 percent of all earnings of the workers covered.

But the payroll tax rate has risen sharply. It is now 5.2 percent for the worker and 5.2 percent for his employer. Under the present form of H.R. 1, it would rise to 5.4 percent and increase further to 7.2 percent by 1977 for both worker and employer. We are taxing a smaller proportion of income with steadily higher rates. In short, we are financing one of our society's most progressive programs with an increasingly regressive tax.

The form of the payroll tax has not changed substantially during a time of vast economic change. The result is serious inequities. Despite the 1969 congressional recognition of the principle that people below the poverty level ought not to pay income tax—and despite the reaffirmation of that principle last week by the Ways and Means Committee in its increase of the low-income allowance—payroll tax continues to be exacted from workers who are below the poverty level.

The payroll tax applies without regard to the number of children or other dependents whom a worker must support. The single individual whose earnings are $20,000 a year pays precisely the same payroll tax as the married couple who are supporting five children on an income of $7,800, despite the broad difference in their real ability to pay tax.

The effective rate of the payroll tax declines as a worker's earnings rise above the ceiling on the wage base. The school teacher earning $7,000 a year pays 5.2 percent of her earnings in payroll tax. The engineer earning $25,000 pays about 1.6 percent of his entire earnings, and the business executive earning $100,000 pays about four-tenths of 1 percent. While each of those workers becomes eligible for the same social security benefits, they simply cannot afford to pay the same amount for those benefits.

Finally, the payroll tax hits harder at families in which there are two wage earners than at families which derive the same income from a single wage earner. Again, the consequence is a major difference in tax burdens which has no relationship to differences in ability to pay.

Thus the payroll tax which began under very different circumstances has become unfair. Those who can least afford it must pay the same amounts as those who need not worry about the burden. And low- and middle-income Americans are near the limit in paying taxes. Under the present system, they face the frightening prospect of inequitable tax increases to finance a vain attempt to provide adequate benefit levels.

The payroll tax has wiped out much of the tax reductions that Congress passed in 1969. Because the burden of the payroll tax is focused upon low- and middle-income workers, increases in the payroll tax in recent years have reduced sharply—and in some cases offset entirely—the tax relief which Congress has attempted to extend to these groups in the income tax system. Despite the major income reductions of 1964 and 1969, the total Federal tax load of the low- and middle-income worker is little lower now than it was in 1963. Indeed, by reason of the payroll tax increases, the single worker with $3,000 of income will pay more total Federal tax in 1973 than he paid in 1963. He will do so despite the fact that, because of general increases in prices and wages, he has become poorer both absolutely and relatively.

Americans have been willing to accept the payroll tax—and its increases—because they have recognized that its current tax burdens will lead to future benefits, for themselves and their families. On these terms, social security has seemed a good buy—and it is. But we can have the same buy, and the same benefits, financed by a fairer and sounder payroll tax. We must change the social security taxes to make them fairer. We must change them so the limits on the ability of many Americans to pay more taxes will not deprive older Americans of needed increases in benefits. And we must strengthen the payroll tax to make the whole social security system stronger.

To achieve that end, Senator MONDALE and I are introducing legislation which would make key changes in the payroll tax. In order to make the payroll tax progressive, our legislation would make these changes:

First. The wage base upon which a worker is taxed would be reduced by dependency exemptions equal to those allowed him for income tax purposes.

Second. Further, the worker's tax base would be reduced by an amount equal to the low-income allowance provided by the income tax law. Under current law, the low-income allowance will reach the level of $1,000 on January 1, 1972. Under an amendment approved by the House Ways and Means Committee last week, the allowance would be increased to $1,300.

Third. The ceiling on the wage base would be removed. Hence, to the extent that they exceed dependency exemptions and the low-income allowance, all of a worker's earnings from covered employment would be subject to the payroll tax.

Fourth. The wage base ceiling would also be removed for the payroll tax paid by employers, but for reasons of administrative convenience, neither dependency exemptions nor the low-income allowance would be applied in the computation of the employer tax. However, continuing the principle of the existing payroll tax that equal contributions should be made by employers and employees, the rate of the employer tax would be set to produce approximately the same amount of revenue as the employee tax.

Fifth. The removal of the ceiling on taxable earnings would be accompanied by an elevation in the amount of earnings counted in computing benefits from $7,800—the ceiling applicable under current law—to $20,000. This modification will provide improved retirement benefits for millions of middle-income Americans for whom social security benefits are insufficient to prevent a drastic decline in income upon retirement. Expanding upon a principle already used in the existing benefit system, the proposal would phase down benefits earned as income rises so that the major benefit increases would occur in levels of income under $10,000 and lesser increases would occur in the $10,000 to $20,000 range.

Our proposal would also change the payroll tax rate by fixing it at a level which brings revenues produced into annual balance with benefits paid.

With these changes made in the tax structure, the payroll tax rate would be established at the level necessary to finance the increased benefits provided in H.R. 1. To support the benefit provisions contained in the current form of

H.R. 1, a tax rate of 5.2 percent would be necessary for the employee's tax. That rate compares with the H.R. 1 rate of 5.4 percent for 1972 through 1974, 6.2 percent for 1975 and 1976, and 7.2 percent for 1977 and thereafter. A tax rate of approximately 4.5 percent on employers would produce approximately the same revenue as the employer tax under H.R. 1. The tax rate of the self-employed would remain at 7.5 percent.

These changes would bring major and fundamental improvement to the payroll tax. Under them, 63 million Americans would pay lower taxes. Only 8 million high-income Americans would pay more. Persons at or below the poverty level would be sheltered from payroll taxes altogether. And the relief would extend well into the middle- and upper middle-income ranges. Every family of four with earnings of $14,500 or less would save money. Every married couple with earnings of $13,000 or less would save money. Every single person with earnings of $12,250 or less would pay lower taxes. Furthermore, at every income level up to $25,000, more people would save on their taxes than would pay increased tax.

In broad and important income ranges, the amounts of the tax savings under the proposal would be substantial. Compared with the tax liability called for in H.R. 1, a four-person family at the poverty level will save $200 in taxes—or 100 percent of its prior Federal tax liability. A worker earning $7,500 and trying to support a wife and four children will pay $300 less—a saving of 44 percent in his Federal taxes. A salesman earning $8,000 and his school teacher wife earning $7,500 who support two children will save $240.

Let me emphasize that the proposal which Senator MONDALE and I make today is aimed at the taxation machinery of the social security system. It would reduce no one's social security benefits. In fact, it increases in benefits for many Americans by incorporation of earnings between $7,800 and $20,000 in the benefit computation. And it makes future benefit increases more likely by improving the equity of the tax which finance them.

Furthermore, let me emphasize that the proposal leaves the present structure of the social security system intact. The payroll tax would remain the financing mechanism of the system. Revenue produced by that tax would continue to be transferred to the social security trust fund. Social security benefits would continue to be paid from that trust fund. If Congress should decide to finance future social security benefits increases from general Federal revenues, as I hope it will, our proposal would not impede that step.

Within the area to which it is addressed, however, the proposal would accomplish broad-scale improvement of the payroll tax. It would shift the burden of that tax from the low-income and the middle-income worker to those who have greater ability to pay the tax. In doing so, it would make today's payroll tax fairer and sounder; and it would facilitate future increases in social security benefits by making it possible to increase payroll taxes without imposing unacceptable burdens upon low- and middle-income families. No longer would a decent income for the elderly depend on an indecent increase in the tax burden of the working.

By submitting this legislation, we draw attention to a long-neglected area of economic injustice affecting almost every working American. A nation that is fair cannot tolerate a tax which makes no allowance for real difference in ability to pay. Enactment of the legislation that Senator MONDALE and I are proposing would allow this country to make social security benefits more generous and burdens more equitable. This legislation, aimed at our second largest tax—a tax which many millions of American workers pay every 2 weeks—would constitute a fundamental and important contribution to the continuing effort to strengthen and improve our Federal tax system.

Mr. President, I ask that additional material be inserted in the RECORD which further details Muskie-Mondale payroll proposal. First, there is a brief fact sheet and explanation of the proposal. Next, there is a series of tables showing the different taxes that would be paid by various groups of wage earners under our proposal compared to H.R. 1. Finally, there are tables showing the percentage and amount of Federal taxes paid by specific taxpayers from 1963 to 1973.

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

FACT SHEET OF THE MUSKIE PAYROLL REFORM PROPOSAL

I. PURPOSE

The proposed legislation would make fundamental and far-reaching improvements in the payroll tax. The present payroll tax, established a flat rate of 5.2 percent on earned income up to a fixed ceiling of $7,800 a year, is highly regressive. Under the existing law, for the working man making $7,800 a year, the effective payroll tax is 5.2 percent, while for the man making $50,000 a year the effective payroll tax rate is .8 percent. The regressive nature of the tax is increased because neither exemptions nor deductions are allowed.

Because the burden of the payroll tax is focused on the low and middle income worker, in recent years increases in the payroll tax have largely eliminated the tax relief Congress attempted to extend to these groups both in 1964 and in 1969. Furthermore, at rates proposed by H.R. 1, the payroll tax burden will be larger in 1973 than the personal income tax burden for the average family of four with an income of $13,900 or less.

II. PROPOSAL

To provide for a more equitable and progressive payroll tax, the proposed legislation would:

1. Remove the ceiling on the wage base.
2. Allow exemptions equal to the personal exemptions provided for income tax purposes.
3. Allow a low income allowance equal to that provided for income tax purposes.
4. Adopt the recommendations of the 1971 Advisory Council of Social Security that the payroll tax rate be fixed at a level which brings revenues produced into annual balance with benefits paid.

With these changes made in the tax structure, the payroll tax rate would be established at the level necessary to finance the social security benefits decided upon by Congress. To support the benefits provisions contained in the current form of H.R. 1, a tax rate of approximately 5.2 percent would be necessary compared with the rate of 5.4 percent proposed by H.R. 1.

III. EFFECTS

The payroll tax reform legislation leaves the present structure of the social security system intact.

Under this proposal 63 million American families would pay lower taxes in 1973 than under H.R. 1. Eight million high income Americans would pay more. Every family of four with earnings of $14,500 or less would pay less in taxes. Every married couple with earnings of $13,000 or less would pay less in taxes. Every single person with earnings of $12,250 or less would pay less in taxes. At every income level up to $25,000, more people would save taxes than would pay increased taxes.

The use of exemptions and low income allowance makes the tax much more responsive to real differences in ability to pay. The removal of the ceiling increases the responsiveness of the tax base to changes in wage and price levels. This proposal builds into the payroll tax the principles of equity and progressivity which are the foundation of any enlightened tax system.

EXPLANATION OF PAYROLL TAX REFORM PROPOSAL

1. *Adopt exemptions and low income allowance.*

Under *present law,* all earned income up to $7,800 is subject to tax. No exemptions or deductions are allowed.

The *proposal* would allow exemptions for employee payroll tax purposes equal to the personal exemptions showed for income tax purposes—$750 per person beginning in January, 1972, under the September 23 action of the Ways and Means Committee. In addition, the employee would be permitted a deduction equal to the low income allowance permitted for income tax purposes.

Married couples filing jointly and single individuals would receive the full deduction; married wage earners filing separately would each be allowed a $500 deduction. The self-employed would receive personal exemptions and the low income allowance under the same rules applicable to employees. For reasons of administrative simplicity, neither exemptions nor the low income allowance would apply in the computation of the tax on employers.

2. *Remove ceiling on wage base.*

The *present* tax is imposed on both employer and employee only on earnings up to $7,800. The self-employment tax is subject to the same ceiling. Increases already scheduled under current law will raise the ceiling to $9,000 in 1972 and thereafter. H.R. 1 would raise the ceiling to $10,200 for 1972 and provide for automatic increases in later years based upon increases in the cost of living.

The *proposal* would eliminate these ceilings. Hence, to the extent that they exceed dependency exemptions and the low income allowance, all of a worker's earnings from covered employment would be subject to the payroll tax. Similarly, to the same extent, all earnings from covered self-employment would be subject to the payroll tax. For purposes of the payroll tax on employers, all covered wages would be included in the wage base, and no reduction would be made for personal exemptions and the low income allowance.

The payroll tax would apply, as at present, only to "wages" and "self-employed income" as defined under the Social Security law. Other types of income would not be taxed. The present law exclusions for the earnings of Federal government employees, most of whom are covered by the Civil Service Retirement system, and railroad workers, covered under the Railroad Retirement Act, would be continued unchanged.

3. *Adoption of recommendations of Advisory Council on Social Security.*

Under *present law,* the payroll tax produces revenue each year beyond the amount necessary to pay Social Security benefits for that year. The surplus for 1973 is projected at $6.1

billion. The Advisory Council on Social Security has recommended that the payroll tax rate be fixed to place the Social Security paid on a pay-as-you-go-basis. In general, under this recommendation, Social Security revenues would equal benefits on an annual basis.

The *proposal* would adopt the Advisory Council's recommendation.

4. *Raise benefit ceiling.*

Under *present law,* benefits rise, though less than proportionately, as average taxable earned income rises, up to the ceiling.

The proposal would accompany the removal of the ceiling on taxable earnings with an elevation in the amount of earnings counted in computing Social Security benefits. The increase would be from the present maximum level of $7,800 to $20,000. The proposal would phase down benefits earned as income rises, so that levels of income above $10,000 would produce declining percentages of benefits.

5. *Reduce payroll tax rate.*

Under *present law* the payroll tax rate for 1971 is 5.2 percent for employees, 5.2 percent for employers, and 7.5 percent for the self-employed. Under H.R. 1, the tax rate on employees and employers would be raised to 5.4 percent for 1972–74, 6.2 percent for 1975–76, and 7.2 percent for 1977 and thereafter.

The *proposal* would lower the tax rate to that which, in conjunction with the amendments described above, is necessary to fund the increased benefits provided in H.R. 1. The employee tax rate necessary to finance the benefits provided in the current form of H.R. 1 would be approximately 5.2 percent. Similarly, 4.5 percent tax on employers—applied to wages without a ceiling and unreduced by exemptions and the low income allowance—would produce the same revenue as H.R. 1's 5.4 percent employer tax on the first $10,200 of earnings. If benefits are set at H.R. 1 levels, the proposal would leave the present 7.5 percent tax rate on self-employment income unchanged.

To fund both the benefits provided for in H.R. 1 and those which would result from raising the ceiling for benefit purposes to $20,000, as proposed, an employee tax rate somewhat higher than 5.2 percent would be necessary for 1975 and later years. However, that rate would be substantially below the H.R. 1 rates of 6.2 percent for 1975–76 and 7.2 percent for 1977 and thereafter. The necessary actuarial computations can be performed by the Social Security Administration at the request of the Committee on Finance.

TABLE 1.—COMPARISON OF EARNED INCOME-EXEMPTIONS-LOW INCOME ALLOWANCE AS A BASE FOR OASDHI REVENUE IN 1973 WITH THE BASE IN H.R. 1, FOR ALL RETURNS BY AGI CLASS. THE FIRST COLUMN INDICATES THE NUMBER OF RETURNS WHICH PAY LESS USING EARNED INCOME AND THE SECOND COLUMN INDICATES THE NUMBER OF RETURNS WHICH PAY LESS USING H.R. 1

AGI class	5.2 percent rate	
	Population (thousands)	Population (thousands)
—999,999 to 0	101.135	0.348
0 to 1,000	4,518.991	5.184
1,000 to 2,000	4,461.641	0
2,000 to 3,000	3,761.959	0
3,000 to 4,000	3,415.565	1.008
4,000 to 5,000	3,683.665	4.050
5,000 to 6,000	3,501.518	0
6,000 to 7,000	4,094.035	0
7,000 to 8,000	4,110.755	5.511
8,000 to 9,000	3,694.785	18.942
9,000 to 10,000	3,630.461	41.654
10,000 to 11,000	3,796.787	67.732
11,000 to 12,000	3,524.330	97.982
12,000 to 13,000	3,029.946	198.376
13,000 to 14,000	2,208.998	623.693
14,000 to 15,000	1,499.616	919.840
15,000 to 16,000	1,722.682	741.419
16,000 to 18,000	2,455.264	1,123.534
18,000 to 20,000	1,909.691	869.218
20,000 to 25,000	1,930.403	1,451.809
25,000 to 30,000	465.665	805.089
30,000 to 40,000	249.706	538.879
40,000 to 50,000	136.097	235.266
50,000 to 100,000	202.567	338.490
100,000 to 500,000	22.997	106.406
500,000 to 1,000,000	0.602	2.210
1,000,000	0.221	0.859
Total	63,130.084	8,197.500

TABLE 2.—COMPARISON OF EARNED INCOME-EXEMPTIONS-LOW INCOME ALLOWANCE AS A BASE FOR OASDHI REVENUE IN 1973 WITH THE BASE IN H.R. 1, FOR FAMILIES WITHOUT CHILDREN BY AGI CLASS. THE FIRST COLUMN INDICATES THE NUMBER OF RETURNS WHICH PAY LESS USING EARNED INCOME AND THE SECOND COLUMN INDICATES THE NUMBER OF RETURNS WHICH PAY LESS USING H.R. 1

AGI class	5.2 percent rate	
	Population (thousands)	Population (thousands)
—999,999 to 0	34,034	41
0 to 1,000	176,024	
1,000 to 2,000	396,548	
2,000 to 3,000	542,415	
3,000 to 4,000	600,322	
4,000 to 5,000	549,045	
5,000 to 6,000	617,566	
6,000 to 7,000	560,289	
7,000 to 8,000	800,475	
8,000 to 9,000	640,422	10,482
9,000 to 10,000	854,084	21,459
10,000 to 11,000	804,597	4,146
11,000 to 12,000	825,894	15,577
12,000 to 13,000	603,065	72,614
13,000 to 14,000	239,064	390,228
14,000 to 15,000	274,276	380,230
15,000 to 16,000	292,740	162,463
16,000 to 18,000	661,981	239,407
18,000 to 20,000	498,306	146,459
20,000 to 25,000	449,645	378,085
25,000 to 30,000	72,110	209,213
30,000 to 40,000	53,783	133,885
40,000 to 50,000	46,199	65,933
50,000 to 100,000	52,254	87,638
100,000 to 500,000	9,141	32,719
500,000 to 1,000,000	221	884
1,000,000	102	353
Total	10,654,604	2,351,817

INDIVIDUAL INCOME TAX AND OASDHI TAXES—BY INCOME LEVEL, FAMILY OF 4, 2 WAGE EARNERS, CURRENT LAW

	$10,000 total income								$15,000 total income			
	$3,000 and $7,000				$5,000 and $5,000				$5,000 and $10,000			
	Income tax	OASDHI	Total	As percent of income	Income tax	OASDHI	Total	As percent of income	Income tax	OASDHI	Total	As percent of income
1963	$1,372	$282.60	$1,654.60	16.5	$1,372	$348	$1,720	17.2	$2,616	$348.00	$2,964.00	19.8
1964	1,200	282.60	1,462.60	14.8	1,200	348	1,548	15.5	2,326	348.00	2,674.00	17.8
1965	1,114	282.60	1,406.60	14.1	1,114	348	1,462	14.6	2,172	348.00	2,520.00	16.8
1966	1,114	403.20	1,517.20	15.2	1,114	410	1,524	15.2	2,172	487.00	2,659.00	17.7
1967	1,114	422.40	1,536.40	15.4	1,114	440	1,554	15.5	2,172	510.40	2,682.40	17.9
1968	1,198	440.00	1,638.00	16.4	1,198	440	1,638	16.4	2,335	563.20	2,898.20	19.3
1969	1,225	480.00	1,705.00	17.0	1,225	480	1,705	17.0	2,389	614.40	3,003.40	20.0
1970	1,122	480.00	1,602.00	16.0	1,122	480	1,102	16.0	2,204	614.40	2,818.40	18.8
1971	1,019	520.00	1,539.00	15.4	1,019	520	1,539	15.4	2,018	665.60	2,683.50	17.9
1972	962	520.00	1,482.00	14.8	962	520	1,482	14.8	1,864	728.00	2,592.00	17.3
1973	905	565.00	1,470.00	14.7	905	565	1,470	14.7	1,820	791.00	2,611.00	17.4

Percentage change 1963/1973, —11.2 percent, —14.6 percent.

TABLE 3.—COMPARISON OF EARNED INCOME-EXEMPTIONS-LOW INCOME ALLOWANCE AS A BASE FOR OASDHI REVENUE IN 1973 WITH THE BASE IN H.R. 1 FOR SINGLE PERSONS BY AGI CLASS. THE FIRST COLUMN INDICATES THE NUMBER OF RETURNS WHICH PAY LESS USING EARNED INCOME AND THE SECOND COLUMN INDICATES THE NUMBER OF RETURNS WHICH PAY LESS USING H.R. 1

[In thousands]

AGI class	5.2 percent rate	
	Population	Population
—999,999 to 0	18.958	0.050
0 to 1,000	4,071.318	0.478
1,000 to 2,000	4,464.913	0
2,000 to 3,000	2,524.464	0
3,000 to 4,000	1,998.478	0
4,000 to 5,000	2,070.183	0
5,000 to 6,000	1,705.537	0
6,000 to 7,000	1,949.842	0
7,000 to 8,000	1,520.473	1.215
8,000 to 9,000	1,097.784	8.460
9,000 to 10,000	879.844	13.950
10,000 to 11,000	688.352	54.582
11,000 to 12,000	448.647	63.756
12,000 to 13,000	195.202	113.108
13,000 to 14,000	128.483	127.922
14,000 to 15,000	42.231	129.181
15,000 to 16,000	51.146	88.918
16,000 to 18,000	36.926	114.408
18,000 to 20,000	59.882	89.750
20,000 to 25,000	58.695	125.997
25,000 to 30,000	10.312	28.840
30,000 to 40,000	0.000	23.395
40,000 to 50,000	4.172	5.453
50,000 to 100,000	10.650	15.247
100,000 to 500,000	1.608	3.712
500,000 to 1,000,000	0.080	0.110
1,000,000 to ********	0.033	0.059
Total	24,038.213	1,008.593

TABLE 5.—COMPARISON OF EARNED INCOME-EXEMPTIONS-LOW INCOME ALLOWANCE AS A BASE FOR OASDHI REVENUE IN 1973 WITH THE BASE IN H.R. 1, FOR FAMILIES WITH CHILDREN BY AGI CLASS. THE FIRST COLUMN INDICATES THE NUMBER OF RETURNS WHICH PAY LESS USING EARNED INCOME AND THE SECOND COLUMN INDICATES THE NUMBER OF RETURNS WHICH PAY LESS USING H.R. 1

[In thousands]

AGI class	5.2 percent rate	
	Population	Population
—999,999 to 0	48.143	0.257
0 to 1,000	271.649	4.705
1,000 to 2,000	600.180	0
2,000 to 3,000	695.079	0
3,000 to 4,000	816.765	1.008
4,000 to 5,000	1,064.438	4.050
5,000 to 6,000	1,178.415	0
6,000 to 7,000	1,583.903	0
7,000 to 8,000	1,789.807	4.296

[In thousands]

AGI class	5.2 percent rate Population	Population
8,000 to 9,000	1,956.579	0
9,000 to 10,000	1,896.532	6.245
10,000 to 11,000	2,303.838	9.004
11,000 to 12,000	2,249.788	18.649
12,000 to 13,000	2,231.679	12.653
13,000 to 14,000	1,841.451	105.542
14,000 to 15,000	1,183.110	410.429
15,000 to 16,000	1,378.796	490.037
16,000 to 18,000	1,756.357	769.719
18,000 to 20,000	1,351.504	633.009
20,000 to 25,000	1,422.064	947.727
25,000 to 30,000	383.243	567.036
30,000 to 40,000	195.924	381.599
40,000 to 50,000	85.726	163.881
50,000 to 100,000	139.664	235.603
100,000 to 500,000	12.248	69.980
500,000 to 1,000,000	0.301	1.216
1,000,000	0.086	0.447
Total	28,437.271	4,837.092

INDIVIDUAL INCOME AND OASDHI TAXES: BY INCOME LEVEL FAMILY OF 4, 1 WAGE EARNER. CURRENT LAW

$3,000 WAGE AND SALARY INCOME

	Income tax	OASDHI	Total	As percent of income
1963	$60.00	$108.60	$168.60	5.0
1964	60.00	108.60	168.60	5.6
1965	0	108.60	108.60	3.6
1966	0	126.00	126.00	4.2
1967	0	132.00	132.00	4.4
1968	0	132.00	132.00	4.4
1969	0	144.00	144.00	4.8
1970	0	144.00	144.00	4.8
1971	0	156.00	156.00	5.2
1972	0	156.00	156.00	4.2
1973	0	169.50	169.50	5.65

$5,000 WAGE AND SALARY INCOME

1963	$420.00	$174.00	$594.00	11.9
1964	321.00	174.00	495.00	9.9
1965	306.00	174.00	480.00	9.6
1966	306.00	210.00	516.00	10.3
1967	306.00	220.00	526.00	10.5
1968	333.25	220.00	553.25	11.1
1969	341.00	240.00	581.00	11.6
1970	200.90	240.00	440.90	8.8
1971	192.50	260.00	452.50	9.1
1972	170.00	260.00	430.00	8.6
1973	140.00	282.50	422.50	8.5

$7,000 WAGE AND SALARY INCOME

1963	$780.00	$174.00	$954.00	13.6
1964	662.00	174.00	836.00	11.9
1965	603.00	174.00	777.00	11.1
1966	603.00	277.20	880.20	12.6
1967	603.00	290.40	893.40	12.8
1968	648.00	308.00	956.00	13.7
1969	663.00	336.00	999.00	14.3
1970	530.00	336.00	866.00	12.4
1971	509.50	364.00	873.50	12.5
1972	475.50	364.00	839.50	12.0
1973	442.00	395.50	837.50	12.0

$10,000 WAGE AND SALARY INCOME

1963	$1,372.00	$174.00	$1,546.00	15.5
1964	1,200.00	174.00	1,374.00	13.7
1965	1,114.00	174.00	1,288.00	12.9
1966	1,114.00	277.20	1,391.20	13.9
1967	1,114.00	290.40	1,404.40	14.0
1968	1,198.00	343.20	1,541.20	15.4
1969	1,225.00	374.40	1,599.40	16.0
1970	1,122.00	374.40	1,496.40	15.0
1971	1,019.00	405.60	1,424.60	14.2
1972	962.00	468.00	1,430.00	14.3
1973	905.00	508.50	1,413.50	14.1

$15,000 WAGE AND SALARY INCOME

	Income tax	OASDHI	Total	As percent of income
1963	$2,616.00	$174.00	$2,790.00	18.6
1964	2,326.00	174.00	2,500.00	16.7
1965	2,172.00	174.00	2,346.00	15.6
1966	2,172.00	277.20	2,449.20	16.3
1967	2,172.00	290.40	2,462.40	16.4
1968	2,335.00	343.20	2,678.20	17.9
1969	2,389.00	374.40	2,763.40	18.4
1970	2,204.00	374.40	2,578.40	17.2
1971	2,018.00	405.60	2,423.60	16.2
1972	1,864.00	468.00	2,332.00	15.5
1973	1,820.00	508.50	2,328.50	15.5

Mr. MONDALE. Mr. President, along with the distinguished Senator from Maine (Mr. MUSKIE), I am introducing today a bill to reform fundamentally our method of financing social security.

As David Broder pointed out recently, Congress has all but ignored the increasingly heavy burden of social security taxes:

> Discussing the inequities of payroll taxing may not attract as much praise at Georgetown cocktail parties as a ringing denunciation of the bombing in Laos or the tactics of the Washington police.

But it is equally worthy of our attention.

The problems posed by the payroll tax are only part of the much larger problem of tax equity.

Three years ago, the Secretary of the Treasury predicted a taxpayer's revolt.

Congress responded to the popular outcry by passing the Tax Reform Act of 1969.

This was a step forward.

Yet today, our tax system is still appallingly unfair.

Contrary to myth, it is not progressive. Rich people, poor people, middle-income people—all pay about the same portion of their income in taxes. According to a recent study by the Chief of the Census Bureau's Population Division, the worker making under $2,000 pays an average of 40 percent of his income in taxes to all levels of government. The worker in the $2,000 to $50,000 range pays a few percentage points less. Workers with income over $50,000 pay a few percentage points more.

Our tax system—taken as a whole—bears no relation to ability to pay.

The average man earning $6,000—barely enough to support a family, and below the Labor Department's low-income budget—pays taxes of $1,600.

Meanwhile, one of every 20 people who made $1 million in 1969 went tax-free. The 20 largest oil companies contributed only 8½ percent of their incomes to the Treasury.

Inequities like these make our tax system a national disgrace.

And the disgrace is deepening. Our tax system is actually becoming more regressive.

At the heart of the problem is the payroll tax.

The Federal tax system is composed of three main taxes: two that are progressive—the corporation income tax and the personal income tax—and the regressive social security tax.

Unfortunately, the social security tax has been growing faster than the other two combined.

Over the last 10 years, as personal income taxes have been cut on several occasions, the average taxpayer has simply watched payroll taxes absorb the difference.

The result is that an increasing share of the Federal tax burden is falling on poor and middle income wage earners.

The worst is yet to come.

If—as appears likely—the House passed social security provisions in H.R. 1 become law, on January 2, 1972, the American worker will receive the largest payroll tax hike in history.

According to Professor Pechman, $1.5 billion in social security taxes is being paid this year by persons officially classified as poor. With H.R. 1, the poor will pay much more.

At present, the family of four earning $3,000 pays $156 in payroll taxes.

By 1977, with the increases scheduled under H.R. 1, it will be $216.

This is wrong and utterly senseless. Everyone agrees on the importance of alleviating poverty. Numerous programs have been devised to cope with the problem. But every year, we force the poor to pay 40 percent of their income in taxes.

For the middle-income worker, the prospects are little better.

The man earning $10,000—close to the average, and less than the Labor Department says is needed to support adequately an average urban family—is already paying total taxes of $2,700.

By 1977, under H.R. 1, his payroll tax will roughly double—to $755.

The bill that Senator MUSKIE and I are introducing today brings a measure of fairness to the Social Security System.

It recognizes the elementary fact that poor families and large families simply cannot afford to contribute as much to social security as the rich.

The Mondale-Muskie proposal would:

Remove the $7,800 ceiling, making all earned income subject to the payroll tax. At present, the payroll tax is imposed on only the first $7,800 of a person's earnings; and

Allow wage earners a standard deduction of $1,000 and exemptions of $650 for each family member in calculating the tax. Thus, a married worker with two children earning $8,000 in 1971 would pay payroll taxes on only $4,400.

Our bill would also allow the payroll tax to be set at 5.2 percent—lower than the 5.4 percent that would go into effect with the passage of H.R. 1. The employer's tax would be computed on all covered wages and salaries without ceiling; the tax rate would be 4.5 percent instead of the higher rate in H.R. 1.

Overall, about 63 million people would pay lower taxes under our proposal than under H.R. 1. And only 8 million would pay more.

All families of four with earnings below $14,592 would benefit. All married couples without children whose earnings are below $13,092 would get a tax cut.

The accompanying table shows the tax savings that would result from our proposal for a family of four.

Savings are $216 at $4,000 of earnings, $222 at $7,000, and $228 at $10,000.

For families of four with two wage earners, the savings in the middle incomes are even greater. Such families would benefit from the reform if their income is $25,000 or less.

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

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

PAYROLL TAX FOR A FAMILY OF 4 IN 1973—H.R. AND MONDALE-MUSKIE

Earnings	Financing under H.R. 1		Financing under Mondale-Muskie
	1 wage earner	2 wage earners	
$2,000	$108	$108	
$3,000	162	162	
$4,000	216	216	
$5,000	270	270	$52
$6,000	324	324	104
$7,000	378	378	156
$8,000	432	432	208
$9,000	486	486	260
$10,000	540	540	312
$12,000	551	648	416
$15,000	551	810	572
$20,000	551	1,080	832
$25,000	551	1,102	1,092
$40,000	551	1,102	1,872

Mr. MONDALE. Mr. President, our proposal has a number of additional advantages.

First, because our tax is truly progressive, we could afford to greatly increase benefits without imposing an indefensible burden on the average worker.

Second, our tax base is much more elastic than the present Social Security tax base. As income grows, tax revenues will grow more than in proportion.

We will then be able either to cut the tax rate, or to finance greatly increased benefits without any increase in the tax rate.

Third, our approach will deal fairly with families containing two wage-earners. At present, a family with two earners may have to pay almost double the tax paid by a single-earner family with the same income.

Finally, our reform will increase work incentives for welfare recipients.

Under the House-passed welfare bill, the tax rate for welfare recipients is 67 percent—or every dollar they earn above $720, the welfare payment declines by 67 cents. But if social security taxes are included, the tax rate rises to about 74 percent.

In my judgment, the tax rate in the welfare bill already removes much of the incentive to otbain work. Our proposal would keep the tax rate down; it would encourage welfare recipients to find jobs.

Some people may object that our approach violates the insurance principle—that it would pay benefits to people who have not contributed to the system.

The fact is, however, that even now social security is far removed from a strict insurance system. We already pay benefits to people who have paid little or nothing in payroll taxes. And for most people, benefits are out of proportion to their contributions.

As Professor Pechman has written:

> The relationship between individual contributions (that is, payroll taxes) and benefits received is extremely tenuous.

Our proposal is wholly consistent with one of the first principles of the social security system.

Removing the ceiling returns us to the situation at the inception of social security when almost everyone—93 percent of all wages and 97 percent of all wage-earners—was below the ceiling. In recent years, only 75 to 80 percent of all wages have been taxable.

Nor would the Mondale-Muskie bill create administrative problems. We would continue to withhold social security taxes; payments would continue to be earmarked for the social security trust funds; the present relationship between contributions and benefits would remain essentially unchanged.

The approach that we are advocating has its precedent in the experience of other countries. Germany exempts low-income workers from social security taxes, as does Japan from the national pension tax. Many countries have no ceiling on earnings subject to tax, and many use a contribution from general revenues to finance benefits.

In this country, there have been numerous proposals to introduce general revenues into the social security system. The idea was recommended by the Committee on Economic Security, whose work led to the Social Security Act of 1935. This recommendation was reiterated by the Advisory Councils on Social Security of 1938 and 1948. The labor movement has for some time supported a plan to finance one-third of the system from general revenues. And several proposals along these lines have been introduced in recent Congresses.

These past efforts have had the same goal as ours today—to bring relief to lower and middle-income workers.

But what we are proposing today is much more than a contribution from general revenues. What we are proposing is much more than a patchup job for the inequities of the payroll tax.

Even if one-third of social security benefits were financed out of general revenues, that would still leave two-thirds to be financed by one of the most regressive taxes in our tax system.

Senator MUSKIE and I have rejected that approach. Instead, we are supporting a comprehensive reform.

Obviously, our approach raises a number of new difficulties. Although many people have devoted considerable effort to developing this proposal, neither Senator MUSKIE nor I are wedded to every detail. No doubt some of the provisions can be altered or improved.

But what is important is that the Congress make a comprehensive review of social security financing. The question is not whether the payroll tax needs to be raised or lowered a few tenths of a percentage point, but whether our whole approach to social security financing makes sense.

I think our proposal makes sense. Its enactment would be an important step toward comprehensive reform of our whole tax system.

It would place the taxpaying burden on those who can afford it, and relieve the load on those who cannot.

It would allow us to provide decent benefits for our retired elderly without imposing an unreasonable burden on our workers.

In short, it would increase economic justice for all our people.

And that must be our first priority in binding up the wounds that so dangerously divide this great Nation.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 2601

At the request of Mr. BIBLE, the Senator from Maryland (Mr. BEALL) was added as a cosponsor of S. 2601, to provide for increases in appropriation ceilings and boundary changes in certain units of the national park system, and for other purposes.

ANNOUNCEMENT OF CONTINUED HEARINGS ON ELECTION REFORM IN THE DISTRICT OF COLUMBIA

Mr. EAGLETON. Mr. President, this is to announce the second part of hearings on election reform in the District of Columbia by the Senate District of Columbia Committee. The first part concerned the residency requirements and this hearing is intended to cover all other relevant matters including those in S. 810 which is pending before the committee.

The hearing is scheduled for Monday, October 11, 1971, at 10 a.m. in room 6226, New Senate Office Building. Persons wishing to testify on this subject should notify Mr. Gene E. Godley, general counsel of the committee in room 6222, New Senate Office Building.

ADDITIONAL STATEMENTS

NATIONAL DEFENSE AND NATIONAL SECURITY

Mrs. SMITH. Mr. President, Richard G. Capen, Jr., vice president of the Copley Newspaper and former assistant to the Secretary of Defense—Legislative Affairs—made a most incisive speech about the status of national defense and national security to the San Francisco Rotary Club.

I ask unanimous consent that it be placed in the RECORD, so that the Members of this body and the readers of the CONGRESSIONAL RECORD may have an opportunity to study it.

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

THE PENDULUM IS SWINGING

(By Richard G. Capen, Jr.)

This is my first speech in the Bay Area since returning to California after serving two and a half years as an appointee in the Department of Defense.

Like my associates at the Pentagon, I was proud and honored to serve under the dynamic leadership of Secretary of Defense Melvin Laird. President Nixon could not have selected a better prepared, more dedicated or more effective leader for that demanding post.

It takes much more than computers to run the wide-spread Defense Department, as complex as it is. Secretary Laird inspired a teamwork approach and dedication to service unmatched in the Pentagon's history.

His understanding of key defense issues, his ability as a persuasive communicator, and his style of leadership have contributed significantly to improved understanding of critical national security issues—particularly those beyond Vietnam.

And, all this has been accomplished at a time when the Defense Department has been

under constant criticism—some constructive, much of it irresponsible.

From the outset, the Nixon Administration made it clear that it would avoid debating whether the United States should have gone into Vietnam in the first place, or once doing so, whether our professional military leaders were given proper authority to execute that war as promptly and successfully as our capabilities would have permitted in the early 1960s.

President Nixon's goal was to conclude American presence in Southeast Asia. That objective is rapidly being met as we move toward a generation of peace.

I believe President Nixon and Secretary Laird have been imminently successful in terminating our country's involvement in Vietnam—given the rather sad circumstances they inherited in January 1969.

What were those circumstances? First, there was no plan for ending the war other than through negotiations. No one understood that reality better than the enemy, and the pathetic record in Paris is testimony to the other side's lack of incentive for serious negotiations.

By January 1969 we had cashed in a key military chip when President Johnson halted the bombing of North Vietnam—just four days before the 1968 Presidential election—with little in return from the enemy.

When President Nixon came into office, the American troop ceiling in Vietnam was 549,500, and increasing rapidly. As many as 500 Americans were dying each week and the war was costing in excess of $28 billion a year.

These were the sad realities in January 1969. The options to President Nixon were extremely limited, to say the least. But what has happened since that time?

First, we are getting out of Vietnam. By this fall, more than 365,000 Americans will have been withdrawn, a figure representing more than two-thirds of the American troop strength that existed when President Nixon took office.

At the same time, U.S. casualties have been cut from 500 a week to less than 15 a week. Even one casualty is too many, but I believe this progress is significant.

With these substantial troop cuts the cost of the war has been reduced by 75 per cent thus permitting a reordering of priorities at home.

Today, national polls indicate that the war is fading rapidly as an issue in America. Unfortunately, those who have built their national reputations as obstructionists, linger on the sidelines, trying to keep the war issue alive for their own selfish goals. Tragically, their only result has been to give aid and comfort to the enemy.

Congressional critics meet with the other side in Paris, issue reports on alleged conditions for peace, only to have them immediately rejected by the enemy.

It is a simple matter to pass resolutions, to make sweeping pronouncements, or to write editorials calling for more rapid withdrawal rates and fixed deadlines.

Certainly, it is easier to demagogue national policy from the sidelines, but it takes real courage to face up to reality with constructive solutions that will contribute to lasting peace, not political expediency.

Time and again President Nixon and Secretary Laird have shown that courage.

How ironic it is that some of those who have led the criticism of President Nixon's Vietnamization program were the very policy makers who got us into the war, who did not have a program for ending it while they were in office, but who now expound all the answers from the privacy of their law offices or from some far-off campus.

In the early 1960s our country had the tools to win the war decisively. But our elected leadership was unwilling to generate the national will to do so.

We fought that war on a "business as usual" basis, building up huge deficits each year because our government was unwilling to establish national spending priorities. Many of today's economic problems are a direct result of that policy of the mid-1960s.

At this point history will judge those who got our country into Vietnam, just as that history will also judge whether the Nixon Administration took the responsible course to get us out.

In either instance, the ultimate responsibility must be assumed by our elected civilian leadership, not by our armed forces. Our military leaders implement national policy, not set it. For too long the man in uniform has been made the scapegoat for decisions made by civilians.

Our dedicated men and women in uniform provide the backbone of our national security and they deserve our respect.

Only through sufficient military strength can we hope to deter reckless acts by potential adversaries. They must clearly understand and respect that we have the will to win and the tools to do the job. It is pure folly to believe that once the last American has left Vietnam, our problems are over and further cuts in defense spending possible.

Despite what some suggest, we cannot legislate peace by unilaterally crippling our defense posture in Congress. Why? Because our adversaries are moving in exactly the opposite direction.

Today, the Soviets are moving ahead of us in virtually every category: missiles, aircraft, ships, military research and conventional forces.

While we were bogged down in Vietnam—at a total cost of $125 billion—the Soviets were able to sustain North Vietnam for something less than $12 billion. They did not use that ten to one difference, however, to fund domestic programs in Russia. All during the 1960s Soviet military budgets were roughly at the same level as defense spending in America which included the burden of Vietnam. Just look at the record.

The Soviets increased their submarine force by more than 400 per cent. They have increased ICBM launchers by over 500 per cent and are currently 45 per cent ahead of the U.S. in total number of ICBM nuclear launchers.

They built a modern Navy that now shows the Soviet flag in the Mediterranean, the Indian Ocean, off our Atlantic and Pacific coasts, in and out of Cuba, and around Hawaii.

In the Mediterranean, for example, the Soviet Navy will steam some 18,000 ship days this year. In 1966 they were present a total of 750 days.

In military research and development, the Soviets are spending at about twice the rate as we in the United States. This trend should be of grave concern to all Americans because it measures the importance the Soviets place on reducing our technological lead within the next five to seven years.

Even while the Soviets push this military and political expansion policy, the U. S. moves to curtail its overseas commitments, partly as a result of our national weariness over a long and costly war.

The Nixon Administration is facing up to this disturbing Soviet military buildup by insisting on sufficient funding of defense programs while insisting that our allies contribute more to their own national security requirements. The latter philosophy is part of the Nixon Doctrine whose goal is a generation of peace through partnership, strength and a willingness to negotiate.

The United States can no longer serve as policeman of the world. Our needs at home are too high and the demand for our material resources too great.

Since the end of World War II we have operated on the philosophy that the United States could do more for its allies than they could do for themselves. We have literally rebuilt economies of the victorious and vanquished alike. We have given billions of dollars in foreign aid and have sent thousands of troops in scores of countries around the globe.

Through the Nixon Doctrine we have insisted that our allies assume more of these mutual security budens, particularly in the area of military manpower.

As a result of this philosophy, more than 400,000 American troops have been withdrawn from overseas. The bulk, of course, have come from Vietnam. But, the Nixon Doctrine has been applied elsewhere as well.

In Korea, U.S. troop strength has been dropped by over 20,000 men. This is a reversal of a commitment to that country where we have maintained more than 60,000 Americans for some eighteen years.

Likewise, reductions in U. S. forces have been carried out in Japan, Thailand and the Philippines. In NATO the concept of burden sharing is being developed, again on the principle that our allies must assume a greater defense responsibility.

An important element of the Nixon Doctrine has been a willingness to negotiate, doing so from a position of sufficient strength. Again, the record of accomplishment has been impressive.

The United States is pursuing a delicate course of negotiation in the volatile Middle East crisis. We have negotiated the turnover to Japan of Okinawa, a most sensitive issue for the Japanese.

The President has proposed new treaty provisions to prohibit the placement of nuclear weapons on the ocean floor. He has carried the nuclear non-proliferation treaty through to ratification and he has renounced the use of biological weapons.

In addition, the Nixon Administration is vigorously pursuing a successful conclusion to the SALT talks. The goal of these important negotiations is to curtail the arms race which as I indicated earlier has been rapidly accelerated by the Soviet Union.

And most dramatically, in this spirit of negotiations, the President has moved forward to revive our country's relationships with Mainland China, an area involving one-fourth of the world's population.

Certainly we hope for success in these diplomatic efforts to limit the arms race and to improve relationships with our potential adversaries. That success will come, however, only if those who oppose us respect our national determination to remain strong militarily.

I believe most Americans not only support a strong U.S. defense posture but will insist upon it in the years ahead. However, our voices must be heard.

That is not to say the strength of the United States depends solely on its men in uniform or on its weapons, as important as those capabilities are. I believe the strength of our nation in the 1970s must be based also on the wisdom of our foreign policy, on the strength of our economy, and on the will of our people.

The day is past when we can hope to provide most of the defense for our allies. They must share in this burden.

The day is past when we can afford to assume the primary role in solving all of the problems of the Western World. That responsibility also must be shared more equally with our allies.

This does not suggest that we can afford to build a wall around our country, withdrawing from the competition and security needs of the world. Those who clamor to bring all American troops home forget that their very presence abroad has not caused war but rather has helped to maintain peace.

During my service in Washington, I was involved in some of the most complex, difficult problems faced by this country. But it was a source of inspiration to be surrounded by those who were confident in their course, and who respected a higher national priority extending beyond any temporary expediency.

The negative thinkers have had their day. They have marched in the streets. They have built false hopes. And they have comforted our detractors at home and adversaries abroad.

Those who have built their national image on such obstructionist attitudes are finding it difficult to shift away from the tired, divisive approach of the past.

Young people today cry out for constructive leadership in an atmosphere of optimism. They seek positive approaches and personal involvement in efforts to build a better America.

Like you and me, they resent the tarring of all America because of a few shortcomings. How ridiculous it is, for example, to charge—as one senator recently did—that all America is sick because our prisons are sick. We have had too much of that destructive approach in the past.

One of our greatest national strengths is our ability to face up to problems openly and candidly. We banner our shortcomings across our newspapers and TV sets for the whole world to see.

Our critics at home and abroad delight in exploiting these weaknesses as a symbol of a crumbling America.

What these critics forget, however, is that as we identify a problem, as we debate it publicly, we work to solve it—and succeed in doing so. As a result, we have built, on balance, the best and most successful way of life ever known to man.

We have been confident that our problems could be corrected; that dreams could be embodied in action, and that a better life would be achieved. But we have always known, as we do today, that we would have to work for it.

Over the years, we have been successful, not by thinking we would lose but rather by believing we would win. Too often we have sold our country short with an almost national guilt complex.

I have little tolerance for those who thrive on self pity or who drop out of society in protest against problems they say they did not create.

Dreams of self fulfillment cannot be found through heroin, in a commune or on a wrecking crew. Most young people know that.

Today's young generation no longer lives in an overwhelming atmosphere of war and violence. Our task is to capture their imagination and involvement in our endless search for a better America. There are new goals to set, new records to break, new problems to solve. A new day is dawning and America's optimism to meet those opportunities is building.

Yes, the pendulum is swinging.

ESTABLISHMENT OF POLICY AND PRINCIPLES FOR PLANNING THE USE OF WATER AND RELATED LAND RESOURCES OF THE UNITED STATES

Mr. JACKSON. Mr. President, I was unable to be present on September 29 when the distinguished Senator from West Virginia (Mr. RANDOLPH) introduced the bill (S. 2612) to establish new policies and principles for the formulation and evaluation of Federal water resource projects. I joined the Senator from West Virginia in cosponsoring the bill because I am dismayed at the incredible length of time which has been taken for the review of new policies and criteria after the substantive work of developing them was completed by the Water Resources Council's task force over a year ago.

Congress established the Water Resources Council and directed it to prepare such criteria, for the President's approval, under the provisions of the Water Resources Planning Act of 1965. In 1968, when a significant revision was made in the discount rate—one factor in the evaluation of potential projects—a number of committees of the Congress, including the Interior Committee, again urged expeditious action to review the entire evaluation procedure.

I was gratified to review the report of the competent task force subsequently formed by the Council to recommend revised criteria. The task force recommendations include a proposed methodology which will give consideration to all of the diverse impacts of water resource projects—economic, social, and environmental. This is precisely the kind of decisionmaking we are trying to achieve in Government. The new proposed policies and procedures for formulating and evaluating projects would be an important advance toward carrying out the philosophy which has always been professed in project planning, but which is severely hampered by present procedures.

I am still hopeful that the Council's proposals can be finalized expeditiously by the executive branch. The technical details of the criteria are more appropriate as a matter for executive rulemaking than for statutory establishment. That is why Congress gave the responsibility to the Council 6 years ago.

However, if, as it now appears, the executive branch cannot or will not carry out the responsibility, it will be necessary for the Congress to act. Fortunately, we have the excellent work of the task force as a basis for action. The bill, S. 2612, was prepared at the direction of my colleague, the chairman of the Public Works Committee, to put the task force recommendations into legislative form. I wish to associate myself with his remarks upon the introduction of the bill.

PAY INCREASES FOR ARMED SERVICES PERSONNEL

Mr. TAFT. Mr. President, I take this time to comment upon my support of the Allott amendment and my earlier vote against the motion to table the draft conference report. I have consistently supported the objective of proceeding toward an all-volunteer army since 1964.

While I was a Member of the House I participated in studies undertaken by the Education and Labor Committee which helped prepare the way for the findings of the Gates Commission.

I wholeheartedly supported the recommendations of the Gates Commission and particularly its finding that a pay increase largely directed to the lower grades would make a volunteer army workable.

On June 8 I stated on the floor of the Senate:

> The rejection of pay increases recommended by the Gates Commission will constitute a serious blow to our attempts to proceed toward an all volunteer army.

Although I have been opposing peacetime conscription for many years, I voted for the Senate bill to extend the draft only after the Senate had adopted the Allott amendment, which incorporated the pay increases recommended by the Gates Commission. In my judgment, although I oppose peacetime conscription, I do not believe that we can simply dismantle Selective Service before the volunteer army has proved to be workable. The viability of the volunteer concept, in turn, is dependent upon raising military pay to a sufficient level whereby military service will be economically attractive to prospective volunteers.

When the House-Senate conferees announced that they had agreed upon pay schedules below both the House version and the Senate version, I stated on July 12 that I would probably vote against the conference report on the selective service bill.

I was subsequently persuaded to vote in favor of the conference report only after obtaining assurances from the administration that it would support further legislation to increase military pay in line with the Gates Commission's recommendations. The chairman of the Armed Services Committee indicated that he would help to bring such legislation to the floor of the Senate.

The Allott amendment, now agreed to by the Senate, is the occasion for these commitments to be realized. My earlier vote against tabling the conference report on the selective service bill should not be interpreted as a vote in favor of the draft. On the contrary it was a vote for the all-volunteer army approach based upon the assurances that pay increases would be forthcoming and that we could proceed in an orderly fashion toward a volunteer army.

We should not permit the Selective Service System to hang over the heads of another generation of young Americans. By supporting the military pay increases contained in the Allott amendment, we can be sure that the volunteer army approach will have a fair chance of success.

CAN THE WHALE BE SAVED?

Mr. CHURCH. Mr. President, some people believe that the only time a democracy can act is in the face of an emergency. Only when a situation reaches the point of crisis, they believe, will democratic government respond.

Just such a crisis point has been reached with the world's population of whales. Many experts agree that most species of whales will disappear if the current rate of killing is continued. Levels set for the commercial whaling fleets by the International Whaling Commission in June were unrealistically high and legitimize a practice that will not protect

whales from extinction. Unless all nations act now to reduce the killing of whales until such time as it can be done without fear of extinction, we will lose the whale forever.

Congress and some executive agencies have recognized the seriousness of the threat to the whale. The Senate unanimously passed a joint resolution instructing the State Department to negotiate a 10-year international moratorium on the killing of whales. A House subcommittee has reported a similar measure. The Department of Commerce and the Department of the Interior have banned commercial whaling by U.S. companies as well as the importation of whale by-products after December 1971. The opposition of the State Department to the Senate joint resolution raises some question, however, as to whether the Department appreciates the need for action and the interest of Congress in having such action taken. Forceful international representations by those interested in saving the whale are needed. I am not convinced that the State Department as yet has a sufficient sense of urgency to make these representations.

I am convinced, however, that the international community can act in concert to save the whales, given enough leadership. The history of the northern fur seal, threatened with extinction by open sea, or pelagic, sealing, shows that agreement can be reached and that controlled fishing may once again be a possibility when whales have reestablished themselves. Open sea killing of seals was prohibited by international agreement in 1911. This agreement has led to the growth of a northern fur seal herd from near extinction in the 19th century to about 1 million today.

There are only a limited number of whales left. Divided by type, these are:

Whale type:	Number
Blue	8,000
Fin	+100,000
Sei	+120,000
Humpback	4,000
Right	2,000
Bowhead	1,000
Gray	11,000
Sperm	Several hundred thousand
Killer	10,000

In 1962, whalers killed an estimated 67,000 whales. Since that time a number of countries have gone out of the whaling business because of the lack of whales. Today, the Japanese and the Russians are the principal whalers; they have recently begun to hunt dolphins and porpoises. Continued whaling poses a clear threat of extinction.

The Senate cannot, by itself, make a treaty with other countries. It has, however, recommended by joint resolution that the State Department negotiate a 10-year moratorium on the killing of whales. This measure was passed unanimously. There should be no question about the intent of the Senate. It is high time that the State Department gave this matter the priority it deserves. I have today written to Secretary of State Rogers asking that he lend his personal attention to this problem. Let us, as Americans, take the leadership in saving the animal which played such a large part in the history of our country.

I ask unanimous consent that an article on whales, written by Tom Garrett, and published in the Washington Post of August 28, 1971, be printed in the RECORD.

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

A "FINAL SOLUTION" FOR THE WHALES

(By Tom Garrett)

WASHINGTON.—In early July the United States Senate unanimously passed a joint resolution instructing the State Department to negotiate a ten-year international moratorium on the killing of whales. A similar resolution, though in a weakened concurrent form, has been reported from a House committee.

This action follows centuries of unbridled carnage. Eighteenth and nineteenth century whalers, harpooning from small boats, ravaged the initially enormous populations of Right and Bowhead whales, leaving only scattered survivors. With the development of steam-driven "catcher boats" and cannon-fired harpoons tipped with explosive shells, the whalers turned on the faster "rorquals," such as the Blue and Finback. Antarctic waters, populated seasonally by a vast host of previously unmolested whales, were invaded in 1904, first from shore stations, then by pelagic fleets with floating factory ships. For over 35 seasons fleets from an increasing number of nations steamed south for the Antarctic summers.

World War II afforded the whales a respite, as their persecutors turned their attention to one another. By this time the Blue whale had been reduced to a fraction of its former Antarctic population, and whale numbers had everywhere declined before the brutal mechanized assault.

In 1946, a whaling convention was signed by seventeen nations, establishing an International Whaling Commission charged with "conservation and rational utilization" of the world's whale resources. What followed the advent of "conservation management" late in 1948 was not a reduction of the kill to provide for a sustained yield but a dramatic acceleration of the massacre. The past two decades have been the most sanguinary in the slaughter-glutted history of whaling. During the late 1950's and early 1960's, new killing records were set. In 1962 the worldwide kill reached 67,000—well above the maximum annual kill of laissez-faire whaling.

The International Whaling Commission, since its establishment, has been dominated totally by the commercial whaling interests, who have simply ignored any suggestion of restraint. Blue and Humpback whales were still common in 1948. They now exist in pathetic remnants, near the abyss of biologic extinction. Finbacks were previously the most abundant of the baleen whales. Having borne a decade of unprecedented technological havoc following the "commercial extinction" of the Blue whale, Finbacks are now scarce. The industry, using spotter helicopters, radar and sonar, presently focuses its attack on the smaller Sei and Minke whales, and is engaging in a relentless, ocean-wide pursuit of the Sperm whale. In 1970, Japanese whalers took 200,000 dolpins and porpoises.

Since 1960, nation after nation has been forced to cease whaling because of a dearth of whales. Today, only the Japanese and Russians—who last year divided 85 per cent of the kill—continue large-scale pleagic operations. The end, long predicted, is now clearly in sight; an end of whaling, and to the travesty of "conservation management."

This "final solution" cannot have been, and is not being, unknowingly imposed. The Japanese and Russian whaling industries are now, quite deliberately, "whaling themselves out of business." An entire order of unique and magnificent mammals is being destroyed, fed into the pitiless maws of the factory ships. The "reason why" resides simply in the decision of men involved in the whaling business that it is much more profitable to whale on a very large scale for a few years until the whales are exterminated than to whale indefinitely on a limited, sustained yield basis.

For the overwhelming majority of humans the loss of the whales is a total loss, unrelieved by the slightest gain. We must declare a moratorium on whaling, as called for in the Senate resolution, to permit the slow restoration of a previously enormous marine resource, mindlessly decimated. We must permit the survival of living beings, with a greater cortexual mass than our own.

Yet the Whaling Commission, during its annual meeting in June, coldly parceled out this once-vast marine population. The whaling nations overrode the objections of the U.S. and United Kingdom, and again set quotas far above those considered sustainable. The State Department now opposes the joint resolution for a moratorium on the grounds that it might "jeopardize the vigorous role of U.S. leadership" within the commission. During the House hearings, Government officials complained that an attempt to preserve the whales might make the U.S. "look foolish."

While human quibbling over propriety and profits continues, the last chance to halt the killing in time to save the great whales may be fading. One hundred and twenty-five times each day, on an average, a whale is located, and killed with an explosive harpoon. All that the whales are, all that we might learn from them, is being lost. Their profound living songs, at the moment we have at last heard them, and might hope to understand them, are being effaced, irrevocably, from the earth's oceans.

U.S. POLICIES AND PROGRAMS FOR BRAZIL

Mr. CASE. Mr. President, hearings on Brazil were held earlier this year by the Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Relations Committee. I am a member of this subcommittee of which the distinguished Senator from Idaho (Mr. CHURCH) is chairman.

Many questions of far-reaching importance were raised during these hearings. Taylor Branch has written an article on the proceedings for the September issue of the "Washington Monthly." Mr. President, I ask unanimous consent that Mr. Branch's article be printed in the RECORD.

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

AID TO BRAZIL: FROM DUNGEONS TO DISNEYLAND

(By Taylor Branch)

Anyone who is discouraged by the tribulations with which our foreign policy must wrestle will be uplifted by the recently published hearings on "United States Policies and Programs in Brazil," conducted by Senator Frank Church's subcommittee on Western Hemisphere Affairs. For what emerges from this testimony is a theme of rarely encountered intergovernmental friendship, a strikingly hopeful contrast to the nasty imbro-

glios in Pakistan, Indochina, the Middle East, and the SALT Talks. The witnesses paint a detailed picture of executive harmony between the United States and the right-wing military government that has ruled Brazil since 1964—a harmony which provides hemispheric and political balance to our overtures toward China, and which proves that determined initiative can transcend popular opposition to achieve the kind of bilateral partnership that diplomats dream of.

The signs of intergovernmental friendship abound. Major General George S. Beatty of the Joint Brazil-United States Military Commission, testified that Brazil was one of only two Latin American countries to provide forces for our 1965 peacekeeping effort in the Dominican Republic (the other being General Stroessner's Paraguay). Senator George Aiken of Vermont remarked that number two ranking aid recipient Brazil can be counted on for votes in the United Nations, unlike number one recipient India. And in return, we have trained more than 3,400 of Brazil's elite military officers in the U.S. and Panama since 1964. Moreover, according to testimony from Ambassador William M. Rountree, we are currently engaged in negotiations to help the Brazilian navy go forward with its anti-submarine warfare program.

These intimacies have been cultivated in a spirit high above the malodorous reports of death squads, torture, thousands of political prisoners, and heavy censorship on the part of the Brazilian government. In determining whether the grotesque repression really goes on, Ambassador Rountree testified that "the [Brazilian] President and one of the ministers, and others as well, have acknowledged that it does. They say they do not condone it, but it has happened."

The Brazilian government has been joined in not condoning its torture by Pope Paul VI, the International Commission of Jurists, the U.S. Catholic Conference, much of the Brazilian high clergy, most American newspapers, and the Commission on Human Rights of the Organization of American States (which Brazil refused to admit to the country for an investigation of torture and other state violence made possible by President Emilio G. Medici's suspension of the constitution). In addition, Allen Ginsberg and Lawrence Ferlinghetti of the Bay Area Poets' Phalanx issued a statement on July 23 of this year protesting the recent arrest and/or torture of 15 members of the Living Theatre now imprisoned in Brazil, including founders Julian Beck and Judith Malina. Nevertheless, according to Chief AID Public Safety Adviser Theodore Brown, the United States has possessed the diplomatic maturity to overlook these slip-ups in the interest of preserving our program of training, advice, and material assistance to the Brazilian police forces, which operate under the guidance of the military. Mr. Brown told Senator Church that AID had been of service to Brazil's National Police Academy in helping to:

". . . increase the value of the personnel of the Federal Police Department, and of the state and territorial police from the moral, psychological, and intellectual standpoint, developing their democratic conscience, their respect for human rights, and dedication to their country; develop civic and moral standards, qualities of direction and leadership, a spirit of renewal; a mentality of permanent cultural development, a dedication to public security of police integration and mutual collaboration in the performance of their mission, the love of liberty and truth, and active participation in the nation's development."

HE INVOKED A STANDARD

Along with Senator Claiborne Pell, Senator Church expressed some skepticism of Mr. Brown's statement that "the minimum use of force, humane methods, these are the types of things I think that we have been helpful with." Forgetting for a moment that a program can be nourished by historic ties and personal bonds as well as success, Senator Church probed for reasons why we should align ourselves so enthusiastically with the torturers and thereby cause image problems around the world:

Senator CHURCH. Do you think that the Brazilian police are today known for their restraint and humane methods in dealing with Brazilian people?

Mr. BROWN. Well, they certainly advocate this, and through training at their academy, through their inservice training, through the mobile training courses. This is one of our principal thrusts.

Senator CHURCH. In light of the many reports that we hear of torture in Brazil, do you think you have been successful in inculcating humane methods in restraint?

Mr. BROWN. Yes, sir; I do, Senator.

Senator CHURCH. You do. You think our program has been successful in Brazil in achieving its objectives?

Mr. BROWN. Yes, sir.

Senator CHURCH. You really believe that?

Mr. BROWN. Yes, sir.

When pressed by Senator Pell for reasons why the Brazilian government is known as such a crude police state, Mr. Brown invoked the marital spat analogy to capture the relationship between the Brazilian police and the people:

Mr. BROWN. Why certain people do things, that is a difficult question for me to answer, sir.

Senator PELL. I realize that.

Mr. BROWN. Why do some people beat their wives, these things why do they occur, it is difficult for me to answer.

Of course, friendly governments have spats, too, and the U.S.-Brazil relationship has suffered at times from the next-door neighbor problem, in which families must bear the sounds of household quarrels through thin walls. This problem is evident in the following exchange between General Beatty and subcommittee staff member Pat Holt:

Mr. HOLT. I have a copy here of an Associated Press story from Rio which says:

U.S. Naval Mission here is on the same floor in the Brazilian Navy Ministry as a room in which political prisoners claim to have been tortured.

One American assigned to the floor said recently, "I have been hearing screams and groans for about two years. I was frightened." Other U.S. personnel were reported to have seen Brazilians being dragged to and from the interrogation room by Brazilian naval agents.

No one, insofar as can be determined has ever reported anything about it to U.S. Navy officials or the U.S. Embassy.

Admiral Clarence Hill, Commander of the U.S. Mission, said he knew nothing "about this kind of thing."

But after newsmen began making further inquiries of U.S. personnel there, Hill ordered them not to discuss the subject. The American who reported hearing screams would no longer talk about it.

Do you know if Admiral Hill gave such an order?

General BEATTY. That is not a real accurate description of what he did. He invoked a standard——

Mr. HOLT. Please give us an accurate description.

General BEATTY. He invoked a Navy regulation which requires that if there are things out of line in any organization these facts be made known to persons in the chain of command, that is what he told them.

A REASONABLE PREDICTION

Back in Washington, the U.S. government has managed to contain its indignation toward torture in Brazil by turning its eye more toward the stability of military control. When the senators asked Ambassador Rountree for evidence of official U.S. displeasure with the death squads and torture cells, he scoured the record and produced the transcripts of two noon press briefings at the State Department. Under pressure for a pro- or anti-torture position, the briefing officer had let fly some brotherly anxiety in 1970:

A. As far as allegations of torture of prisoners in Brazil are concerned, of course we are concerned about this. Now, we've been assured in conversations with high Brazilian officials that the Brazilian Government does not condone torture.

Q. You're satisfied with this assurance?

A. Well, we continue to be concerned about these reports, Tad, and we've been in touch with the Brazilian Government about them. I would assume we'll continue to be in touch with them and express our concern.

Further questioning revealed to the senators that our unqualified regard for General Medici has been breached no more often and at no higher levels.

Anxious to determine exactly what motivates this fraternal cooperation, Senator Church questioned AID Director William A. Ellis:

Senator CHURCH. How does the present government, in which we have invested $2 billion, serve the national interests of the United States, in your judgment?

Mr. ELLIS. One of them is the existence of a government or society which is generally consistent with our national, specific national, security interests in the hemisphere which would not pose a security threat to us.

Second would be the protection and expansion, if possible, of our economic interests, trade and investment, in the hemisphere.

Senator CHURCH. Can you tell me how large the American private investment is in Brazil today?

Mr. ELLIS. It is somewhat over $1.6 billion.

Senator CHURCH. So we have pumped in $2 billion since 1964 to protect a favorable climate of investment that amounts to about $1.6 billion.

Mr. ELLIS. That is only one of the objectives. . . . I think the third, Mr. Chairman, is the economic and social development of the country, which has been slated. As a U.S. objective, it has, I think, overlapped with our security objectives and with our humanitarian interest in a country this size.

But the generals testified that our security interests are lessened by the fact that Brazil faces no serious external threat. And although IBM earned 64 per cent on invested capital in Brazil last year when American business as a whole repatriated $2 million more in profits than it invested, the hearings showed that our government sends more to Brazil than private enterprise brings home. So the senators were left with sheer bonhomie as the basis for extremely healthy relations with General Medici's regime. Only General Beatty put forth an old politics view of all the military aid and good will, hazarding a guess into Brazil's future:

It is generally believed that the Brazilian Armed Forces will continue to be a major influence in the formulation of Brazil's national policies for some years to come. In the light of Brazil's continuing importance to U.S. objectives, it is considered to be in the best interests of the United States that U.S. friendship and cooperation with the Brazilian Armed Forces is maintained.

INTERNAL SECURITY AT THE STARDUST HOTEL

When any affection waxes this strongly, the parties are bound to be together or visit each other a great deal—and government officials

are no exception. Senator Church, seeking a functional explanation for the huge number of employees at the U.S. mission in Brazil (588 American professionals, 811 domestics), found our presence there enormous, especially in Rio de Janeiro. "It seems to me that the size of our bureaucracy is simply immense," he told Ambassador Rountree. "I think there is nothing like it in the history of other nations." Church later stated that "relative to population, we have twice as many people in Brazil as the British had in India when they were providing the government for that entire country." Of course, there are reasons other than good feeling between governments for this large number of Americans who risk torture and repression to stay in Brazil. Public safety, for example, was cited by Public Safety Adviser Brown, who is responsible for the police training program:

Mr. HOLT. Would you feel safer by yourself on the street at night in Washington or in Rio?

Mr. BROWN. I would feel safer in Rio.

Senator CHURCH. If that is the case then how is it that we are so well qualified to instruct the Brazilians on adequate police protection methods?

Mr. BROWN. I am sorry, sir, I did not quite understand the question.

Senator CHURCH. If you feel safer walking in the streets of Rio than in Washington, the capital of this country, how is it that we are so specially qualified to instruct the Brazilians on proper police methods?

Mr. BROWN. I would not say that my statement had to do—anything to do—with the quality of our law enforcement or the qualifications that our law enforcement personnel have. I think it is just the facts of life, sir.

These facts of life have driven so many government officials to Rio that we are forced to keep seven professionals in the air attache office and to maintain a special Military Airlift Command for one military flight to Rio each week.

Because true political partnership can never be a one-way street, there is also considerable official Brazilian traffic to the north—generally of the uniformed, dark-blue sunglasses variety. General Beatty declared to the subcommittee that training tours to the U.S. for Brazilian officers of their army, navy, and air force war colleges are vital to military and diplomatic unity—and therefore worth their funding under the Military Assistance Program. He described the significance of the tours as follows:

To the staff and command schools, these visits mean knowledge of the United States at a formulative time of the officers' development. To the high-level civilians and military of the War College, orientation visits furnish a broad insight of the United States at a time when the national and international interests of their country are under discussion and review. . . . Given the scholastic atmosphere under which this training is conducted and these visits are made and the ensuing discussions, debates, and comparisons which follow on their return to Brazil, it is probable that the participant's U.S. experience will increase his understanding and friendship toward the United States in carrying out military and civic responsibilities.

The subcommittee staff inserted 35 pages of recent tour itineraries into the records, which reveal that, once again, fraternity triumphs over functional realpolitik as the key to our fine-tuned harmony with the Brazilian government. The scholastic atmosphere of the Air Force tours is enhanced by visits to such spots as the Flamingo and Stardust Hotels in Las Vegas, and the Astrodome. The Navy spends a lot of time at the Plaza Hotel in New York, Disneyland, the San Diego Zoo, Universal Studios, Fisherman's Wharf, and as guests of the Coca Cola Company at Radio City Music Hall. A typical tour for the Brazilian Army's National War College goes as follows, in this case costing $91,800 in Military Assistance Program training funds:

Fri 14 Aug 1605 EDT, arrive Miami International Airport via Braniff KLT Flt 976. Greeted by Mr. Roberto Fernandez, Public Affairs Mgr, *Esso Brazilero;* Mr. Rudolpho Ledgard, Sr Advisor Public Affairs, *Esso International* and Major Frederick G. Qvale, USAF Escort Officer.

Proceed to Holiday Inn Motel, 2201 Collins Ave. on Ocean Miami Beach, Florida.

Evening, at leisure.

Sat 15 Aug a.m., at leisure for shopping and sight-seeing.

1200, informal lunch.

1900, reception/Dinner hosted by *Esso Inter-Americas Co.* Bath Club, Miami Beach.

Sun 16 Aug 1230 e.d.t., depart Miami International Airport, lunch aboard aircraft.

1235 c.d.t., arrive Hurlburt Field, Florida. Greeted by Brig Gen Leroy J. Manor, Comdr, USAF Special Operations Force.

P.M., special Opns Force (SOF) Briefing at Hurlburt Field. Proceed to Howard Johnson Motel, 245 Miracle Strip Parkway, S.W., Fort Walton Beach.

1900, reception/buffet at Hurlburt Officers' Club

Mon 17 Aug a.m., static display and demonstration at Hurlburt Field

1200, hosted luncheon

1400, depart Hurlburt Field, Fla., *Honors*

1715 e.d.t., arrive New York City, LaGuardia Airport. Greeted by Major Zint, SAFOI New York Escort Officer

Evening, proceed to Belmont Plaza Hotel, 49th & Lexington Ave., N.Y. At leisure

Tue 18 Aug, 1000, visit United Nations

1200, lunch at Governors Island. Hosted by Rear Admiral Benjamin F. Engel, CDR 3rd Coast Guard District

P.M., tour Manhattan island courtesy US Coast Guard

Wed 19 Aug, 0900, Depart New York City via chartered bus (Party will depart from Belmont Plaza Hotel)

1100, Arrive Philadelphia, Pennsylvania. Proceed to Benjamin Franklin Hotel, Chestnut St. and Ninth. Tour of Philadelphia conducted by Philadelphia Convention and Tours (Mr. Hornstein, Director). Informal lunch

P.M., Continue tour of Philadelphia

Thus 20 Aug, 1000 e.d.t., Depart Philadelphia via chartered bus (Party will depart from Ben Franklin Hotel)

1230, arrive Washington, D.C. Proceed to Ambassador Hotel, 1412 K St., N.W.

Thu-Mon 21-24 Aug, see detailed Washington schedule

Tue 25 Aug. 1100 e.d.t., depart from Washington, D.C., from Andrews AFB, *Honors,* Lunch aboard the aircraft

1310 c.d.t., arrive Ellington AFB Tex.

P.M., Briefing and tour of Ellington. Immediately following briefing, proceed to Sheraton-Lincoln Hotel, 777 Polk Ave., Houston

1900, reception/buffet social function at Ellington AFB Officers' Club

Wed 26 Aug, guests of *Humble Oil Company*

A.M., Brief sessions in Humble Building by Humble Management

Noon, Luncheon in Petroleum Club

P.M., tour of Esso Production Research facility

Evening, party at Astrodome

Thus 27 Aug, 0900, visit NASA Manned Space Center, Houston, Tex.

Noon, informal lunch

1400, proceed to Rice University for tour and briefing

Evening, at leisure

Fri 28 Aug, 1200 depart Houston International Airport via Pan American Airways Flt 501 for Rio De Janeiro. CONUS tour ends

General Beatty also told the subcommittee that the tours are useful in so dazzling the Brazilian officers with our strategic hardware that they are induced to rely on us for international protection—allowing them to concentrate on their own specialties, such as internal policing:

The magnitude, extent, and costs of the U.S. defense effort are brought dramatically to their attention during visits to defense installations. Their recognition of this magnitude has been very influential in persuading the Brazilians that the U.S. strategic capabilities enable them to keep their military equipment procurement primarily limited to their needs for internal security and defense of contiguous maritime communications.

A BREATH OF MINT FOR BRAZIL

General Beatty and Public Safety Adviser Brown told the subcommittee that *encouraging* the Brazilians to concentrate on internal affairs, and indeed training them to do so, is kept scrupulously short of *interjering* with those internal affairs. This is a fine line, of course, but it is precisely when a cooperative relationship is hotly intertwined that one must be careful not to commit an indiscretion. Senator Church questioned Mr. Brown about one uncoordinated incident that took place when the police used equipment with clear American identification markings in the suppression of a riot. Mr. Brown supplied an account of how AID acted quickly to correct this condition and forestall further adverse publicity.

Subject equipment were olive-drab canvas pouches for carrying gas masks; they had U.S. stencilled in large black letters on the pouch; below the emblem was an insignia believed to be of the U.S. Army Chemical Corps and in smaller size stencilled lettering a capital "U" and the words "Army Service Gas Mask."

U.S. AID Public Safety was informed by the acting commander of the Military Police Battalion that the masks were loaned to the military police by the Brazilian Army.

Following the incident, U.S. AID Public Safety advisers discussed the subject with Secretary of Public Safety for the Federal District and he made the decision to have all of the U.S. markings on these pouches painted over with black paint. He later issued orders to the Military Police Commander to make certain that all equipment on loan from the Brazilian Army be checked and U.S. markings painted over.

This kind of precaution is absolutely necessary when so much military aid equipment is in the hands of authorities in Brazil. Similar care is required on the part of the American instructors who provide training for Brazilian military and police officers, because cooperation can look like interference if it is not handled right. Staff member Holt told General Beatty that a non-intrusion posture is especially important in our military training program, inasmuch as we teach Brazilian officers the following skills:

. . . censorship, checkpoint systems, chemical and biological operations, briefings on the CIA, civic action and civil affairs, clandestine operations, communism and democracy, cordon and search operations, counterguerrilla operations, cryptography, defoliation, dissent in the United States, electronic intelligence, electronic warfare and countermeasures, the use of informants, insurgency, intelligence, counterintelligence, subversion, countersubversion, espionage, counterespionage, interrogation of prisoners and suspects, handling mass rallies and meetings, nuclear weapons effects, intelligence photography, polygraphs, populace and resources control, psychological operations, raids and searches, riots, special warfare, surveillance, terror, and undercover operations.

Despite these fine lines, the U.S. mission in Brazil has managed to be very close without touching, without direct involvement in the internal affairs of Brazil. As Senator Church has stated, "The record contains the most categorical denials by responsible offi-

cials testifying under oath." In fact, the officials maintained that a noninvolvement policy has been in effect at least since the military government came to power in 1964. (There is a strong undercurrent of opinion in the hearings that U. S. disfavor with the previous constitutional government, effected through economic aid policy, was influential in bringing down that government in favor of the military.)

THE HUMAN FACTOR

Regardless of the firmness of the record on this score, Senators Church and Pell asserted that they had trouble explaining U.S. policy toward Brazil to critics in this country. The Brazilian government just *looks* bad, they said, despite the safe streets of Rio and the AID public relations training. Senator Church went into the appearance/reality problem by asserting that the realities to which General Beatty and the others had sworn carried little weight with Americans who have to form judgments based on the climate of international opinion and the newspapers. College students were, as usual, most troublesome on this score:

Now, when I go to American colleges and talk to young people they ask why have we spent $2 billion in Brazil when the government there is dictatorial in character, run by military men, any number of Brazilians are said to be mistreated in the jails, where there are recurrent reports of human torture. Why should the United States give such lavish support to a government of this kind? They say, "What does this have to do with the kind of society we are supposed to stand for?" Those questions are not easily answered, and since ultimately public support will be necessary to sustain any foreign policy, what happens when that foreign policy falls out of contact with the traditional values of our country in such a way that people can no longer understand its purpose nor justify their support for it? Young people say, if we are not against this kind of thing then what is it we are for in the world that is worth supporting? This is the ultimate test of a foreign policy and frankly, public support for the American foreign policy is rapidly eroding away.

It became clear during the testimony that Ambassador Rountree assuages his misgivings along these lines with the old American maxim that when in doubt, look to the GNP. As honorary president of the U.S. Chamber of Commerce in Brazil, the Ambassador alluded to a rise in the national income figures as indicators of a growing contentment that calms the Brazilian workers (whose standard of living, in a statistical counter-trend, has fallen 10 per cent in the last seven years). Whenever pressed by Senator Church to justify fervent American support of Brazil's government, Ambassador Rountree would wash the Medici regime in the momentum-words of progress and take the misunderstanding to its core:

Mr. ROUNTREE. The dedication of the Brazilian leaders, with the support of the Brazilian people to this program of progress, is really very impressive. Their progress is being made under a free enterprise system which I think serves as a very good example to others who might be considering other forms of economic systems for the achievement of their objectives.

Senator CHURCH. Do you feel the same way about the political system, Mr. Ambassador, serving as a good example?

Mr. ROUNTREE. The political situation existing in Brazil, of course, is uniquely Brazilian. I do not think they would expect that Brazilian solutions to the problems of Brazil would necessarily constitute an example for other countries whose problems are different, and whose situations are different . . . the situation in Brazil presents many differences from our own concepts. I am tremendously impressed with what President Nixon has said about this general question:

The United States has a strong political interest in maintaining cooperation with our neighbors regardless of their domestic viewpoint. . . . We deal with governments as they are.

Senator CHURCH. We not only deal with them, we extend lavish amounts of money, in the case of Brazil, $2 billion to support Brazilian programs under the auspices of this country. With all deference to the President's statement, it does not go far enough, in explaining our policies

Indeed, the President left out the spirit of the Stardust Hotel and of the AID public safety mission—the indescribable spark which sometimes arises between people who have things in common

SENATOR WILLIAM L. PROUTY

Mr. GAMBRELL. Mr. President, although I did not have an opportunity to become well acquainted with the late Senator from Vermont, Winston L. Prouty, I have been genuinely moved by the outpouring of feeling toward this sincere and gentle man.

It seems to me that the Senate could learn a valuable lesson from him—the importance of simplicity—simplicity of words, of style, and of intent. Senator Prouty, through his franchise from the people of Vermont and through his committee assignments, accomplished some real good for mankind by his constant work in behalf of the handicapped, the elderly, and the underprivileged.

The heartfelt gratitude of the beneficiaries of this man's untiring effort will form a suitable memorial to this dedicated public servant.

Mrs. Gambrell and I extend our deepest sympathy to Mrs. Prouty and her family in their time of loss.

REPRESENTATIVE POFF DECLINES CONSIDERATION FOR SUPREME COURT NOMINATION

Mr. TAFT. Mr. President, last week I spoke on the prospects for the nomination of Representative RICHARD H. POFF for one of the Supreme Court vacancies. Regrettably, Mr. POFF has now asked that his name not be considered. While I do not purport to speak for the Congressman or even know his reasons for taking the position he has taken, I fear that factors at work do not bode well for the appointment of the best qualified men to the Court. For that reason, I ask unanimous consent that an editorial published today in the Chicago Tribune be printed in the RECORD.

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

"LIBERAL" INTOLERANCE

Rep. Richard Poff, Virginia Republican, has requested President Nixon not to consider him for nomination to one of the two vacancies on the United States Supreme Court. He said he wished to avoid a protracted and degrading fight against confirmation which would bring agony to his family, and that he wished to avoid delay in manning the court. The President will respect Mr. Poff's decision.

Opposition to him had been gathering from Senate "liberals" who rejected Mr. Nixon's two other southern nominees for positions on the court. Teamed with these elements were civil rights, labor, and feminist groups. The National Association for the Advancement of the Colored People, Americans for Democratic Action and labor unions were said to have set a team of 50 attorneys combing Poff's record for ammunition to fuel a Senate filibuster had he been nominated.

Objections to him were primarily based on past votes against civil rights legislation and on his signing the Southern Manifesto against school desegregation in the mid-50s. The National Organization of Women opposed him because, as second ranking Republican member of the House Judiciary Committee, he voted to water down the proposed "equal rights for women" amendment to the Constitution.

It was of no consequence to his opponents that Mr. Poff, in a recorded interview last summer, long before consideration was given him for appointment to the court, confessed that his views on civil rights had been mistaken and that he repudiated them. The itch to embarrass President Nixon and "liberal" zealotry persisted, and his political enemies were not ready to give Rep. Poff a fair trial. Altho more than half of the Senate was believed ready to vote for confirmation, the administration was doubtful that it could muster the necessary two-thirds vote to shut off a filibuster.

In March, 1970, after his nominations of Judges Clement F. Haynsworth Jr. of South Carolina and G. Harrold Carswell of Florida had failed, Mr. Nixon said he would nominate no more candidates from southern states as long as the Senate remained as presently constituted. He said that his appointees had "endured with admirable dignity vicious assaults on their intelligence, their honesty and their character." He said that when hypocrisy was stripped away objections to them were founded on their philosophy of strict construction of the Constitution.

The President called the rejection of his nominees an "act of regional discrimination." Referring to the need for geographical balance on the court, he said that controversial and far-reaching decisions are better received "when each section of the country and every major segment of our people can look to the court and see there its legal philosophy articulately represented."

Rep. Poff had no desire to undergo the same ordeal visited on Mr. Nixon's other nominees by a "liberal" claque headed by such worthies as Senators Birch Bayh of Indiana, Edward F. Kennedy of Massachusetts, Charles Percy of Illinois and Edmund Muskie of Maine. He has stepped aside with dignity, leaving the President's adversaries to cook up objections to whomever the administration may be disposed to consider in his place.

STUDENTS COMBAT MULTIPLE SCLEROSIS

Mr. BAYH. Mr. President, multiple sclerosis is a neurological disease of the central nervous system—the brain and the spinal cord—which afflicts an estimated 500,000 people in this country. Tragically, the symptoms appear most often in adults between 20 and 35, but there is as yet no known cure. Thus, many of our young citizens become victims without warning of an unexplained disease which is sometimes fatal and other times relatively stable. In most patients, however, the symptoms multiply throughout the nervous system over time. The average life expectancy after the onset of symptoms is more than 25 years, but for many patients, those years

are spent with incomplete motor control or sight.

In 1964, the National Multiple Sclerosis Society was founded as a result of widespread response to a public notice in the New York Times which read:

Multiple Sclerosis: Will anyone recovered from it please communicate with patient. T272 Times.

Since then, the society has joined with 19 nations to combat the disease. In the United States, research has been conducted in closest consultation with the National Institute of Neurological Diseases and Blindness. By 1967, nearly $7 million had been made cumulatively available in research grants from the National Multiple Sclerosis Society. Since 1968, Congress has appropriated approximately $3 million a year. However, a cure has not yet been found.

At a time like this, when there is some promise of new breakthroughs in the field, requests for research grants have greatly increased.

In response to this need for more money, the National Student Association passed a resolution this year in Colorado to coordinate their efforts to combat the disease through educational programs and fundraisers. Each member school of the NSA will be asked to sponsor an Educational Week or Month on their campus, climaxed with a large fund raising event to support national research and patient service activities. I ask unanimous consent that the text of the resolution be printed at this point in the RECORD.

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

WAR AGAINST MULTIPLE SCLEROSIS

Fact: Multiple sclerosis is a neurological disease that discriminates against young people. It primarily attacks the nervous system and cripples people in the prime of their life. The M.S. patients and chapters urgently need help to make sure that this horrible disease is eventually wiped out.

This disease is not the problem of the older generation, it is our people that are being physically destroyed. It is probable that a major break-through in M.S. can occur in this decade only if students are willing to devote their time.

Declaration: The U.S.N.S.A. stands fully committed to the fight against the disease of its generation, multiple sclerosis.

Mandate: There will be no cure found for M.S. unless the students are brought together in a unified group to aid the national multiple sclerosis society. N.S.A. will do all in its power to implement its position in combating this youth crippling disease, by coordinating student efforts across the United States.

Mr. BAYH. Mr. President, I had hoped to attend this year's NSA Congress but was unable to do so, because of a death in my family. I believe that the convention's unanimous commitment to restore our national priorities by working to raise medical research funds is noteworthy. I am sure the Senate will want to join me in paying tribute to these students. Let us hope that we can all join forces this year in meeting the challenge of multiple sclerosis.

CANNIKIN

Mr. CRANSTON. Mr. President, the latest news reports do not make clear whether President Nixon still intends to go ahead with the detonation of the Cannikin 5-megaton nuclear test, despite growing domestic and international concern about the environmental risk of doing so.

A new development in the past few days has further clouded the picture: Acting against all reason, and at the worst possible time, the Soviet Union has chosen to conduct a large underground explosion of its own, at its Arctic test grounds on Novaya Zemlya. Predictably, some reporters in this country have been quick to suggest that this was the Soviets' version of Cannikin, and to imply that this provides the President with fresh incentives to conduct the test. In my view, the Soviet action was outrageous and ill timed, and for exactly the same reasons that the U.S. detonation of Cannikin was and continues to be.

Nearly 2 years ago the authorization for Cannikin was first debated on the Senate floor. At the time, I called the test "unwise, unsafe, and scientifically unsound."

In view of the developments since then, I am convinced that, if anything, that was an understatement. Even if one could accept the testimony of scientific experts that the chances are small that Cannikin will trigger an earthquake or contaminate the sea, no one can claim that those dangers are nonexistent.

Congress has amended this year's AEC appropriation to require President Nixon personally to approve plans for Cannikin—in effect, if he decides to go ahead with it, to declare that despite the risks of environmental catastrophe, the national security interest in conducting this test is more important.

But I believe the President will find this hard to do. It now appears that the principal reason for the explosion is to test the warhead for an obsolescent missile, the Spartan ABM, which was to have been the mainstay of the anti-Chinese Sentinel ABM system which President Nixon scrapped when he came into office. The Safeguard ABM system he is now proposing is more suited to smaller missiles with smaller warheads than the 5-megaton Spartan.

Thus, the Cannikin test would appear to be not only unwise, unsafe, and unsound, but unnecessary as well.

Mr. President, in the apparent absence of a strong national security justification for the test, I have to wonder whether it is only pure inertia that keeps the momentum for this test going. Having scheduled the explosion and dug the hole for it and built the bomb to set off in that hole, is it possible that the AEC can conceive of not going ahead with that explosion?

If the predictions of the AEC safety experts are wrong, devastating environmental damage may result. No matter how remote the chances, it is still possible that the explosion could trigger an earthquake in this highly seismic area causing extensive damage from shocks and tidal waves, not only in Alaska, but on the U.S. West Coast, in Canada, in Japan, and in the U.S.S.R. Radiation could escape into the sea to kill fish and other marine life over a wide area. Radioactive gas could leak from the explosion chamber to contaminate the atmosphere and the land downwind from the test site.

It is hard to see why these risks to the environment should be taken at all, but it is impossible to justify them where there seems to be no reason to detonate the bomb other than that, "Here is a weapon and weapons have to be tested," as a New York Times editorial suggested yesterday.

Furthermore, the test is planned for the worst possible time. We are reportedly on the verge of reaching agreement at the SALT negotiations with the Russians on limiting ABM's and other strategic nuclear weapons. What worse way to show the world our good faith and concern about disarmament than by setting off a huge nuclear blast? Some will say, The Russians have just done so; why should not we as well? I can only say, Mr. President, that the argument that we must make a stupid mistake just because the Russians do is hardly justification for our doing so. Many of the same arguments that apply in the case of Cannikin apply to the Soviets as well, and their having ignored them in no way diminishes the stupidity of our going ahead with the test.

Aside from the potential damage to SALT negotiations resulting from this test, Mr. Nixon will soon be going to China. Will United States-China relations be improved by nuclear saber-rattling just before he departs? I doubt it.

I urge the President to cancel this test.

Mr. President, speaking on behalf of the Task Force for the Nuclear Test Ban, a group of prominent scientists and arms control negotiators recently wrote to President Nixon urging that he cancel Operation Cannikin. They argue forcefully and, I believe, persuasively that the potential physical and political risks of the nuclear test far outweigh whatever possible advantages there might be to the U.S. weapons development program. Mr. President, I ask unanimous consent that their letter and an editorial published in the New York Times of October 4, 1971, be printed in the RECORD.

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

TASK FORCE FOR THE
NUCLEAR TEST BAN,
Washington, D.C., September 23, 1971.

The PRESIDENT,
The White House,
Washington, D.C.

MY DEAR MR. PRESIDENT: As individuals with varied scientific and political experience in national defense and arms control, we urge you to cancel Operation Cannikin, the large underground nuclear explosion at Amchitka Island, Alaska scheduled to be detonated in October. There are a number of compelling reasons that justify your taking this action. These reasons have been stated by many groups in the U.S. and by several governments, so we will briefly cite only a few.

The five megaton bomb, equal to the destructive force of ten billion pounds of TNT, will be the potentially most destructive man-made underground explosion in history.

This nuclear test creates physical and political risks that outweigh whatever possible advantages there might be to our weapons development program.

A recent analysis of past underground nuclear explosions, published by eminent seismologists in the July 16, 1971 issue of the journal, SCIENCE, demonstrates that such explosions in rock where there is residual strain can lead to earthquakes with the release of more than ten times the energy of the triggering explosion. Since Amchitka is in an earthquake region, this possibility in the case of the Cannikin test could result in major damages to life and property.

A serious threat also exists that the explosion could vent dangerous radioactivity in air, sea and underground water sources. If radioactive fall-out occurs, it could produce a danger to life in the area and upset the ecological balance in this region of the Far North. Even the sponsors of Cannikin at the Atomic Energy Commission and the Department of Defense cannot produce objective evidence that one or more of these disasters will not occur.

In addition to the very real threats to the ecology, life and property, there are political and economic reasons to cancel Cannikin. At a time when the U.S. is urging all nations to forego the development of nuclear weapons under the Nuclear Non-Proliferation Treaty, it weakens our credibility with these nations to proceed with one of the largest underground explosions in history. Furthermore, two important U.S. allies, Japan and Canada, both having legitimate concerns with activity in the North Pacific, have officially protested underground testing in this area.

The U.S. efforts in the present negotiations for strategic arms limitations would be reinforced if we would forego the setting-off of the Cannikin bomb.

A cancellation of Cannikin, we believe, should be followed by the U.S. instigating negotiations with the other nuclear powers for a comprehensive ban on all nuclear tests. New seismic and other developments of national means of verification are such that the the U.S. can now safely agree to a ban on testing underground without mandatory on-site inspections.

Stopping the Cannikin explosion could be an important and dramatic demonstration of our intention to halt a nuclear arms race that has placed a heavy economic and political burden on our nation without bringing us real security.

We urge you to take advantage of this opportunity for our nation to take this new initiative in the search for a secure and peaceful world.

Respectfully yours,
Dr. BERNARD T. FELD,
Dean ADRIAN FISHER,
Dr. G. B. KISTIAKOWSKY,
Dr. FRANKLIN A. LONG,
Ambassador JAMES J. WADSWORTH,
Dr. BETTY GOETZ LALL,
Mrs. JO POMERANCE,
Cochairmen, Task Force for the Nuclear Test Ban.

GAMBLE IN THE ALEUTIANS

In recent weeks reports have come out of Washington that President Nixon plans to cancel the projected underground atomic test at Amchitka and other reports that he will shortly give it his required approval. The official word from the White House is that the President has yet to make up his mind on the test known as Cannikin. The conflicting stories—probably betraying no more than wishful thinking—are a measure of the division, even within the Administration, on this ominous project.

The Atomic Energy Commission and the Department of Defense are all for testing a five-megaton hydrogen warhead for the Spartan antiballistic missile system. Their defense of the test is routine, narrowly based and wholly unimaginable when measured against the dangers involved. In effect, they say: Here is a weapon and weapons have to be tested.

Against this oversimplification must be placed the State Department's concern about the resentments of Japan and Canada, both close enough to this Aleutian site to fear the earthquake, tidal waves and radioactivity that might be triggered by underground explosion of a hydrogen warhead 250 times as powerful as the bomb that destroyed Hiroshima.

The department also has a wary eye on the effect such a test could have on the strategic arms limitation talks with the Soviet Union. If the two powers agree on limiting ABM systems, there will be no need for the particular warhead to be tested; while to proceed with the test now might prejudice the chances that any limitation can be reached.

Above all, opposition stems from those concerned with the environment of the region—not only Canadians, Japanese and the Alaskans themselves, but the President's own environmental guardians. Their advice to cancel the test is backed by a group of distinguished authorities including Dr. George B. Kistiakowsky, who was science adviser to President Eisenhower. Cannikin, they warned the President in a joint telegram, is "potentially the most destructive man-made underground explosion in history."

No argument advanced by the Defense Department remotely justifies so appalling a gamble.

GEORGE MEANY'S TESTIMONY ON ECONOMIC STABILIZATION

Mr. HUMPHREY. Mr. President, on Monday, October 4, 1971, George Meany, president of the American Federation of Labor-Congress of Industrial Organizations appeared before the House Banking and Currency Committee to testify on the subject of economic stabilization.

Mr. Meany correctly pointed to a severe problem that the Nixon administration just will not face: Crisis planning and crisis government is not the way to run a government.

"What lies down the road—new panicky moves, new stunts, new surprises, new television programs starring the President?" asks Meany.

George Meany asks some hard questions that demand answers from the Nixon administration. But, as he correctly points out, the Nixon administration has given very few straight answers.

Mr. Meany's conclusions are worthy for all of us in public life to bear in mind:

America needs immediate measures to lift the economy out of stagnation—to create jobs for the millions of unemployed and underemployed and to restore confidence and health to the economic foundation of American society.

America does not need another experiment in 19th Century trickle-down policies. America does not need another bag of tricks, in place of sound and well-conceived measures.

Mr. President, I ask unanimous consent that the complete statement of Mr. Meany be printed in the RECORD.

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

STATEMENT OF GEORGE MEANY, PRESIDENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, BEFORE THE BANKING AND CURRENCY COMMITTEE OF THE HOUSE OF REPRESENTATIVES, ON ECONOMIC STABILIZATION HEARINGS, OCTOBER 4, 1971

We are glad to be here today, Mr. Chairman, because we are glad the Committee is holding these hearings. Out of them, we trust, will come the answers to some very perplexing questions that the President and his advisors have so far failed to give the American people.

For example:

What sudden national emergency caused the President on August 15 to abandon his economic policy; change his entire ideological course; break the word his Secretary of the Treasury had given this Committee?

If there wasn't a sudden national emergency, why the secrecy, why the elaborate security (with some possible exceptions), why the failure to consult Congress or even advise it?

What lies down the road—new panicky moves, new stunts, new surprises, new television programs starring the President?

And most important of all, how in the name of equality of sacrifice can the President impose economic actions which are patently unfair?

Is this what the Congress intended when it gave the President certain authority under the Economic Stabilization Act? Or has the President abused that authority?

Let's examine the record of what happened.

On August 15, President Nixon suddenly announced a 90-day freeze on wages, rents and most prices. To enforce the freeze, a Cost of Living Council, with broader powers, was established by Executive Order, and headed by the Secretary of the Treasury.

The freeze order was presented as only one part of a major package of economic actions and recommendations to the Congress, all of which the President said were equally important.

In referring to the authority for ordering the freeze, the President specifically singled out the Economic Stabilization Act, which originated in this Committee.

So it is most appropriate, in our judgment, for this Committee to examine the meaning and consequences of the order, as well as the purposes and intent of the Congress in adopting the Stabilization Act.

As you know, President Nixon opposed this legislation, when it was being considered in 1970 and the Administration sent a representative to this Committee to flatly oppose it.

On February 1, 1971, about a half-year after the Act was adopted, the President's Economic Report to the Congress stated: "I do not intend to impose wage and price controls. . . . Neither do I intend to rely upon an elaborate facade that seems to be wage and price control but is not."

Hardly more than three weeks later, on February 23, Secretary of the Treasury John B. Connally appeared before this Committee, in support of a two-year extension of the legislation. In his brief introductory statement, announcing the Administration's sudden reversal of policy on the legislation, Secretary Connally said:

"In accepting this section, we do so with the advance statement that we do not contemplate any circumstances—short of an all-out national emergency—in which the President would establish general wage-price controls without a further specific mandate from the Congress."

Yet, on August 15, the President simply dropped the Administration's 31-month old

"game plan" and put a new "game plan" into effect, including a freeze order—without consultation with the Congress, advance notice, reasoned justification or even an explanation.

This was a sudden flip-flop in basic economic policy, without apology to the American people for rising unemployment, continued inflation and increased poverty that had been produced by the "game plan" which he put into effect in January 1969 and dropped like a hot potato on August 15, 1971.

Was there an all-out national emergency on August 15, which could justify the President's refusal or failure to keep Secretary Connally's promise to the Congress? If so, why wasn't America told?

Was it a political emergency—one created by the polls which showed a continued sharp drop in confidence, as a result of the Administration's "game plan" and policy failures? What is it that the President has tried to hide from the Congress and the American people?

There was no request for "a further specific mandate from the Congress," as promised by Secretary Connally. There wasn't even advance warning to the Congress, much less consultation, although there are stories that advance indications of the Administration's action were given to the oil industry. We have no way of knowing whether these stories are true or false, but we do know what happened to gasoline and oil prices. We also know the Administraton's record of tender concern for the welfare of big business and the banks, with little regard for the needs and aspirations of the vast majority of Americans.

Examination of the meaning and consequences of the President's new economic "game plan" show that it is clearly unbalanced and unfair.

The freeze on wages is across-the-board and absolute. It is enforced happily by the employer through control of the paycheck.

In contrast, some prices were never frozen, some prices have been allowed to increase since August 15 and there is no systematic, effective enforcement procedure for those prices that are still supposed to be frozen.

Interest rates and profits are completely free of any restraint at all, while, on dividends, there is only the Administration's verbal request to business to hold the line.

In addition, the President's tax and government expenditure proposals would reinforce the lopsided nature of the freeze order, through a radical redistribution of income and wealth for the benefit of big business, the major banks and the major stockholders, at the expense of the poor, the cities and state governments and federal employees.

Let me make the position of the AFL–CIO crystal clear:

On numerous occasions in the past five and one-half years, including our statement before this Committee during its hearings on the Economic Stabilization Act, we have said:

We are prepared to cooperate with stabilization controls—if the President decides they are necessary—provided such controls are evenhanded and across-the-board. But we are opposed to any and all attempts at one-sided curbs on workers' wages, without effective curbs on prices, profits, interest rates and other incomes.

The President's new "game plan" does not meet that test of balance and equity. The Administration's record provides no confidence that it can be trusted to use a general delegation of stabilization authority, with balance, equity and fairness.

We do not believe that it was the intent of the Congress, in adopting and extending the Stabilization Act, to establish the statutory basis for the Administration's double standard—generosity for big business and the banks, penalties for workers and the poor.

Under the freeze order, wages and salaries are frozen for 90 days. During that 90-day freeze, all deferred wage increases, under legal contracts, are nullified, all cost-of-living wage adjustments are barred. Merit and seniority increases are prohibited. So are productivity wage increases.

The effect is to nullify every collective bargaining contract, which provides a wage or salary adjustment during the 90-day period. And workers are told that they are prohibited from even negotiating retroactively for lost wages legitimately due them during the 90-day period.

So employers are pocketing tens of millions of dollars that are legitimately due their employees and these are just additional profits to the employer, whose prices already reflect the wage increases that are due, which the President now says must not be paid to workers.

The railway unions estimate that the loss of their 5% wage increase, between October 1 and the end of the 90-day period on November 13, amounts to about $40 million. And that is only one industry. There are many more—teachers and technicians, retail and service employees, blue-collar and white-collar workers alike.

With wages frozen, while productivity increases, this loss to workers and windfall to employers may total as much as $4 billion or more.

Of course, partnership income, like that enjoyed by Mr. Nixon's former law partners, is not frozen. Nor is the income of land speculators, or those who play the stock and bond market, or those who live on virtual tax-free incomes.

Was this the intent of the Congress in adopting the Stabilization Act—to nullify collective bargaining agreements, to penalize workers, to provide a windfall for employers?

Interest rates have been a major factor in the whole sorry inflation picture. But the President has refused to place a ceiling on interest rates, establish selective credit controls and allocate credit—ignoring the authority he has had since December 1969, as a result of legislation which originated in this Committee.

Interest payments by all sectors of the economy literally skyrocketed in the 1960s. They tripled between 1960 and 1970—rising from $44.9 billion in 1960 to $135.6 billion in 1970. The increase was from 8.9% of the Gross National Product in 1960 to 13.9% of a much greater GNP in 1970.

This huge increase in interest payments was passed on—and frequently pyramided on the way—to the consumer. It boosted costs and prices throughout the economy, particularly in 1969 and 1970, when interest rates reached their highest point in 100 years.

The beneficiaries of this rise of interest payments have essentially been the banks, their major stockholders and the big operators in bonds.

Despite the Administration's claims, interest rates are not in a consistent pattern of decline. They moved down through the second-half of last year and early 1971, turned up in the spring and were close to their record peaks in mid-August. The interest cost of conventional mortgages, for example, rose, in August, to a nationwide average of 7.73%. In many areas, with the addition of points, the effective rate was 8½%, 9% or more.

Following the President's announcement, interest rates moved down and, then, turned up again.

Yet this inflationary factor is without restraint. Was this the intent of Congress—to permit the price of money to be free to move up, when wage and salary earners' income is under a freeze?

Moreover, so long as profits are unchecked while wages and salaries are restrained, the test of equity is not met. Corporate profits rebounded, during the first-half of 1971, following a decline during the recession of 1969 and 1970. The cash-flow to corporations, in the first-half of the year, was 108% greater than in 1960.

To control or freeze the incomes of workers, without accompanying controls on the incomes of corporations and stockholders, is unbalanced and unfair. In our view, effective restraints on profits, through the tax structure, must accompany any restraints on wages, if there is to be balanced economic growth and equity.

We have documented our case against the President's tax package before the Ways and Means Committee. We will not repeat the details here, but let me point out we don't think the Committee's action begins to meet the problem. We are still opposed to the accelerated depreciation write-offs and also to the investment tax credit which the Congress wisely repealed in 1969.

Who will pay for the President's proposed tax bonanza to business of $70 billion over the coming decade?

The President's proposals provide the answer: The poor, through delay of much needed welfare reform. The financially strapped cities and states, through postponement of promised federal help. And federal employees, who have been singled out for especially unfair treatment.

The President has announced that he is putting into effect a 5% slash in federal employment. At a time when the President is apologizing for his tax bonanza to big business by calling it "job creation," it is inconsistent and, in fact, inconceivable that he would eliminate 100,000 jobs.

Moreover, the President announced a prolonged 10½-month freeze of the pay increase due federal employees. Unless the President's action is overturned by the Congress, as we trust it will, federal employees will wait at least until July 1, 1972, for increases they have already earned.

Were such gross inequities the intent of the Congress, in adopting the Economic Stabilization Act?

Unfairness characterizes many of the actions of the Cost of Living Council, just as it is deeply rooted in the basic policy. This can be seen, in capsule form, in the following report from *The Washington Post* of September 24:

"The Administration filed its first suit yesterday to enforce the wage-price freeze ordered by the President on August 15.

"The Justice Department filed suit in U.S. District Court in New Orleans seeking both temporary and permanent injunctions to block the school board of Jefferson Parish, La., from granting raises of about $400 to its 2,800 teachers.

"The move came amid a flurry of activity, including legal price increases on cars . . .

"American Motors Corporation said yesterday it began selling some of its 1972 model cars Wednesday at prices above the 1971 levels. But the Office of Emergency Preparedness said it had approved the new prices and 'does not regard them as price increases' . . .

"American Motors said it had made standard some equipment which was optional last year. Twelve of the company's models will cost more, but three, including the Javelin, will come down in price."

Was such a double standard the intent of the Congress when it adopted the Economic Stabilization Act?

Before concluding, Mr. Chairman, let me restate the AFL–CIO's pledge.

The AFL–CIO will cooperate with a stabilization effort that is fair, equitable and workable.

Back in February 1966, the AFL–CIO Executive Council adopted a policy statement which declared:

"If the President determines that the situation warrants extraordinary overall stabi-

lization measures, the AFL–CIO will cooperate so long as such restraints are equitably placed on all costs and incomes—including all prices, profits, dividends, rents and executive compensation, as well as employees' wages and salaries. We are prepared to sacrifice as much as anyone else, so long as there is equality of sacrifice."

This statement has been reiterated by the constitutional conventions of the AFL–CIO in 1967 and 1969 and on numerous occasions by the Executive Council.

It is our view that one-sided curbs on workers' wages, with no effective restraints on prices or the incomes of other groups in the economy, including profits and interest rates and capital gains, are neither a balanced and equitable stabilization program nor a workable policy in a free society.

Anyone who expects workers to sacrifice alone just doesn't understand the American people.

It is our view that government measures to restrain wages—or both wages and prices—in one industry or one sector of the economy are inequitable and unworkable. In this complex, interdependent and huge American economy, it is not possible to single out one industry or one sector, in the hope of curbing price pressures, when all other parts of the economy are free of similar restraints.

How can the government, in good conscience, apply wage restraints on workers in one industry, when the prices of the food, clothing and other goods and services they must buy are free to move up? Such a measure smacks of punitive action, rather than a stabilization policy. Moreover, how can the government hope to stabilize prices in one industry or one sector when that industry or sector depends on materials and services it buys from other industries, whose prices are free to rise?

America now urgently needs job-creating expansionary measures to reduce unemployment rapidly, as well as fair and workable measures to curb inflation. The Administration's new "game plan" does not meet these urgent needs.

America's economic problems continue. Unemployment is continuing at high levels. Major economic indicators are continuing down.

America needs immediate measures to lift the economy out of stagnation—to create jobs for the millions of unemployed and underemployed and to restore confidence and health to the economic foundation of American society.

America does not need another experiment in 19th Century trickle-down policies. America does not need another bag of tricks, in place of sound and well-conceived measures.

We in the AFL–CIO want inflation ended. We want full employment restored. We are prepared to sacrifice to meet these goals—as much as anyone else, for as long as anyone else. But we will not be the scapegoat for the economic mess created by this Administration's ill-conceived "game plans" and its credibility-shattering sudden policy reversals.

In view of the Administration's record of unkept promises, disastrous policies, sudden flip-flops and utterly lop-sided programs, it is our considered contention that the Congress must reassert control over the economy.

The Congress gave the President a blank check in the Economic Stabilization Act. He has proved unworthy of that trust.

We believe this Committee should immediately open hearings on the subject of economic stabilization and draft a program for the duration of any national emergency, defining such emergency, and insuring that any program of controls be effective and equitable and that whatever sacrifice is necessary be borne equally by all Americans.

APPENDIX 1

INTEREST PAID BY ALL SECTORS OF THE ECONOMY, 1960–70

[Billions of dollars]

			Percent of GNP	
	1960	1970	1960	1970
Total interest paid	$44.9	$135.6	8.9	13.9
Business interest paid	27.8	97.4	5.5	10.0
Consumer interest paid	7.3	16.9	1.4	1.7
Government interest paid	9.8	21.3	2.0	2.2

Source: U.S. Department of Commerce, Office of Business Economics.

APPENDIX 2. CORPORATE PROFITS FIRST-HALF, 1971

From the August 1971 issue, Monthly Economic Letter of the First National City Bank of New York:

"Earnings in the second quarter rebounded almost to pre-recession peaks. Both sales and margins improved. . ."

"Reports from nearly 1,300 non-financial corporations tabulated by the First National City Bank's Economics Department showed an average year-to-year increase of 11% in after-tax earnings in the second quarter. In the first quarter, this same group of firms had a 7% rise in profits. . .

"Only four quarters in the past two decades have shown a more widespread advance in profits.

"For the most part, the rise in earnings paralleled the boost in sales volume that characterized the recovery. In addition, profit margins showed a moderate but encouraging advance, reflecting the benefits of extensive cost cutting. Profit margins rose to 5.3 cents per dollar of sales, compared with 5 cents in the first quarter and 5.1 cents a year ago. . .

"Altogether, after-tax profits of manufacturers rose 12% over the same quarter a year earlier. Compared with the previous quarter, earnings were also 12% higher. . .

"After adjustment for seasonal variation . . . virtually all of the 22% decline in manufacturing earnings during the recession has made up during the first two quarters of recovery."

The article in the bank's newsletter also explains why the bank examines company reports to stockholders, rather than depend on the Commerce Department's reports on profits. It explains that the Commerce Department's reports on profits are essentially based on corporate tax reports to IRS and, therefore, are less valid descriptions of corporate profitability. (There are also some questions about the accuracy of the reports to stockholders, but the article states that these reports "are probably closest to the concept of earning power used explicitly or implicitly by management. . .")

The article states:

"The idea of a separate set of books for the tax collector is nothing new in human history. This country's complicated corporate tax structure has today made this almost a necessity. Corporate management would be derelict in its duty to stockholders if it did not utilize every legal means of minimizing reported income and therefore taxes. Yet just because this method of reporting taxable profits is hedged about by laws and regulations, that does not mean that it is the 'true' picture of what is happening to business and its earning capacity."

These are some of the reasons why the AFL–CIO, as well as some investment counselors, emphasize the importance of changes in the corporate cash-flow (after-tax profits plus depreciation allowances) as a more accurate indicator of the financial ability of corporate enterprise.

APPENDIX 3. THE CORPORATE CASH-FLOW SINCE 1960

The inflation problem of recent years started with a profit inflation, which persisted through most of the past decade.

The cash-flow to corporations (after-tax profits plus depreciation allowances) shot up sharply in the 1960s, much faster than wages and salaries. By the first half of 1969, before the recession started, the corporate cash-flow had skyrocketed far out of line with improvements in workers' wages.

Between 1960 and the first half of 1969, before the onset of the recession:

The cash-flow to corporations shot up 87%.

But the after-tax personal income of all Americans was up only 77%—about one-eighth less than the corporate cash-flow. And that includes the effects of a large increase in employment and substantial increases in income from interest payments, rent and dividends, as well as the income gains of wage and salary earners.

The after-tax weekly earnings of the average non-supervisory worker in private, nonfarm employment were up merely 34%—three-fifths less than the corporate cash-flow. In terms of buying power, the gain was only about 10%.

The cash-flow to corporations soared from 1960 to 1966 and continued up at a somewhat slower pace through the first half of 1969. From the latter half of 1969 through the end of 1970, the recession—combined with the sharp rise of interest rates and lagging productivity—brought a decline in the profits of non-financial corporations and their cash-flow leveled off.

However, in the late 1960s and particularly in 1969–1970, interest rates shot up—resulting in rising costs and prices and sharply increasing bank profits. So, while the cash-flow of non-financial corporations rose more slowly in the late 1960s and leveled off between the first half of 1969 and the end of 1970, bank profits soared.

As a result, the cash-flow to corporations generally (including banks) moved up a bit, even during the recession of 1969–1970.

In the first half of 1971, despite sluggish conditions in most parts of the economy, profits and the cash-flow rebounded—moving up much more rapidly than the gross national product. There has been a widening of profit margins and a rise in the volume of sales, as well as a continuing increase of depreciation allowances.

By the first half of 1971—with industry operating at only 73% of productive capacity—the cash-flow to corporations was 108% above 1960.

Corporate cash-flow, after-tax profits plus depreciation allowances

	Billion
1960	$51.6
1961	53.5
1962	61.3
1963	64.8
1964	72.3
1965	82.9
1966	89.5
1967	89.6
1968	94.6
1969	95.8
First half 1969	96.4
1970	97.4
First half 1971	107.1

Source: U.S. Department of Commerce.

PRECEDENT FOR RATIFYING GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, one of the objections to the ratification of the

Genocide Convention is based upon its article 9 which states that disputes between the contracting parties are to be submitted to the International Court of Justice for adjudication. It is argued that this is an unprecedented delegation of power by the United States to an international body.

This argument is incorrect.

On November 2, 1967 the Senate ratified the Supplementary Convention on the Abolition of Slavery. Article 10 of the Supplementary Slavery Convention states that disputes between the contracting parties are to be submitted to the International Court of Justice for adjudication. This is clear precedent for article 9 of the Genocide Convention.

Mr. President, the Senate should ratify the Genocide Convention as soon as possible.

OPENING STATEMENT OF SENATOR SAM J. ERVIN, JR., BEFORE THE CONSTITUTIONAL RIGHTS SUBCOMMITTEE HEARINGS ON FREEDOM OF THE PRESS

Mr. ERVIN. Mr. President, last week the Senate Subcommittee on Constitutional Rights began a series of hearings on freedom of the press in America. These hearings are a part of a subcommittee study of the relationship between the press and Government. They will be continued this month on October 12, 13, and 14 and on October 19 and 20.

There is great public interest in these hearings. The subcommittee has received many inquiries concerning their purpose and direction. Because of this great interest in the hearings, I intend to insert later this week statements prepared and delivered by several of the witnesses who appeared before the subcommittee last week.

Mr. President, I ask unanimous consent to have printed in the RECORD the statement which I made at the opening of this series of hearings. In addition to detailing the reasons for these hearings, it underscores what the subcommittee's goals are in studying this important subject.

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

OPENING STATEMENT OF SENATOR SAM J. ERVIN, JR., CHAIRMAN, SENATE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS HEARINGS ON FREEDOM OF THE PRESS, SEPTEMBER 28, 1971

Many years ago, at the birth of our great Republic, Thomas Jefferson observed:

"No government ought to be without censors and where the press is free, no one ever will."

Today, nearly two centuries since our Founding Fathers incorporated Jefferson's observation in the First Amendment to our Constitution, the Senate Subcommittee on Constitutional Rights opens a series of hearings to examine the state of freedom of the press in America.

These hearings, and the Subcommittee study of which they are a part, have been organized because it is apparent that in today's America, many people doubt the vitality and significance of the First Amendment's guarantee of freedom of the press. There have been at least four recent examples of this:

First, the increased subpoenaing of journalists by grand juries and Congressional committees;

Second, the recent publication by several newspapers of classified information and the government's unsuccessful attempt to enjoin the publication;

Third, the widespread use of false press credentials by government investigators; and

Fourth, new fears about government control and regulation of the broadcast media.

These developments have brought into sharp relief existing concern about the relationship between government and the working press.

In addition, we have heard sharp and angry attacks upon the news media by high government officials. These attacks have brought forth equally hostile responses from spokesmen for the press. Some government officials appear to believe that the purpose of the press is to present the government's policies and programs to the public in the best possible light. These officials have forgotten Jefferson's words. Indeed, they appear to have lost sight of the central purpose of a free press in a free society.

Likewise, some members of the press appear to have forgotten that the First Amendment's guarantee of free speech and free press was not intended as their exclusive possession. Those enlightened men who devised our constitutional system did not mean to secure freedom of the press by suppressing the right of Americans, whether private citizens or public officials, to criticize the press. Not every critical word about the press is an attack on the First Amendment.

These continuing controversies, and the bitterness and suspicion that accompany them, make it evident that many Americans are uncertain about both the role of a free press in a free society and the necessary conditions for its preservation.

In my judgment, it is time to challenge this uncertainty by considering again the reasons underlying the Constitution's guarantee of freedom of the press. It is time to reexamine and to reemphasize First Amendment principles.

And, it is time to measure developments in the law as they affect both the printed and broadcast press against these principles. Such are the objects of this series of hearings.

The struggle to establish and preserve freedom of the press has been long and bitter. From the moment the type was set on the first printing press, kings and parliaments have attempted to control the press. Public officials have always feared the threat that a free and vigorous press poses to their power and tenure.

Anglo-American history has been no exception to this struggle. During the reign of Henry VIII, the manuscript of any material intended for publication had to be submitted to royal officials empowered to censor objectionable passages. Licensing was another means of controlling the press, and these officials also had the power to approve or deny a license for printing the material. Licensing continued in England until 1694. Thereafter, the common law crime of seditious libel emerged as a substitute for the system of licensing as a means of control.

Chief Justice Holt set forth the underlying concept of seditious libel in *Tuchin's* case, in 1704. He wrote:

"A reflection on the government must be punished because if people should not be called to account for possessing the people with an ill opinion of the government, no government can subsist. For it is very necessary for all governments that the people should have a good opinion of it."

Historical studies indicate that there were hundreds of convictions for seditious libel during the seventeenth and eighteenth centuries in England.

American colonial history is replete with examples of government attempts to censor the press. A gentleman named John Wise, of Massachusetts, was tried and convicted of seditious libel in 1687 for bringing the King's government "into hatred and contempt in the minds of the people." He had dared to declare that a tax not levied by the Assembly was contrary to Magna Carta and did not have to be paid. His punishment was suspension from the ministry, a fine of fifty pounds, and the posting of a one-thousand pounds bond to guarantee his "good behavior" for one year.

Time and time again in colonial America, men were arrested and thrown in jail for "wicked lyes and slanders upon Government," for "sundry vile insinuations against His Majesty's rightful and lawful authority," and "for inflaming the minds of his Majesty's subjects."

There is a fundamental similarity among these and other historical instances of restriction of the press in the government's rationale. Governments justified prior restraint or prosecution on the grounds of the necessity of preserving its good reputation among the people. All too often, this is still the real, if no longer the explicit, justification for government attempts to control the press.

In a truly free society this is not a sufficient justification. Our Founding Fathers understood that however incomplete, unfair, and even vicious the press may be in its attacks upon government and government officials, the press cannot be censored or punished, without undermining one of the cornerstones of free thought and expression.

The first widespread discussion in America of the significance of the First Amendment's guarantee of freedom of the press occurred during the bitter days at the close of the eighteenth century. By 1798, our young Republic was on the verge of collapse. A Federalist majority in Congress, determinded to stifle opposition, enacted the Alien and Sedition Laws of 1798. The Sedition Act made it a federal crime, punishable by fine and imprisonment, to publish "any false, scandalous and malicious writing" against the government, Congress, or the President. Ironically, this legislation passed the Senate on July 4, 1798.

The Sedition Law was vigorously enforced. The government brought to trial, convicted, and imprisoned many Americans who dared to put in print their opposition to the policies of the incumbent Administration. Many others were intimidated—or as we now say "chilled"—by fear of retribution. Confronted by this reign of terror against freedom of the press, Thomas Jefferson in 1799 was moved to tell a group of college students:

"To preserve the freedom of the human mind . . . and freedom of the press, every spirit should be ready to devote itself to martyrdom; for as long as we may think as we will, and speak as we think the condition of man will proceed in improvement."

From this sad chapter of repression in the history of our country came a greater appreciation for the necessity of protecting the press from government intimidation. While the Alien and Sedition laws were repealed and never held to be unconstitutional by the Supreme Court, most Americans accepted the view that the First Amendment's guarantee of freedom of the press was incompatible with the traditional common law of seditious libel. Americans who believed in freedom—freedom of thought and freedom of expression—determined that a free and robust press was an absolutely essential ingredient for a truly free society. Not since that time has criticism of government policies and officials by the press constituted a crime.

Our historic commitment to freedom of the press means that we must tolerate absurd, misleading, and vindictive reports which sometimes appear in newspapers and magazines and on radio and television. It means that thoughts and ideas which we hate and despise will appear in print and be broadcast across the land. James Madison recognized that "Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press." Most Americans have come to understand that the irritating excesses of the press are a small price to pay for a press independent of government control.

They realize that only an independent press can vigorously and effectively contribute to that wide-ranging and critical discussion of public affairs which is a prerequisite to a democratic society.

This view of the role of a free press in a free society necessarily means that there will be tension and sometimes hostility between the press and government. Indeed, it is the conflict between the press and government which attests to the vitality of the First Amendment.

This conflict exists today. It is manifested in a number of relationships between government and the press.

THE SUBPOENA CONTROVERSY

In recent years an increasing number of subpoenas have been issued to newsmen in connection with various government investigations. In the past, government prosecutors and members of the press have attempted to adjust their different interests in a way that would serve justice without endangering freedom of the press. Apparently, the mutual understanding on the part of the press and the government which underlay this adjustment of interests has disappeared, perhaps another victim of the fear and suspicion that has developed between them. Confrontation has replaced negotiation. Today, there are members of the press who believe that their integrity and independence is being threatened by government's zealous demand for their notes, their pictures, their films, and other working materials. Some of them suggest that the government views the reporter as another investigative arm of government. The government, on the other hand, sees no reason why members of the press do not have exactly the same obligations as any other citizen when it comes to law enforcement.

It is not an easy task to resolve the conflict between First Amendment interests and the interests of justice that is involved in the subpoena controversy. The Attorney General, in August, 1970, issued Guidelines to govern the issuance of subpoenas at the federal level. A case is presently under consideration by the Supreme Court which directly raises the issue of whether or not the First Amendment requires the granting of a privilege for newsmen not to appear before a Grand Jury under certain circumstances.

Senator James Pearson, of Kansas, and Congressman Charles Whalen, of Ohio, have introduced legislation in the Senate and House of Representatives to establish a statutory privilege for newsmen to protect their confidential information and sources from compulsory disclosure. Senator Pearson's bill, S. 1311, has been referred to the Subcommittee on Constitutional Rights. Many of our witnesses will comment upon this legislation and the underlying problem.

THE TIMES INJUNCTION

The conflicting interests of the government and the press were dramatically underlined this past summer in connection with another problem. On June 30, 1971, the Supreme Court handed down one of the most important opinions ever issued concerning freedom of the press. The case of *New York Times* v. *United States* is a touchstone for any analysis of the state of the law concerning freedom of the press. The conflicting positions put forth by the parties in this case underscore the need to re-examine First Amendment principles.

The government sought to enjoin publication by *The New York Times* and *The Washington Post* of the Pentagon Papers which contain classified information concerning our country's involvement in the Vietnam war. The government argued that the President's constitutional responsibility for foreign affairs and for national security entitled the President to an injunction against publication upon persuading a court that the information to be revealed threatens "grave and irreparable" injury to the country. Quite simply, it was an argument that the "inherent" Presidential power to protect the national interest was superior to the proscription of the First Amendment.

In wisely rejecting the Government's application for an injunction, the Supreme Court reaffirmed the belief of our Founding Fathers that a press free from governmental control is essential to a free society.

Mr. Justice Black in his opinion emphasized the purpose of a free press:

"In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government."

Notwithstanding the Supreme Court's holding in this case, the Government's attempt to restrain publication of the "Pentagon Papers" has raised serious doubts about the securit[illegible] of freedom of press. This case represented the first time since the adoption of the Bill of Rights that federal courts have been asked by the government to halt publication. Furthermore, a careful analysis of the various opinions filed in this case makes uncertain just how free from government restraint the press is.

It is my hope that these hearings will provide a forum for the examination of the impact of this important case on the state of freedom of the press.

Whatever the differing views concerning this historic case and the circumstances surrounding it, it is important that we understand the consequences of this decision for freedom of the press.

THE BROADCAST MEDIA

Another special concern of these hearings is the First Amendment implications of existing government regulation of the broadcast industry. The increasing amount and scope of government regulation of broadcasting has occurred without sufficient attention to its effect upon principles of freedom of press.

While the Founding Fathers did not contemplate the media of radio and television when they wrote the First Amendment, their reasons for protecting the printed press from government control apply equally to the broadcast media. More people get their news from radio and television today than any other single source. Studies show that the impact of the broadcast media upon Americans is without precedent in the history of communications. If First Amendment principles are held not to apply to the broadcast media, it may well be that the Constitution's guarantee of a free press is on its death bed.

Great confusion surrounds the Federal statutes, regulations, and the few court decisions which affect broadcasting. Congress enacted the Radio Act of 1927 and the Communications Act of 1934 to prevent the air waves from being flooded with such a host of voices that the medium of broadcasting would be rendered useless. Whatever government regulation of broadcasting was authorized, it was only for the purpose of securing the most effective use of available air waves and communications technology. As is often the case with government control, this limited authority with respect to broadcasting has greatly expanded.

The power of the Federal Communications Commission has increased to the point that many broadcasters believe principles of freedom of the press no longer have significance with respect to broadcasting. With the promulgation by the Federal Communications Commission in 1949 of the "fairness doctrine," the Commission's power over broadcasting was greatly enhanced.

Whatever one's view of the "fairness doctrine," it must be clear to everyone that such a doctrine has placed in the hands of a federal agency a not very subtle form of censorship. A recent federal Court of Appeals decision, for example, has sustained an FCC determination that since the relationship of smoking to health is no longer a "controversial issue," tobacco interests are not entitled to the benefit of the fairness doctrine. In other words, mankind, at least as personified by the FCC, has discovered the ultimate truth with respect to the hazards of smoking. There is no reason for further discussion.

The irony in this decision underscores its absurdity and its danger. It was only a few years ago that opponents of smoking were fighting an uphill and largely discouraging battle to convince the FCC and the courts that smoking was dangerous and therefore a "controversial issue." In less than ten years, "absolute truth" has shifted from one side of this issue to the other.

The lesson of this one example is that whatever the dangers to freedom of expression that result from concentrated ownership of the broadcast media, it is nowhere near as dangerous as leaving to a few government officials the power to decide what can be discussed and what cannot; and when ultimate truth has been discovered and what it is.

There are some Americans who apparently think they know what is good and what is bad for other Americans to hear on the radio and to see on television. They believe that the power of government should be used to protect Americans from falsehood, bad programming, harmful thoughts, and zealous advertising. While I do not quarrel with the good intentions of these people, I believe that the sweeping government regulation of broadcasting implicit in this view foreshadows the end of a free broadcast media and with it, a mortal blow to the First Amendment.

Our Founding Fathers were wise enough to know that there is no way to give freedom of speech and press to the wise and deny it to fools and knaves. Certainly, they did not intend for the government to decide who were the wise and who were the fools and who were the knaves. With broadcasting, just as with the printed press, governmental power to protect the public from excess and foolishness is governmental power to censor.

The troublesome consequences of government regulation of broadcasting were dramatized this summer when Dr. Frank Stanton, President of Columbia Broadcasting System, relied upon the First Amendment in refusing to appear before the House Committee on Interstate and Foreign Commerce. That Committee issued a subpoena to Dr. Stanton in connection with its investigation of a controversial television broadcast. The Committee's assertion of authority to protect the public from misleading presentation of the news was challenged by Dr. Stanton's insistence that First Amendment principles apply to broadcasting as well as to the printed press.

This controversy clearly sets forth the problems involved in authorizing govern-

ment regulation of broadcasting "in the public interest" and simultaneously protecting freedom of the press.

PRESS CREDENTIALS AND "COVERS"

Another manifestation of today's tension between government and the press involves the issuance of press credentials by government to reporters and the alleged use of these press credentials as "covers" by government investigators. This problem was underscored by a recent incident in Madison, Wisconsin. This summer members of the Madison Newspaper Guild unanimously voted to destroy their press cards and denounced them as "a form of license." Speaking for its members, the Guild President said, "We take this step not lightly but in response to repeated police use in this country of undercover agents using press cards." He added, "The power to license . . . implies the power to withdraw the right."

These and other conflicts between government and the press should give liberty-loving Americans cause for concern. They have prompted this Subcommittee study and this series of hearings on the state of freedom of the press. In many situations the interests of government and the press appear to be irreconcilable. Often they are not, but only seem so because the two sides have taken intransigent positions out of mutual distrust and fear. Rarely if ever in our history have we actually had to choose between suppression of the press or disaster. In every national war, where security was truly at stake, the press and government found means of accommodating their apparently irreconcilable interests. I see no reason why suppression or censorship is required now, if it was not when national survival hung in the balance.

Nonetheless, it is easier to preach freedom of the press than it is to practice it. In the midst of controversies which seem to us now as earth-shaking, we tend to lose sight of the higher issues at stake. These hearings are designed to let us take pause from the daily battle, and assess where we are and where we should be going. Hopefully, they will produce a better understanding by press, government, and the American people of the purposes of the First Amendment.

The topic "freedom of the press" is obviously much too broad and deep to be thoroughly covered in one set of hearings. There are many issues that will not be mentioned, or at most only touched upon. For example, it should not be thought that freedom of the press refers only to the working news press, and of them, only the "establishment" press. Movies, scholars, the "underground" press, obscenity—all raise issues under the First Amendment. Because we will not discuss them here should not be understood as meaning that the Subcommittee has drawn a circle and left them outside the First Amendment.

Assisting the Subcommittee in these hearings are Americans with diverse and wide-ranging experiences in journalism, in publishing, in government, and in the law. Among those invited to appear before the Subcommittee are members of Congress; the Attorney General; members of the Federal Communications Commission; newspaper reporters, editors, and publishers; broadcast journalists; presidents of broadcast networks; professors of constitutional law and constitutional history; and representatives of newspaper, publisher, photographer, and broadcast associations. Because of the experience and knowledge of the witnesses who are scheduled to appear before the Subcommittee, I am confident that these hearings will make a significant contribution to a better understanding of freedom of the press.

This week, the Subcommittee is pleased to have as its witnesses Senator James Pearson, of Kansas, author of S. 1311—the newsmen's privilege bill; Congressman Charles Whalen, of Ohio, author of the companion bill in the House of Representatives; Mr. Harding Bancroft, Executive Vice President of *The New York Times;* Mr. Norman Isaacs, of the Columbia University School of Journalism; Mr. Frank Stanton, President of the Columbia Broadcasting System; Mr. Richard Barnet, author and political scientist; Congressman Ogden Reid, of New York; Mr. Walter Cronkite, of CBS News; Professor Philip Kurland, of Chicago Law School; and Mr. James J. Kilpatrick, newspaper columnist and television commentator.

WILL PEKING CHANGE?

Mr. GOLDWATER. Mr. President, not quite a year ago, on December 19, 1970, I addressed the Senate on the question of Red China and raised the question of whether the mere passage of time has in any way altered the bloody practices of a Communist regime which holds some 8 million people in its control. At that time I suggested that the whole idea of opening channels of communication to Red China could be a beneficial development if it were to lead to a growth of freedom in the Far East and if it were not taken as the sole requirement for eventual recognition of Communist China by the United States and for the admission of Red China to the United Nations. As I said on that occasion opening of the channels of communication "can only be acceptable if communication is set up between the United States and China and becomes meaningful enough to bring about some reforms on the mainland of China in the name of human freedom."

In that earlier speech I referred to Red China as a "rogue nation" and said that some authorities believe it is a totalitarian system which is planning a 100-year assault against the entire globe and which would not recoil from the horror of instituting nuclear war to accomplish its goal.

Now, Mr. President, quite a number of events have taken place since December of 1970. For one thing the Red Chinese received and entertained in their country a ping pong team from the United States as well as numerous long-standing China liberals and American newsmen. In addition to that, Chinese Premier Chou En-lai received the Kissinger mission from the United States and mapped out plans for President Nixon to visit Red China personally sometime before May of next year.

Now let me make it perfectly clear that far from opposing such visitations to the People's Republic of China I am happy to welcome and encourage them. I believe that this method of communication with a nation that once refused even to speak with our officials may be highly beneficial to the cause of world peace in the long run. I see nothing devious or evil in the fact that an American table tennis team had a pleasant social time in China while they were being soundly defeated in China's favorite sport. And I see nothing devious or evil in the prospect of a visit to Red China by President Richard M. Nixon. In fact, I would rather see President Nixon in that particular role than any of our former Presidents or any of our softheaded liberal diplomats. It will be recalled that President Nixon is a long-time student of Communist tactics and that he stood his ground before a belligerent and bullying and shouting Nikita Khrushchev in the famous "Kitchen Cabinet" incident of 1959.

At the same time, Mr. President, I want to go on record as stating that the Red Chinese have done nothing substantial to wipe out their record of being the principal fomentor of strife, tyranny, oppression, and subversion throughout the world.

Let us examine what has happened. In the first instance—that is, the visitation of the ping pong players and journalists to Red China—the Peking government has done nothing but show the most rudimentary kind of courtesy to citizens of another nation. Admittedly, this is the change from past performance, but whether it is an indication of a whole new attitude on the part of Communist China is something we still have to find out. In the second instance—the agreement on a visit by President Nixon—the Red Chinese have done nothing more than agree to talk. This too has to be recognized as a change—in fact a distinct departure from previous policies. But, again, the whole question of whether the change signifies more than just a tactical maneuver in an oriental game of diplomatic chess is yet to be discovered.

In fact, Mr. President, I believe the major objective of the Nixon visit to Red China should be to observe and to make some kind of a judgment on the motives behind the latest moves of the Peking government. I believe that a major purpose of the Nixon trip should be to determine if Red China is ready to change its attitude on enough important matters to make it acceptable for membership in the family of nations.

Despite all the arguments that a climate of detente has been created we have no solid evidence to make a real case. In all events, I, for one, cannot subscribe to any enthusiasm for seeing Red China admitted to the United Nations General Assembly. I believe we must acknowledge that this action is inevitable, but I do not agree that it is reason for any kind of celebrating among western nations. And if it is accomplished by the elimination of Taiwan, either from the Security Council or the General Assembly, I say that the action will not be an achievement but a complete and total surrender to expediency. We must remember that the Nationalist Chinese Government on Taiwan was a charter member of the United Nations and was supposed to be a permanent member of the U.N. Security Council. It must also be remembered that the Nationalist Chinese have done nothing that would justify their expulsion from either or both positions in the United Nations.

In fact, when the activities of all United Nations agencies are inspected, I believe it will be found that the Government on Formosa has done more than most other nations to advance the cause of world peace. I believe you will find

that Nationalist China has been a major contributor to the welfare of less fortunate nations around the world and has upheld all of its obligations with distinction and honor.

In other words, Mr. President, the Nationalist Chinese have done nothing wrong except to occupy a position in the United Nations and in the family of nations which is sought by a powerful outsider. I note that recently the British foreign secretary, Sir Alec Douglas-Home believes that the admission of Red China, as he put it, will add "a mighty vote to our councils," Sir Alec also offered the opinion that a major step will have been taken "toward the true representation of the balance of the world power and world opinion, from which consensus can be hammered out, however painful at times the process may be."

I sincerely hope that the British foreign secretary is correct. I hope, in this case, the British may be showing a more astute grasp of the world situation than they have in the past. But I believe the opinion of Sir Alec Douglas-Home is the worst kind of wishful thinking.

It occurs to me, Mr. President, that unless Peking has drastically changed her policy, her attitudes and her objectives, the addition of Red China to the United Nations will be a serious blow to that organization. I believe that what worth the U.N. has had in the past as a neutral ground for debating world problems will be lost. I believe that the admission of Red China will pave the way for the admission of other Communist governments in similar circumstances. I believe the admission of Red China will pave the way for new and successful drives for the admission of North Vietnam, North Korea and East Germany—all Communist regimes. In other words, I believe the admission of Red China to any part of the United Nations will be a major step toward turning the United Nations into a convenient and dangerous sounding board for international communism.

Mr. President, I sincerely hope that I am wrong in this. But if I am not, I believe that our future usefulness in the United Nations will rapidly be drawing to a close. In fact, I believe the usefulness of the United Nations itself as a place where opposing viewpoints can be aired will be rapidly drawing to a close. It stands to reason that if and when the Communist nations gain a voting control in the United Nations that organization's value to the cause of peace and to the cause of human freedom will be at an end.

I dislike to strike a negative note at this time of diplomatic euphoria, but I must draw attention to the fact that once again Communist words do not match Communist actions in the field of foreign affairs. If an accommodation is near with the Soviet Union, if the SALT talks are actually on the verge of producing some kind of agreement on strategic arms, why is the Soviet Union breaking its neck to build the most powerful arsenal of nuclear weapons and the most powerful navy the world has ever seen? And if Red China is actually moving in the direction of a detente with the United States, why does it keep sending the implements of war to North Vietnam and why does it push to establish the world's largest stockpile of nuclear weapons?

Mr. President, I believe the answers to these questions prove rather conclusively that either the Communists are using a facade of accommodation as a tactic to outmaneuver us or they are thoroughly convinced that the effort will fail. In all events, we seem to be the only party to these so-called detentes who is not going all out for an arsenal big enough to intimidate the remainder of the world.

As I have said repeatedly, in connection with Red China, the mere passage of time does not alter principle. The mere fact that the government of Mao Tse-tung has proven that it has "staying power" is no reason why we should believe that it smells any sweeter.

In conclusion, Mr. President, let me repeat something I said in December of 1970 and which I feel holds just as true today:

> Nothing can be gained but a great deal can be lost by the admission of Red China to the United Nations or its diplomatic recognition by the United States. If we approve either act, as a nation we will in effect be placing our seal of approval, not only on the tyranny which Communist Peking maintains within the boundaries of China, but we will, by inference, be endorsing the policies through which Red China spreads rebellion, discontent and subversion throughout Africa, the Middle East and the Western Hemisphere in addition to Southeast Asia.

THE OTHER IOWA

Mr. HUMPHREY. Mr. President, as chairman of the Rural Development Subcommittee of the Committee on Agriculture and Forestry, I took particular note of an article entitled "The Other Iowa," written by Mr. Richard Greenwood, editor of the Iowa AFL–CIO, and published in last Sunday's Washington Post. I commend this article to the attention of Senators and urge them to read it carefully. The article tells of what is happening in Iowa, one of our Nation's most rural States. It reveals the dilemma faced by many of the farmers in that State today as a result of the huge corn crop they produced at the request of the Nixon administration. It reveals some of the problems faced by the smaller farmers and how many of them must find jobs in town in order to make it on the farm. It tells of abandoned businesses in small towns and declining prices for farm commodities while consumer prices continue upward.

Mr. President, I understand that today we are observing the Annual Day of Bread and that loaves of bread are being distributed to every Member of Congress today to mark the occasion. I hope, Mr. President, that as Secretary Hardin participates in this day of observance, he can offer some explanation and hope to Iowa corn and wheat farmers throughout the Nation regarding the prices they are now receiving for their products, including the wheat that is used to produce a loaf of bread. Wheat is down to about 2 cents a pound, while the retailer still asks the housewife to pay 25 to 30 cents a pound.

Our wheat and feed grain farmers today must be given some relief from these price depressing pressures. Iowa, Nebraska, Minnesota, Illinois, Indiana, and the other States of our great Midwestern heartland are faced with major blows to their respective economies as a direct result of what is now happening to agriculture and the American farmer. The story revealed in Mr. Greenwood's "The Other Iowa" is destined to get much worse before it gets better—and throughout our Nation's agricultural regions—if something is not done soon by Congress and the administration to help the American farmer to meet this crisis.

The action I called for yesterday on the Senate floor regarding the enactment of a national grain reserve bill and the need for an acreage diversion payment program for the 1972 wheat and feed grain crops would go a long way in helping to relieve these problems.

Mr. President, I ask unanimous consent to have printed in the RECORD Mr. Greenwood's article entitled "The Other Iowa."

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

THE OTHER IOWA

(By Richard Greenwood)

Back in March, when President Nixon made his foray into Iowa to announce his rural development revenue-sharing plan, he may not have been shaken by the unfriendly greeting of students, blacks and union members. But the sight of several hundred sign-wielding farmers certainly may have surprised him. And when he returned to dedicate a federal dam and recreation project in Southern Iowa he may well have been disappointed that farmers did not flock to hear him extol the virtues of rural life.

There are several reasons why farmers protested and then ignored the President's trips. First is the Nixon administration's farm subsidy program, announced shortly before the President's Des Moines venture in March. The feed grains program, which provides nine-tenths of Iowa farm subsidies, is not geared to help the small and marginal family farmer. And half the farms in the Hawkeye State can be classified as marginal operations.

What the administration has done is to reduce feed grain acreage allotments on which subsidy payments are based, so as to encourage more planting and production. More corn means a greater supply this fall in the face of existing surpluses and a declining export market, which means cheaper corn cash prices, which means cheaper feed for livestock, which means more livestock production, which means lower prices received by farmers for their pork and beef.

Further rankling the farmers is the fact that reduced farm income doesn't mean reduced food prices for consumers. When farmers sell pork, for example, at 17 cents a pound on the hoof, then seek pork chops selling for 89 to 99 cents a pound in the supermarket, the fires of resentment are easily ignited. And they know that the packing house worker earning $4 to $5 an hour isn't the one to blame—not when a 200-pound pig will yield 150 pounds of bacon, ham loin roasts and pork chops and when anywhere from 2,000 to 4,000 hogs are slaughtered and processed

during an eight-hour day in a single meat-packing plant.

Besides, all the byproducts of an animal—fat, oils, hides, hair, bones, hooves and even blood and glands—are the farmer's gifts to the packer. He sells the animal for meat, and that is what his price is based on. He gets no credit for the soaps, lard, leather, glue, gelatin and pharmaceuticals made from the by-products.

What's true for pork production is also true for beef. Urban housewives might keep this in mind next time they pay $1.29 a pound for that little prepackaged piece of meat labeled "eye-of-round." Only the multiplier is larger for beef: A 1,000-pound critter on the hoof will dress out to about 700 pounds of roasts, steaks, boils and hamburger, so that what the farmer receives $300 for costs $900 in the supermarket meatcase—beef byproducts are not included.

IOWA'S TWO FACES

To understand the deep-seated reasons for farm discontent in Iowa, though, one must look behind the current farm economy to other harsh economic, geographic and sociological factors.

Live in this state a year, travel it up and down, and the picture will become clear. Iowa is not simply row upon row of rich green corn shoots and soybeans playing checkerboard with plots of lush grazing pastures. Nor is it uniformly a vast pastoral plain gently rippled with groundswells of golden grain.

Iowa actually has two faces. For about half of it—the northern half—the picture postcard image is more often in focus than not. The fashionable term is "agribusiness"—that's what postcard Iowa is all about. For much of the southern half—at least the bottom three or four rows of counties stretching from the Mississippi River west to the Missouri River—the postcard landscape very often doesn't apply. Here is a hilly, rocky, sometimes even craggy part of the country. Plowed fields and hillsides are apt to turn up brown, reddish or even dung yellow soil. Buckbrush, clump oak and hedge ball trees cover much of the pasture land.

In Southern Iowa, "agribusiness" for most farmers is a sophisticated word from Madison Avenue via television or maybe from Wallaces Farmer magazine, which comes from West Grand Avenue in Des Moines. In either case, it is as unrealistic as the Marlboro ads with horses and tattooed ranchers and cowboys and helicopters. Like the word "effluent" that so many city councilmen talk about these days, everybody knows "what it really is," as one Clarke County farmer put it.

Southern Iowa is closed store fronts, run-down business buildings, gothic courthouses, and sidewalk seams stitched with weeds, all of which speak of a desertion and destitution found in a Dali painting.

"Sell out 'n' move 't' town," is the young or middle-aged farmer's typical response. But even in Iowa, the unemployment rate is 5 per cent and the problem is to find a town where there is a job. Older farmers, who've reaped the profits of war production years and more favorable farm subsidy programs and can now sell in an inflated land market, are prone to retire in California, Florida or Arizona trailer courts. But the less prosperous and less adventurous move into the nearest town and a familiar but dwindling community.

Along dusty gravel roads that crawl up the backsides of these hills and through their hollows, abandoned farm houses and ramshackle barns stand like sagging monuments over fallow memories of the day of the family farm—mute testimony that farm subsidies really only serve agribusiness.

But some remain on the land. Take Larry Wisecup, 29, Rural Route, Truro, Iowa, who is clinging to 80 tilled acres, 30 head of cattle and 40 acres of pastureland near that tiny farm hamlet about 40 miles south of Des Moines.

"I love to farm," he says. To pursue this passion, Wisecup holds down a full-time swing-shift job at the Armstrong Tire and Rubber Co. plant in Des Moines. Nine months out of the year, his typical workday is 16 to 20 hours. Even so, it is doubtful if his total income reaches five figures.

Not far away, a neighbor, 79-year-old Francis Carlson, who has lived on his 135-acre farmstead since 1935, sets his lantern jaw, squints across the road at another neighbor's corn field and scoffs at agribusiness. "Everything is big business these days," he says. "That seedcorn cost $51 a bushel. I don't see how a man can make it on less than a section of land." (A section is 640 acres.) Carlson contents himself by grazing 60 head of steers and renting out his hay land. He's thinking of retiring in another year or two, but doesn't know what to do with his farm.

Multiply Wisecup and Carlson by 25,000 to 30,000 and some idea of the numbers involved in this landed peasantry can be had.

EPITAPH FOR SMALL FARMERS

There's more than visual evidence to depict Iowa's two faces. Economists, ensconced in cream-colored cubicles in that citadel of the Iowa agribusiness establishment, Iowa State University at Ames, record the differences in computer type and statistical table. They compare, for example, "Characteristics of High and Low Profit Farms, 1967–69 Average." After listing returns for 240-acre farms and total capital investment per farm, "net income" tells the story. For the "High Profit ⅓ of Farms," net income is $21,451. For the "Low Profit ⅓ of Farms," net income is $5,633—nearly all of them in the South. In stricter agribusiness terms, the ISU economists compute an 11.1 per cent capital earnings rate for high-profit farms, compared to 1.4 per cent for the low-profit ones.

They also display another table showing that total expenses for the 160-acre farmer—and there are still a lot of them in Iowa—are about $190 per acre. But as the size of the farm increases the costs decrease until they amount to only a little over $100 an acre for the 640-acre spread.

"The low profit group would have been $6,616 a year better off if they had invested their capital at the going rate of interest and worked for someone else at going farm wages," is the way economist H. B. Howell put it in an article in ISU's January issue of Iowa Farm Science. Going farm wages, though, are low, and unemployment among hired farm workers has already set in at a rate of nearly 5 per cent.

It's a blunt epitaph for small and marginal farmers who can't hire help anyway. It was largely these farmers whose hostility greeted Mr. Nixon in Des Moines last March, largely under the aegis of the National Farm Organization.

But there were Iowa Farmers Union members there, too, representing that middling third of agrarians whose yearly net income is somewhere above ISU's low of $5,633 but well below the "high profit" $21,451. They're all feeling the crunch of the government's farm policy and the encroachment of agribusiness. They know full well what Iowa State means when it says, "There are no data to indicate how big is 'too big' as far as acres per farm is concerned in the Corn Belt."

Hardly anyone in Iowa officialdom or journalism admits to all this. Behind the postcard facade is an endless verbal barrage of bucolic nonsense about country living, individualism and the pioneer spirit of Iowans' forefathers. The 4–H Clubs and others ceaselessly drum the message and the spirit of Iowa "wholesomeness" into young minds. Not the least offender is the Des Moines Register, which blows hard about its Pulitzer Prizes but regularly features columns and essays singing hymns to the rugged individualist and his pastoral gods. (They are all white; there are no black farmers in Iowa.) Wallaces Farmer, Successful Farming, and the Farm Bureau's Farm Journal continually reinforce this rustic conditioning.

Iowa is beautful, and it is not the nature worship one finds objectionable. It is the yearning for yesteryear and the 19th Century economic and social thought that goes along with it.

About a year ago, Iowa Educational Television Director John Montgomery sought to puncture the myth with a documentary called "Hard Life in the Country." He was censured by the Iowa Farm Bureau Federation, which combines the economic interests of large corporations with the political and social philosophies of ultraconservatives to dominate the state's agribusiness circles and most local and state government circles. The Farm Bureau said Montgomery did not present a "realistic picture" of the Iowa farm scene. But Montgomery knew whereof he spoke. He grew up on a Southern Iowa farm and his family still toils there.

WIDENING BREACH

Republican Rep. William Scherle, whose district encompasses nearly the whole southwest quarter of the state, seems to make the most out of the good and the bad. On the one hand, he's engaged in agribusiness himself, down in Cass County, and votes the Farm Bureau line on most issues. On the other hand, he takes full advantage of the poverty-spawned ignorance there to tilt at windmills with assorted Communists, criminals, student protesters, rioters, welfare mothers and, lately, foreign competitors in farm production.

"He's cuttin' a fat hog," is the way the folks put it in that part of the state.

Two trips into Iowa probably didn't reveal anything other than the postcard image and mentality to President Nixon. It is almost certain that Gov. Robert D. Ray, who conducts his office in classic Chamber of Commerce fashion, didn't provide the President with any disturbing information.

Whether the farmers revolt in 1972 depends upon farm economics and what the administration does about it. Its rural development revenue-sharing plan, which sounds more like a real estate developer's pitch than a family farm program, isn't a satisfactory solution. The President's recent economic "freeze," which excluded farmers and farm prices, may signify some kind of official recognition of the farmer's plight. But it does little to end the breach in his relations with the family farmer.

THE MOST SPECTACULAR PORTION OF AMERICA'S LONGEST RIVER

Mr. MOSS. Mr. President, during the August recess it was my privilege to preside at hearings of the Senate Interior Committee in Great Falls, Mont. The subject of the hearing was the bill, S. 1405, which would authorize establishment of the Missouri Breaks Scenic Recreation River. This bill would authorize the Secretary of the Interior to designate portions of the river between Fort Benton and the Robinson Bridge in Montana, a distance of about 175 river miles, as wild scenic or recreation, while continuing existing land uses for grazing, hunting and mineral development.

I was pleased to note, shortly after we returned to Washington following the August recess, that the Associated Press

has distributed a major article regarding the Lewis and Clark expedition and the historic Missouri River, including the relatively short segment with which S. 1405 deals. Jules Loh of the AP begins his description of that segment with these words:

By some uncanny providence the most spectacular portion of America's longest river, the most enchanting in Lewis' eye, is also the segment least aware of man's meddling hand. It remains as Lewis described it.

Mr. President, I ask unanimous consent that the entire AP article, as published in the Missoulian of September 12, 1971, be printed in the RECORD. The same article appeared in other Montana papers, among them the Great Falls Tribune and the Billings Gazette, and also in the Washington Evening Star.

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

THE NEON TRAIL

(EDITOR'S NOTE.—We all learn about it in high school history. The Lewis and Clark expedition, an epic of exploration; the first American eyes to look on a land of wealth and beauty, of wonder and wilderness. But now, their legacy of paradise is lost. And what has been gained? AP Newsfeatures Writer Jules Loh retraces the trail in this distinguished, vivid and troubling journal of nature, a nation and its people; of human nature, its feats and follies.)

(By Jules Loh)

"To Meriwether Lewis, esquire . . .

"Beginning at the mouth of the Missouri, you will take observations of latitude and longitude, at all remarkable points on the river, and especially at the mouths of rivers, at rapids, at islands and other places and objects distinguished by such natural marks and characters of a durable kind, as that they may with certainty be recognized hereafter."

One wonders what sort of hereafter the prescient Thomas Jefferson envisoned for his country when he wrote those instructions in 1803.

Lewis and Clark followed their orders precisely. Were they to retrace their route of discovery today, however, they would with certainty recognize precious little of it. It was wilderness then, all of it, from the Missouri to the Pacific, and the natural landmarks and remarkable points they noted in their journals were numerous and spectacular. But durable?

Consider rapids:

"I determined to pass through this place," William Clark wrote, "notwithstanding the horrid appearance of this agitated gut swelling, boiling and whorling in every direction. . . ."

Today people at play pass through that once wild and horrid place on water skis, the agitated gut long since inundated by flat, slack water behind Bonneville power dam on the Columbia River.

Or islands:

"A beautiful little island well timbered is situated about the middle of the river," wrote Lewis when he reached the Great Falls of the Missouri. "In this island on a cottonwood tree an Eagle has placed her nest; a more inaccessible spot I believe she could not have found: for neither man nor beast dare pass those gulfs which separate her domain from the shores."

Today that island is a treeless, joyless employes' parking lot, wreathed in the acrid smoke of an Anaconda Co. smelter and easily accessible, the churning gulf having been plugged up and paved over.

Not even the most ardent preservationist would suppose the land could or should remain, in the 165 years since Lewis and Clark completed their expedition, a primeval Eden. The very reason President Jefferson sent them on their journey was to open up the wild continent "for the purpose of commerce."

That they did. Smokestacks and power lines and shopping centers all along the route manifest the destiny America perceived for itself.

A 20th century American, aroused, as Lewis and Clark were not, over the deteriorating quality of a finite environment, can find no better example of man's treatment of nature's resources than to re-examine the route of those two explorers. They saw the land new and wrote down what they saw. The modern traveler sees the land after it has felt man's hand, sometimes brutally, sometimes gently.

He sees it against the broad canvas of the entire history of white America's development of a section of the country stretching from the Midwestern prairies across the Rockies and northern Cascades to the misty Oregon coast.

He passes through 10 states where nearly 20 million people now live, the accumulated progeny of eight generations of Americans who in their turn and by their own lights traded on the bounty of the land.

They took timber from its valleys and ore from its mountains to build homes, hospitals, schools and churches, and ski lodges, marinas and jiffy car washes. They turned prairie into wheat field, wheat field into shopping center. They built dams and smelters. Dams light cities and kill salmon. Smelters lift life out of the stone age and befoul air.

Seeing the land thus "put to use," in the driving Yankee phrase, one may profitably ponder: when paradise is lost, what is gained? Hindsight tells us that what is rare is dear. Will foresight tell us what price to demand for the bit of wild land left?

Lewis and Clark entered a kingdom of nature. They viewed it with awe and acknowledged with reverence how much about it they did not comprehend. In just 165 years, their heirs, swept forward on a technologicl tide undreamed of since Genesis, have made that natural wilderness into an empire of man. At man's gain, or simply his gratification, they have reshaped nature at nature's expense. Now man finds himself with so little left of nature that words like "recycle" enter his vocabulary. He chose to supplant a river with a lake; what will supplant the lake when its use is spent?

As Meriwether Lewis pressed westward, beyond the last buffalo trail, he came to a point in his expedition not unlike the juncture America has now reached in its march through history. To paraphrase the thought Lewis confided to his journal: I have come so far I am committed; there is no turning back. I can only continue, and pray I keep my wits and do not lose my daring. . . .

The Lewis and Clark expedition began in St. Louis, at the mouth of the Missouri, May 13, 1804, ascended the lower segment of the river and arrived at what is now Sioux City, Iowa, on Aug. 20.

"The water excessively rapid, & Banks falling in," Clark noted early in the voyage.

Cursing and sweating against the rolling current, the crew sailed and rowed and poled and towed a 55-foot keelboat and two large pirogues up the river. At one point, "We like to have Stove our boat," reported Clark. "In going round a Snag her Stern Struck a log under water and She Swung round on the Snag, with her broad side to the current. . . ."

That was the wild Missouri of song and legend. The mighty water highway for a westering nation. The treacherous stream whose hidden snags and underwater logs, called sawyers—a name immortalized by Mark Twain's mischievous lad—stove in and sank no fewer than 441 steamboats before the railroad ended that romantic era and began another. The Missouri. Too thick to drink and too thin to plow, by the measure of farmers along its banks who, as regularly as spring, lost acres of croplands to its brawling floods. The restless Missouri meandering between bluff lines 15 miles apart, changing its course with such caprice that part of Iowa is now on the Nebraska side. The lusty, wide Missouri of frontier folk song. "Away, you rolling river!"

And today?

The Missouri of 1971 would inspire few to song. It is a tame river. Diesel towboats passively ply a weel-buoyed channel between St. Louis and Sioux City hauling shapeless barges. Where Lewis and Clark saw trees four feet thick snatched into the current by the roots, levees now keep the riverbed in one place.

The U.S. Corps of Engineers has sliced away the wickedest of the river's bends, making shortcuts. Strewn inland along both sides of its new, shorter course are two dozen crescent-shaped lakes, ox-bows as they are called, where children in orange life jackets putt around in aluminum boats.

In fact, the Corps and nature together have made it well nigh impossible to locate with Lewis and Clark set down with such geographic precision in their journals.

The riverside bluff where the explorers held America's first official council with Indians west of the Mississippi can still be found, however. It is not at Council Bluffs, Iowa, as might be supposed, but about 20 miles north of there. The site is farmland now, rich, rolling fields of corn, neat white houses under shade trees, plump Herefords grazing, a scene of a Sweet Lassy Feed calendar. "The air is pure and healthy so far as we can judge," commented Clark in 1804. And so, today, it remains.

But don't go near the water.

The lower Missouri, tame enough at last for factories and canneries, warehouses and slaughterhouses, to lurk in safety along its stabilized banks, is—did any suspect otherwise?—polluted.

Industry is the major offender. Individual citizens in cities and towns along the river—Jefferson City, Kansas City, Atchison, St. Joseph, Omaha, Sioux City and points between—began cleaning up their part of the mess years ago, long before ecology became a parlor word.

During the 1950s drought, a gag went the rounds in Kansas City commenting satirically on the well-known fact that untreated sewage was being dumped in the river and swept downstream: "Everybody flush, Booneville needs the water."

The message was clear, if the river wasn't. Kansas Cityans swallowed hard and voted themselves a sewer service charge to finance $75 million in bonds for treatment facilities. Other cities followed.

"If the industrialists along the river felt the same obligation and acted as responsibly as the private citizen," said farmhand Raymond Train, "the Missouri could be cleaned up in no time." Train said the man he works for on a farm south of Omaha had voluntarily curtailed his use of herbicides. "Did you know that stuff finally winds up in the ocean?"

As astonishing as the scarcity of identifiable Lewis and Clark landmarks along their route is the apparent lack of detailed knowledge about their truly remarkable expedition among Americans at large.

Meriwether Lewis and William Clark rank with Columbus and Coronado as explorers, with Boone and Crockett as frontiersmen, and were in addition accomplished diplomats,

geographers, botanists, zoologists. Merely completing the two-year journey against such improbable odds—the party had been given up for dead—was as inspiring a feat of endurance and leadership as history offers. On top of that, Lewis and Clark brought back eight volumes of documentation which shed the first light of knowledge on an area twice the size of the then existing United States. Prior to their expedition the entire Louisiana Purchase was a blank not only on the map but in human thought. What is more, their success gave America paramount claim to the detached Oregon region which otherwise might have become a domain of either Britain or Russia, and thus foreordained their nation's eventual sovereignty from sea to shining set.

Yet many who live along the route of the expedition are generally aware of little other than that the two passed by on their way from somewhere to somewhere, and monuments to their passing customarily take the form of the Lewis and Clark Trailer Court, the Lewis and Clark Texaco station, the Lewis and Clark Coin Operated Laundry, Lewis Boulevard and Clark Road. In Kansas City a lovely green park, Clark's Point, overlooks the confluence of the Missouri and Kansas rivers. On inquiry one finds that it was named not for William but for Charles. Charley Clark of happy memory, a steadfast alderman during the Prendergast regime.

William Clark, Aug. 17, 1804: "We Set the Prairies on fire to bring the Mahars & Soues if any were near, that being the usual Signal."

When Omaha and Sioux held sway along the Missouri there was prairie to burn, as it were, a seemingly endless wilderness. In the evolution of American mores and American concerns, the era of ecology, of Smokey the Bear, was a century-and-a-half away. Other eras had to come before, each in its turn, leaving its imprint on the banks of the historic old riverlike fossils, each revealing a moment of a nation's time.

Bushwacker Bend and Nigger Bend, landmark turns in the river, preserve in memory one bloody era: a Confederate ambush; a slave market. So does the site near Omaha where two suspected horse thieves were hanged at opposite ends of the same rope slung over a limb. And the place where John James Audubon, on a bird-painting excursion following Lewis' and Clark's maps, dragged the corpse of a three-years-dead Indian chief named White Cow from its burial place and decapitated it for a souvenir. "He was a good friend of the whites," explained Audubon. Names of cities along the river testify that White Cow was an exception and recollect the awful price of "civilizing" the West: Ft. Leavenworth, Ft. Riley, Ft. Laramie, Ft. Randall. Other names, painted on the rusting cabs of antique steam locomotives standing forlornly in city parks, the playthings of children, evoke memories of another era: Union Pacific; Burlington; Atchison, Topeka & Santa Fe; Missouri Pacific.

At some places the past and present collide with jarring irony. The Pony Express Stables, carefully preserved in St. Joseph, Mo., stand in rough hewn permanence next to the neon-lit Pony Express Bowling Lanes. North of Yankton, S.D., a tangled parcel of suburban land known as Devil's Nest when Jesse James used it for his hideout, will soon become a fashionable housing development to be called—are you ready?—Hideaway Acres.

If Lewis and Clark were to pole their pirogues up the Missouri today, Yankton would be as far as they would get.

There they would run into the towering face of the Gavins Point Dam, the first of six huge Corps of Engineers dams which have converted the upper Missouri from a rampaging river into a series of slackwater lakes stretching across both Dakotas and into Montana, the tailwaters of each practically lapping at the face of the next. The Corps refers to them proudly as the Great Lakes of the Missouri.

To a card-carrying conservationist of, say, the Friends of the Earth variety, plugging a river heads the list of capital sins, and the Corps' engineers are Satan's minions prowling about the country seeking the ruin of nature's soul.

"Dam engineers are like beavers," says David Brower, president of Friends of the Earth. "They can't stand the sight of running water."

"Yes, our business is changing the environment," said Brig. Gen. John W. Morris, stripping brown paper off a small package. "Changing it for the better." He dipped into the package and withdrew a white lapel button with bold red letters. "I just bought 250 of these—with my own money. I want you to be the first to have one." He tossed it across his desk. It said: The Corps Cares.

Gen. Morris, chief of the Corps' Missouri River Division, believes firmly that conservation is not necessarily the preservation of wilderness but rather the wise and varied use of the land for man's benefit.

Gen. Morris believes further that the benefits of the very dams so accursed of today's environmentalists have played no small part in elevating the nation's standard of living to a point where the quality of the environment, as opposed to more fundamental human needs, can become a pressing national concern.

"I just got back from Vietnam," he said. "Believe me, when the struggle is for day to day existence as it is in those villages, the condition of the ecology is not of priority interest."

The six mainstem Missouri dams alone—there are 77 lesser ones on its tributaries and 22 more planned—have, by the government's estimate, prevented $700 million in flood damage over the past 18 years, generated 13 billion kilowatt hours of electricity annually, irrigated countless thousands of arid prairie acres and, as a lagniappe, made possible the spectacle of sailboat races in midcontinent. The six lakes inundate 1,776 square miles, a total water area roughly the size of Delaware.

"Twenty million people have visited those lakes for recreation," Gen Morris said. "If we hadn't developed that river, they wouldn't have been out there—reading our signs about Lewis and Clark. We haven't hurt the cause of history, we've helped it."

That depends. It is one thing to view the hulking powerhouse at Gavins Point Dam with its ganglion of wires and read that it stands on the precise spot, Calumet Bluff, where Lewis and Clark smoked a peacepipe with the Yankton Sioux; it is immeasurably more rewarding, however, to stand where the explorers stood and see the country exactly as they saw it, hear the rushing water as they heard it, smell the smells they smelled. And it is still possible to do this at one stretch of the river far up beyond the last big dam—though it might not be possible for long.

Is it not this sort of history in the wild an American resource too?

"Of course it is," said Elmo W. McClendon, the chief of the Corps' Reservoir Control Center in Omaha who helped plan five of the six dams.

"But how many Lewis and Clark campsites do you need to preserve? How about two-thirds of them. This river is 2,500 miles long and we've inundated 850 miles of it. Isn't two-thirds enough for posterity when you're able to gain other things of importance?

"Look," McClendon said, warming up, "before those dams were built, only one farm in 20 in all this vast area had electricity. Now all of them do. I grew up on a farm in Texas with kerosene lamps. I don't belittle electricity."

Clark, July 29, 1804: "Cought three verry large Cat fish one nearly white, those fish are in great plenty on the sides of the river. . . ."

"I know, I know," McClendon said. "We've flooded the catfish spawning grounds. But Lewis and Clark didn't catch any walleye or northern pike or sauger. Those are noble fish. Lake fish. We put 'em there."

The point environmentalists make is that man does not know enough about nature's mysteries to presume to alter the ecology on so large a scale as by damming a great river.

The people of Niobrara, Nebr., bitter and dismayed, are wondering. Their town is slowly drowning.

Niobrara, population 602, lies at the mouth of the river of the same name which rises 450 miles away, in Wyoming, and discharges with a frothy rush into the Missouri just below the South Dakota border.

That is, it used to. Gavins Point Dam has turned the swift Missouri into a sluggish lake, no longer able to flush away the tons of silt washing down the Niobrara from the Wyoming hills. The mud piles up at the Niobrara's mouth. Water seeps across the lowlands. Beneath the town the water table is rising inexorably. Cellars flood. Trees rot in the ooze. Citizens say that sewage problems, health problems, are only a matter of time. "Muskeetors verry troublesom," Meriwether Lewis observed when he passed the mouth of the primeval Niobrara. Today they are a positive menace.

Westward across the boundless Missouri Plateau, geological laboratory of the 20th century's Corps of Engineers, pushed the 19th century's Corps of Discovery. . . .

Past the sacred Black Hills—sacred until they were thought to harbor mineral treasure, then profaned.

Past the badlands, "rich pleasing and beautiful . . . hightened by immence herds of Buffalo which we saw in every direction . . . so gentle that we pass near them while feeding"—all gone, in an orgy of marksmanship.

Past Indian villages: the Mandans, "Kind, pore, & extravigent, pursessing national pride, not beggarley;" the Arikaras, "inclined to be at peace with all nations," a people who "never whipped even their Children, from their burth"—both tribes still in existence, in name at least, still proud, still peaceful, still abominably poor on a shared North Dakota reservation.

Past a fall in the river the explorers named Elk Rapids, "the most considerable rappids which we have yet seen on the missouri"—gone now, inundated by Fort Peck Reservavoir, the last and largest of the Corps of Engineers dams.

"And beyond the manmade lake. . . .

"The hills and river Clifts which we passed today exhibit a most romantic appearance," wrote Lewis.

"The water in the course of time in descending from those hills and plains on either side of the river has trickled down the soft sand cliffs and woarn it into a thousand grotesque figures, which with the help of a little imagination . . . are made to represent eligant ranges of lofty freestone buildings, having their parapets well stocked with statuary."

"As we passed on it seemed as if those scenes of visionary enchantment would never have an end. So perfect indeed are those walls that I should have thought that nature had attempted here to rival the human art of masonry had I not recollected that she had first began her work."

Amen.

By some uncanny providence the most spectacular portion of America's longest river, the most enchanting in Lewis' eye, is also the segment least aware of man's meddling hand. It remains as Lewis described it.

It stretches 180 miles from the tailwaters

of the Fort Peck impoundment westward to the charmingly antique village of Ft. Benton, winding unmolested through one of the blankest areas on the map of America. Few highways approach it. To see it one must earn the privilege: hike in, float down the swift, wild stream, camp on the banks.

Those so privileged enter a hushed corridor of fantasy within a cathedral of nature beneath a vaulting, cobalt dome of Montana sky. It is almost more than the senses can absorb. One gives in to the urge to shout out—hooray! And then, in the murmuring quiet, to recall the words of Edith Warner: "This is a day when life and the world seem to be standing still—only time and the river flowing past the mesas."

In the files of the Corps of Engineers there exists a proposal to dam up and flood this portion of the river too.

The engineering studies refer to it as the High Cow Creek Dam. The Corps, however, is not currently pressing the proposal. "Not during this ecology kick," a civilian employe explained. It would be located just above Cow Island, a site given its name by Lewis and Clark and made famous—or infamous—72 years later.

That was when Chief Joseph slipped his Nez Perce tribe across the river under the noses of American soldiers who outnumbered his warriors six to one. He had led his people 1,500 miles in a masterful retreat, pausing only to hurl back the pursuing troops time after time. At Cow Island he was a few days march from the Canadian border.

After one final battle just north of the river, on Oct. 5, 1877, Joseph chose to surrender rather than leave behind his dead and wounded women and children and make the easy dash to Canada. Yes, women and children, shot by U.S. soldiers. Sand Creek had already established a pattern of massacre; Wounded Knee was yet to come. And My Lai.

"Hear me, my chiefs," Joseph said, weeping. "I am tired. My heart is sick and sad. From where the sun now stands I will fight no more forever."

The National Park Service firmly opposes the High Cow Creek Dam. It has proposed as an alternative that that stretch of the Missouri be designated a national river and developed for public enjoyment. That means picnic tables, boat ramps, litter baskets, access roads, rest rooms, historical markers, nature trails and scenic overlooks.

"God damn," said Thomas Hart Benton, the artist, who floated the wild river several years ago making sketches. "God damn! God damn!"

Lewis and Clark assigned names to all the rivers they encountered on their journey, though not all the names—for all the rivers, for that matter—have survived. Small wonder that in their euphoria amid the romantic white sculptured cliffs of the Missouri they named tributary streams for their true loves.

Upstream Lewis came upon "a noble river . . . its borders garnished with one continued garden of roses." Right away he named it Maria's River for his "lovely fair one," Maria Wood. Maria, alas, decided not to wait for Meriwether and married somebody else. Her river eventually lost its apostrophe and Montanans today call it the Ma-RYE-us.

Like its namesake the Marias is a fickle stream, changing its course, eroding its banks. Just recently, upstream from Shelby, Mont., it began chewing at the turf alongside one of the holes at the Marias Valley Golf and Country Club. A par three, it was. To forestall that disaster, junked autos—the feces of the affluent society, as commonplace along the Lewis and Clark trail today as once were buffalo chips—were dumped over the bank as a rampart. In their haste the innovators failed to drain the cars' crankcases and for miles downriver the Marias' banks were garnished not with wild roses but greasy sludge.

Fighting off grizzly bears all the way, "a turrible looking animal," Lewis and Clark pushed upstream until "a roaring too tremendious to be mistaken" signaled their approach to the great falls of the Missouri.

Here the river descends 400 feet in 10 miles, cascading over four huge cataracts, each a titantic drama of irresistible water and immovable stone played beneath great aurors of spray and foam. "The grandest sight I ever beheld . . . a sublimely grand specticle," Lewis wrote. He gazed awestruck at the fall farthest upstream for four hours.

Lewis described the falls for his journal, read what he had written "and was so much disgusted with the imperfect idea which it conveyed of the scene that I determined to draw my pen across it and begin again." Then he decided not to bother and let the first draft stand.

Today's traveler might attempt it thus:

"A landmark too tremendous to be mistaken assured me I was approaching Great Falls. It was the smokestack of the Anaconda Co. smelter, 506 feet tall, 74 feet in diameter at the base, 53 feet at the top. It rises from a hilltop beside Black Eagle Falls, the fall farthest upstream, a giant totem of the industrial age emitting yellow smoke. The smelter, where 1,500 people work, is a dreary complex of stained and rusting buildings held together by pipes and railroad tracks. There is no grass. Black Eagle Falls, as well as the three downstream, has been converted into an electric power dam to run the smelter, light the city and operate the drills at the copper mines in Butte, 126 miles away. Grizzly bears are no longer a hazard."

If the description seems inadequate, it will have to stand.

Four days out from Great Falls the expedition passed through a gorge where the "clifts rise from the waters edge on either side perpendicularly to the hight of 1200 feet," a site begging for a dam, which was duly built. Lewis named the place Gates of the Mountains; bursting from the confines of the gorge, the Rockies suddenly appear—unmistakably the Rockies, hulking granite crags tipped with alabaster, massive, brooding, dividing the continent between eastward and westward flowing waters, enticing the explorer then and now.

In short order the expedition, "much fortiegued," reached its first major goal: the mountain meadow where three streams join to form the mighty Missouri.

With the possible exception of the grain elevator, the most prominent structure in Three Forks, Mont., today is the Sacajawea Hotel, a rambling old clapboard edifice muchly gabled and porched and columned. Directly across the street is a small park. Three fir trees are planted in a triangle, each with a nameplate: Jefferson, Madison, Gallatin, the names Lewis and Clark gave the three streams. In the center of the triangle stands a rough granite stone with a bronze plaque, placed there in 1914 by the Daughters of the American Revolution. The plaque says, "In patriotic memory of Sacajawea . . . (who) in acting as guide across the Rocky Mountains made it possible for the Lewis and Clark expedition to succeed."

Poppycock. Sacajawea was the Shoshone maid who had joined the expedition. Three Forks was in Shoshone country. Just when Lewis and Clark needed her most, to tell them which fork to take, Sacajawea was at a loss. Indeed, Lewis remarked, she was "without any information with rispect to the country" whatsoever.

The explorers by their own surmise correctly chose the middle fork, the Jefferson. After 11 days Sacajawea finally recognized a familiar landmark, a huge rock in the shape of a beaver's head near a place where her people gathered pigment for paint. Lewis, reassured, carved his name in the rock.

It was an imaginative Shoshone who named Beaverhead Rock. On the other hand it may very well have resembled a beaver's head—before part of it was blasted away to provide gravel for an irrigation ditch. That was some time back. Last year its present owner again began dynamiting until Sen. Mike Mansfield pleaded with him to stop. Lewis's carved name, incidentally, went into the irrigation ditch.

Damaged or not, the rock has given its name to Beaverhead County, Beaverhead National Forest and Beaverhead River, the upper reach of the stream Lewis named the Jefferson—above where it, too, parts into three forks. Lewis had christened the right and left forks the Wisdom and the Philanthrophy, "virtues which have so eminently marked that deservedly celebrated character through life." Today the right fork is known as the Big Hole, the left variously as the Stinkingwater and Ruby.

To read in Lewis and Clark's own words of their trek across the great divide at Lemhi Pass and of their arduous struggle northward up the rugged Bitterroot Valley is sheer excitement. To follow in their footsteps is pure joy. Few places on the continent are as scenic and remote as the precipitous mountain barrier that forms the Montana-Idaho border. Here man is the intruder. Here an elk fawn, startled, bounds for cover, wild free, the essence of grace. Here a bald eagle perches in a towering red cedar, hot-eyed, defiant, lifting her regal head to a mate high above searching the limitless sky on motionless wings.

In the few mountain villages along the way children grow up without ever seeing a parking meter or hearing a siren or knowing the loneliness of a crowd but instead learn to identify birdsong and paw prints. Then they leave after high school to find work in Butte or Spokane.

"There just aren't many opportunities here for young people," said a redbearded man of middle age at the Diamond Bar Cafe, a wayside inn at North Fork, Idaho, where the Salmon River—the River of No Return—begins its furious plunge through the majestic canyons of the trackless Bitterroot range. The rush of the rapids 100 feet away was the only sound to reach the restful, cool cafe.

"Of course," he continued after a moment's thought, "they could do what I do."

"What is that?"

"Nothing. Nothing worthwhile."

What is it about this country—is it its grandeur, its total lack of artificiality—that makes a mere man feel small and hypocritical and goads him into introspection and candor?

Lewis, Aug. 18, 1805: "This day I completed my thirty-first year. I reflected that I had as yet done but little, very little indeed, to further the happiness of the human race or to advance the information of the succeeding generation. I viewed with regret the many hours I have spent in indolence . . . and resolved in future to redouble my exertions and . . . to live for mankind, as I have heretofore lived for myself."

At Lolo, Mont., Lewis and Clark turned west for their final 150-mile thrust across the lofty Bitterroots in search of a navigable tributary of the Columbia. At that turnoff today, in furtherance of the happiness of the human race no doubt, is Mother Goose Land. Here the wayfarer, if bored by the monotony of endless snow-crested peaks, may stop and tour a cute garden and peek through the windows of cute pink and blue houses at cute statues of cloth animals. Then he may head up the Lewis and Clark trail—U.S. highway 12—for a dip at Lolo Hot Springs Resort.

Clark, himself, lay in the spring 10 minutes and came out in "a profuse swet." Lewis endured a 19-minute bath. Today swimmers can luxuriate all afternoon, the hot water barely tepid by the time it pours into an efficient

blue fiber glass pool behind a plastic fence of alternating green and yellow panels. There also is a kiddie pool.

"My, yes, this is a very popular place," said David McColley, the resort's proprietor. "We also have the trailer court, cafe and bar. We've had people come visit us from as far away as California."

The Lolo Trail over which Lewis and Clerk crossed the Rockies was an established road, at least to the Nez Perces who traveled it annually to the buffalo grounds on the eastern slope—part of a coast-to-coast Indian interstate highway system, as it were, used over the centuries for both commerce and war. From Lolo to Lochsa Idaho, it followed ridge lines rather than valleys, at heights of 6,000 to 7,000 feet over "Steep points rockey & bushey" and with "high ruged mountains in "very direction." The journey took an agonizing 10 days. Lewis' feet nearly froze. Game was scarce. The party drank melted snow and ate wolf, horse, bear grease and 20 pounds of candles.

Today's highway follows the old trail almost exactly, the aborigines, apparently, were quite good surveyors.

But Lewis and Clark with aching bellies could not know the immense satisfaction today's leisurely motorist enjoys within those wild heights, the feeling of being witness to the origin of things. Crystal streamlets, great rivers aborning, course down every green crevice, nature's baptismal fonts lavishing purest waters over infant brows of moss. Will any of it remain thus? Fresh, unaltered?

The highway skirts the Selway-Bitterroot Wilderness, a designation not only descriptive but statutory. It will by act of Congress remain. The way it was, the way it is, those one million acres shall be forever-more.

The U.S. Forest Service, so often criticized for its timber operations, is suzerain of 88 such wilderness areas and closes them to every manner of vehicle.

That includes, most importantly, timber vehicles themselves. These are groaning diesel trucks with huge logs chained to their backs, a common sight from the forks of the Clearwater, where Lewis and Clark emerged from the Rockies, all the way to the Pacific coast. Their destinations are the myriad sawmills and pulp factories which can be located from great distances by smoke signal or, if the wind is right, by following one's nose. Either method leads unerringly to the juncture of the Clearwater and the Snake at Lewiston, Idaho.

"The water of the South fork Snake is a greenish blue," wrote Clark, "the north Clearwater as clear as cristial."

The Clearwater, still crystal clear when it tumbles out of the Bitterroots, now is periodically coated with a sticky white effluent below the Potlatch Forests, Inc., pulp and paper plant at Lewiston. The effluent, by the estimate of Arthur W. Van's Hul of the Idaho Health Dept., makes oxygen demands on the river equivalent to a human population of 300,000. A fisheries expert from the University of Idaho, Dr. Michael Falter, counted up to 40 species of aquatic organisms above the plant, no more than six downstream.

There is more. Lewiston has the lowest average wind velocity of any reporting weather station, and smoke from the Potlatch chimneys hangs in the city's languid air. The smoke contains hydrogen sulfide, which has a smell akin to rotten eggs, plus another substance which is composed of the same chemical skunks emit. The combination turns white houses black, tarnishes silverware inside cupboards, corrodes metal; a fixture at Potlatch and other pulp mills is an automatic car wash at the parking lot exit.

"Measure this against the value of taxes paid by Potlatch and against the value of stable employment of several thousand people." For years that was the company's position, stated by its president at a stockholders' meeting at the Lewis and Clark Hotel.

Townspeople took another whiff, as a good measure, and formed an Environmental Action Committee. "We weren't going to sit around any longer and say it smelled like money," said Shirlee Hennigan, a committee member.

With the pressure on, Potlatch about-faced and announced last September it would spend $9.6 million for facilities designed to clear up the Clearwater and strain 97.7 per cent of the pollutants from the air. The lovely hill-rimmed city named for Meriwether Lewis may yet again breathe free.

And also the one named for William Clark, Clarkston, Wash., is on the opposite bank of the Snake from Lewiston—Siamese twins connected by a bridge. Not surprisingly, there is no place along the route of the explorers where their names are more commercially evident. In the names of Lewis and Clark all manner of services are rendered—plumbing, heating, animal sheltering, saving and loaning. So overworked are their names in the local argot they have become one: Lewisclark. To keep his students alert, Peter Shrever, an instructor at Lewis and Clark State College, finds it necessary to refer to the explorers as Clark and Lewis.

Clark and Lewis, then descended the tortuous canyons of the Snake, shooting its frequent rapids in their dugout canoes when they dared capsizing once, portaging often, and arrived at the second great objective of their journey, the Columbia River, on Oct. 16, 1805.

That raging river plunged westward in a white fury through the Cascades, classic, conical mountains born of volcanic fire and shaped by glacial ice. Through the towering basalt cliffs of the Columbia Gorge—the "Great Shute," as Clark called it—the river became a veritable millrace, its constricted waters "foaming & boiling in a most horriable manner."

It was a river alive. Alive and gone mad with "swells & whorlpools" and airy iridescent rips from bank to bank. Alive with fat salmon fairly leaping into fishermen's nets, the basis of an elaborate Indian economy, fish so plentiful they were used for fuel. Alive with "Swan, Geese, white & grey brants, ducks of various kinds, Guls & Pleaver." Alive "with grass intersperced with strawberry vines" on lush islands which split the channel. And when the water finally flattened into a broad estuary it was alive with telltale creatures, "great numbers of sea otters," and began to taste unmistakably of salt.

"Ocian in view!", scribbled Clark on Nov. 8. "O! the joy."

Today that ocean extends in effect from Astoria, Ore., Lewis' and Clark's Pacific terminus, 433 miles inland across Oregon and Washington.

In April 1975, it will bore even deeper into the continent, 465 miles, and oceangoing ships will tie up at Lewiston, Idaho. That is the scheduled date for completion of the 18th and latest—one hesitates to say last—of the dams on the Columbia and Snake which have transmogrified those leaping rivers into artificial things.

Those 18 aren't all by any means. The Corps of Engineers, Bureau of Reclamation and assorted public and private utilities have built 50 dams on the Columbia and its tributaries. In fact, the Columbia has only one 50-mile stretch of free flowing river remaining from tidewater to the Canadian border and there are plans to dam that stretch as well. On the Snake, the Columbia's 1,000-mile main tributary, only 100 undammed miles remain.

As with the Missouri, the last remaining wild portion of the Snake is also the most spectacular: Hells Canyon, the deepest gorge on the face of the earth. Plum black basalt and granite cliffs glisten 6,500 feet above the stream bed, nesting places for falcons. The canyon forms the Oregon-Idaho border south of Lewiston and Jack Hollenbeck knows its every mile.

Hollenbeck, skipper of the motorboat "Playmate," will use any excuse to take a day off from his job as circulation manager of the Lewiston Morning Tribune for a run up the Snake, bucking the furious rapids, dodging from bank to bank to stay in the tricky channel, nosing "Playmate" into a sparkling white beach at Buffalo Eddy and leaping out: "Come on, I'll show you some petroglyphs."

The ancient etchings were on a large rock near the shore. Man has lived 8,000 years along the Snake River and there are more than 200 known archeological sites in Hells Canyon.

"Up the river a little way there are some more petroglyphs, but I don't think you'll find them as interesting," Hollenbeck said. "There they are. Up there." In white paint, high up on the granite wall, were the letters H M S.

"What's H M S?"

"High Mountain Sheep. That's where they would build it."

High Mountain Sheep is a proposed 670-foot-high dam, one of several that a consortium of power companies would like to build on the Snake, flooding Hells Canyon. The Federal Power Commission approved the dam once, but the Supreme Court in 1967 directed the agency to reconsider since the public interest is also served by "preserving reaches of wild river in wilderness areas." An FPC examiner since has recommended that two dams be allowed after a five-year wait.

Sen. Frank Church of Idaho feels the Hells Canyon section of the Snake ought to be designated a National River, as the Park Service has proposed for the white cliffs section of the Missouri.

"As long as such questions are left to agencies established for the purpose of building dams," Sen. Church says, "then we must expect that eventually dams will be built on all of the remaining sites."

Most environmental groups, however, are even anti-park, believing Hells Canyon should be left as it is, wild, primitive and hard to get to.

"The government seems to measure the value of everything by the extent of public use—the 'visitor days'," said Larry Williams, executive director of the Oregon Environmental Council.

"If that's going to be the basis they'll soon destroy the very places they're trying to save. I'll probably never get to see the Mona Lisa, but I'm satisfied to know it's hanging in the Louvre, where it belongs. I'd hate to think of it on display at some crossroads with picnic tables all around. Why vulgarize a national treasure as priceless as Hells Canyon?"

What is a grove of 1,500-year-old red cedars worth to a nation whose consumption of electric power has doubled in every decade of this century? When Dworshak Dam is completed on the North Fork of the Clearwater next year, the cedars will die.

What is a white sturgeon worth? This extraordinary fish, 10 feet long and weighing half a ton, the largest fresh water fish in North America, was common on the Columbia and its tributaries before the dams were built, and some still inhabit the middle reaches of the Snake around Lewiston. Sturgeon require swift-flowing water and shallow riffles to spawn and survive. When Lewiston becomes an ocean part, water that now takes seven hours to reach the Lower Granite damsite will run deep and take nine days.

And how are the salmon faring?

The Pacific salmon is a most remarkable

creature. It is an anadromous fish, which is to say it breeds in fresh water and lives to adulthood in salt water. From the moment it hatches on the gravel bar of some quiet mountain stream hundreds of miles, thousands of miles, from the ocean, it has but one driving goal: to reach the sea. Should it escape an early end in some Alaskan or Russian or Japanese cannery, another, more mature urge takes over: the urge to spawn. Not spawn just anywhere, but in the precise stream, indeed the precise gravel bar, where it first knew life. Only when it reaches that spot, battered and weary and hungry, for it makes the arduous upstream pilgrimage without eating, will the female deposit her eggs, the male fertilize them. Then, their life's work done and nature's mysteries served, both die. "The number of dead salmon on the Shores & floating in the river is incredible," Clark wrote while descending the Snake.

Incredible because the Columbia system with its labyrinthine tributary streams is the world's largest producer of the Pacific salmon and its anadromous cousin the steelhead trout.

At the turn of the century the summer salmon run alone—there also are spring and fall runs—produced a commercial harvest of 30 million pounds. Today the harvest is measured not in millions of pounds or thousands of pounds, not even in pounds. It is measured in numbers of individual fishes. Three years ago the summer count was 85,000. Today the Pacific salmon is threatened with extinction. Today the number of dead fish in the river is as incredible as that that astonished Clark. Except today they are not dying from a consummate act of procreation. They are dying of the bends.

Most of the Columbia system's dams are equipped with fish ladders, underwater staircases leading over the dams so the migrating salmon may continue their cycle of survival. Some dams, such as Grand Coulee and Chief Joseph on the Columbia and Brownlee Dam on the Snake, are not so equipped. These and others have sealed off more than half the spawning areas of the Columbia basin. Technology and federal dollars have striven to replace these natural nurseries with artificial hatcheries—not without success.

What technological man did not reckon on, however, was the effect on fish of tons of water plunging over spillway after spillway to the ocean. Only in 1968, when yet another spillway was added and fish began to die by the thousands, did scientists discover that the huge quantities of air forced deep into the pools below each dam caused a supersaturation of nitrogen in the water. Nitrogen bubbles expanding in the blood vessels of fish affected them the same way ascending too rapidly affects deep sea divers. The more spillways, the greater the nitrogen buildup. Last year 70 per cent of the fish struggling upstream died before reaching their spawning grounds.

The inescapable fact is that the Columbia, "that noble stream" in the assessment of Meriwether Lewis, is on the verge of death.

Not dead. The Willamette, which joins the Columbia at Portland, at one time seemed dead too, but Oregonians refused to let it be so.

A decade ago John Mosser, then head of the State Sanitary Authority, the parent of the State Dept. of Environmental Quality, took a basket of fish and a stopwatch down to the Willamette and submerged the fish in the river. They were dead in 10 seconds. Oregonians watched the experiment on television and were shocked into action. Today salmon thrive in the Willamette and it is getting cleaner, not dirtier.

Last November the same people voted themselves a tax to clean up the Columbia, even as the people of Kansas City taxed themselves a tax to clean up the Columbia.

Following the path of Lewis and Clark, knowing how they saw the land, seeing it now, seeing evidence of the unconcern of Americans, and of their concern, the impression—it is more than a hope—is, that people in the final analysis prefer clean Columbias and Missouris and ultimately will insist on them. Lewis and Clark often expressed the feeling that the American wilderness was endless. There is reason to think that their heirs are coming to the realization that it is not, and that what remains is worth no less than the value Thoreau placed on it: "The preservation of the world."

"Goals must be re-examined and they will not be the old simple ones of efficiency and growth and profitmaking that were always the guidelines for industrial success." The man who said that was the same man who a few years ago told the people of Lewiston that a little odor was a small price to pay for industrial profits.

U.S. POLICY TOWARD AFRICA

Mr. BAYH. Mr. President, in a statement on August 31, 1971, concerning a new U.S. policy toward Africa, one of the 12 points I proposed dealt with the massive problems of unemployment or underemployment in African countries, problems which beset Asian and Latin American countries as well.

It is becoming clear that the transfer of Western technology, which is capital-intensive rather than labor-intensive, does not fully meet the desperate need to create constructive, gainful employment. What is needed is the development of a new technology which can absorb these unemployed masses into the economy in a way that is beneficial to their societies.

Mr. President, I ask unanimous consent that the text of an article by James P. Grant, president of the Overseas Development Council, entitled "Marginal Men, the Global Unemployment Crisis," which deals with this problem, be printed in the RECORD.

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

MARGINAL MEN, THE GLOBAL UNEMPLOYMENT CRISIS

(By James P. Grant)

Several factors are creating a new phenomenon in the developing world. It is what Robert McNamara of the World Bank has called the rising number of "marginal men"—people who have reached adulthood with no useful role to play in their societies. Largely the product of an unprecedented "baby survival" boom the world over, these individuals now find a dearth of jobs, of the means to provide for themselves and take part in life around them. Quite simply, there is a serious and growing unemployment problem in countries from one end of the developing world to the other and it is likely to dominate international development in the 1970s much as the food issue did in the 1960s.

The impact of the population explosion on employment has been aggravated in most developing countries by an equally unprecedented migration from the countryside to the cities, by the use of increasingly capital-intensive technology and by financial policies favoring use of capital rather than labor. At the same time, living standards are rising rapidly for a sizable segment of the population. This sharpens the contrast between those who are relatively well off and those for whom the present system is not working at all.

The lack of jobs, along with its consequences, is thereby helping to create the preconditions for political upheaval in many countries. It is probably no accident that many of the most severe of these upheavals in recent history have occurred in countries with the highest level of unemployment. In 1957, the average unemployment rate in Cuba was 16 percent, wtih a further fifth of the labor force reported as partially unemployed. The Philippines, Peru, Colombia and Ceylon are examples of countries which have high rates of unemployment and which today face problems that are nearly as serious.

This growing problem is already contributing to shifts in governments, often toward the two extremes: toward the Left, as in Ceylon, India, Peru and Chile, in response to pressures from the dissatisfied, or toward the Right, as in Brazil, in an attempt to contain these pressures. And, as several recent Latin American cases show, the whole gamut of intergovernmental and business relations can be affected.

The problem of marginal men is thus clearly of considerable importance to peoples and governments alike. But how big is the problem? We still have only a vague idea. Our Western concepts of "work" and "the labor force" do not apply in poor countries, and there are few adequate statistical or even descriptive surveys of conditions in these countries. But we do know that the problem is large already and rapidly becoming more urgent.

Even worse, the unemployed are only the tip of an iceberg composed of a wider group of underemployed. Since the cushion of social security does not exist in almost any poor countries, unemployment can be "afforded" only by people who have working relatives to provide support. Most people in the third world, therefore, must take whatever work they can find. Millions subsist on casual labor, while others often work extremely long hours for pittances as shoeshine boys or petty traders.

These problems are well-nigh universal in the developing world. In Latin America, for example, the number of people who were openly unemployed approximately tripled in number between 1950 and 1965. The number doubled as a percentage of the labor force, from 5.6 percent to 11.1 percent. The figures are even higher today. Furthermore, unemployment rates of 15 to 20 percent are increasingly common in large cities throughout the developing world. Young people, particularly those with an education, generally have even higher rates of joblessness.

In general, the labor force of the noncommunist developing world will increase by 170 million in the 1970s, adding at least 25 percent to the size of the work force during the decade. In some areas, particularly in Latin America, where the population explosion started earlier, the increase will be even higher, up to one-third or more. Even in India, a late-comer to rapid population growth, the work force should increase from 210 million in 1970 to 273 million by the end of the decade.

Unfortunately, there is still no end in sight to the population explosion in the developing world. Worse still, for about 20 years after it does end, the labor force will continue to grow accordingly. Therefore the problem of absorbing workers is far more serious for the developing countries than it was for the presently developed countries during their period of industrialization. The populations of the European nations rarely grew by as much as one percent a year, compared to the

current annual increase of 2.6 percent in the LDCs.

The population explosion is not the only cause of the employment problem, however. Despite historically unprecedented rates of economic growth throughout the third world over the last decade, the supply of productive jobs is not increasing fast enough to meet the demand. Both the patterns of economic growth and technological changes have slowed the creation of jobs. For example, a million dollars invested in industrial expansion today does not generate as many jobs as it did 20 or 30 years ago, because of growing technological sophistication. At the same time, many of the policies designed to speed industrial growth have effectively encouraged substitution of capital for labor. These policies include overvalued exchange rates, excessive protection for import-substitution industries and low interest rates. They provide incentives for entrepreneurs to use machinery, especially imported machinery, despite the abundant supply of poorly employed labor. These policies also encourage entrepreneurs to favor capital-intensive import enterprises over labor-intensive export industries.

The job problem is further aggravated by the rate of migration from the country to the city, which also has no precedent in American or European history. A type of "gold rush fever" afflicts underemployed and jobless peasants who are flocking to the cities in increasing numbers. Many seek the rewards of high-paying factory jobs which only few can find. In Latin America, urban populations have grown twice as fast as urban jobs. Today, the cities include more than 50 percent of total population—breeding enormous problems of slums, crime and disease.

II

What should be done about these problems? In most developing countries there is no clear answer. Planners, administrators and political leaders do not yet have more than the beginnings of a consensus on the way to provide enough productive jobs for their expanding labor forces. But there are sparks of hope, deriving from successful programs during the sixties. In particular, there are new possibilities for programs capitalizing on progress in agriculture, and from lessons learned in some of the smaller countries of East Asia.

The search for new policies is spurred by the knowledge that the traditional approach to development could achieve reasonable employment objectives only by attaining unrealizable rates of economic growth. According to one recent estimate, it may be necessary to increase the gross domestic product (GDP) in most developing countries by nine to eleven percent annually. But these rates would only absorb the increase in the labor force in nonagricultural jobs. They would not decrease the absolute number of people working on the land, nor would they affect the existing backlog of unemployment and underemployment. These are striking estimates, particularly when compared with the U.S. experience where we reached the same point while achieving a GDP growth rate of only three percent per year.

It is this type of analysis which led Raul Prebisch to call in his recent report[1] for a growth rate in Latin America of at least eight percent annually. But would attaining even this target—a very ambitious one—be enough? Some economists are skeptical of this approach, arguing that without other major structural changes, most countries are likely to achieve such high growth rates only through much heavier emphasis than before on modern industry. And this concentration would aggravate the problems of high wages in a small portion of the economy, leading to further inequities, migration to the cities and the intensification of urban problems. Thus, more growth is a necessary but insufficient condition for resolving the employment problem.

There is no complete solution to these difficulties, no one strategy that will encompass all the quandaries of development in a single theoretical sweep. Certainly, in practice, even the communist system has problems in combining adequate employment with economic growth in countries where population is increasing rapidly.

There are, however, several initiatives that developing countries could take in order to change the nature of their growth. They could remove biases favoring use of scarce capital over abundant labor, they could develop and favor labor-intensive technologies, and they could develop and use the potential of the Green Revolution. These steps would provide more employment in agriculture and permit programs for greatly increasing employment elsewhere in the economy—programs that have not been previously feasible because of their inflationary potential where food is already in short supply.

First, in most developing economies, there remain serious and persistent imbalances in the prices attached to capital and labor even though there is far more labor than capital available. It is no accident that countries such as Taiwan, Korea, Hong Kong and Singapore, which have taken the lion's share of the growing markets for manufactured products, have consciously avoided the capital-labor distortions prevalent in most poor countries. These countries have many means available to them to correct the distortions they have created. They could begin to make the price of capital more realistic by ceasing subsidies to it, devaluing exchange rates and raising interest rates. By raising interest and broadening access to savings institutions, the poor countries should be able to increase rates of saving, especially among farmers and small-scale entrepreneurs. Most poor countries should also extend less protection to their import-substitution industries, which tend to be capital-intensive and favor instead those industries which ultimately can withstand international competition, on the basis of their low-cost labor. And wage increases in industry and government should be slowed.

A second step for the developing countries relates to the use of technology. Assuming that price structures are made more realistic, industrialists and farmers will have an incentive to look for technologies that employ more labor and less scarce capital. For some basic heavy industries, such as steel and fertilizer production, the most modern technology used in the West may still represent the best use of resources in the poor countries. But in other types of industry, such as textiles and rubber, a range of technologies exists. In Japan, textile manufacturers adapted Western machinery and speeded it up, and thereby used three to seven times as much of their cheaper labor per machine as was typical in the United States. In Korea and Taiwan, the scarcity of capital is reflected in realistic exchange rates and in interest rates of 25 to 30 percent. In these countries, only one-half to one-quarter the amount of fixed capital has been expended per worker in the highly successful export rubber industries than is true in India and the Philippines. Therefore Korea and Taiwan were able to obtain higher payoffs on their investment, more savings, much higher economic growth than the others, as well as to create employment faster.

But where are these technologies to come from? Here we encounter a vast vacuum of knowledge, beyond the adaptation in some cases of Western machinery. Unfortunately, perhaps 99 percent of all expenditures on research and development are made in the rich countries and are devoted largely to finding more capital-intensive ways of displacing high-cost labor. The poor countries therefore desperately need an expansion of research in labor-intensive technology.

III

A third step for the developing countries is rural development. Indeed, as Robert Shaw has explained in considerable detail,[2] increasing the use of labor through broad institutional and organizational changes in agriculture—an integrated approach to rural areas—may be the most promising way both to promote growth and to ease the unemployment problem. After all, the third world is still essentially rural, and most of its people, outside of Latin America, will live in the rural areas for at least the next generation despite high rates of migration to the cities.

The agricultural sector of a typical developing country will therefore remain central to its total economy. This becomes even clearer if we look at the way cities and towns are linked economically. To begin with, if more employment is provided in the towns and through public works, much of the wages generated will be spent on food. But if food prices are not to rise, more food must be produced, which means more jobs in rural areas. At the same time, rural areas comprise the largest mass market for urban products—provided, of course, that enough income is being generated there to make the purchases. Complemented by policies to improve social infrastructure, such as rural educational and health facilities, programs to create better job and income opportunities for hundreds of millions of peasant farmers could also substantially slow the rate of migration.

Fortunately, there are some signs that government interest in agriculture and rural areas in general is growing. In particular, the success of the new dwarf wheat and rice varieties in many parts of South and Southeast Asia has renewed interest in the possibilities of agricultural progress. The new seeds have much higher yields than traditional varieties, provided there is careful cultivation—preparation of the land, water control, fertilizer and weeding. Where there is a market for increased food production, therefore, the combination of higher yields and more careful cultivation increases the amount of labor used per acre of land, and also increases the income of those laborers. Precisely this sort of spur to labor-intensive agriculture is required in tackling the problems of the countryside. At the same time, of course, the higher yields give governments greater flexibility to increase employment, without having to worry as much about inflationary demand for food caused by increased incomes.

While agricultural technology is becoming a source of hope, however, it is also contributing to some of the problems it could be useful in solving. The same economic forces active in industry in such countries as Mexico, India and Pakistan are subsidizing tractors and combines which are displacing the agricultural laborer. As an alternative to the rapid mechanization of agriculture, several countries have developed a system of agriculture centered on small-holders able to use the new seed varieties, small machinery and fertilizer, demonstrating that it can be profitable and create more jobs. A farmer with

[1] Paul Presbisch, "Transformacion y Desarrolo: la Gran Tarea de America Latina." (Report for the Inter-American Development Bank; Santiago, April 1970).

[2] Robert d'A. Shaw, "Jobs and Agricultural Development," Overseas Development Council, November 1970.

suitable water control and no more than two or three acres can make a decent income for his family, providing that he has access to credit, fertilizer, high-yielding seeds and a place where he can sell his produce for a reasonable price.

In Taiwan, for example, where there is a seven-acre limit on farms, the agricultural breakthrough has been highly labor-intensive. And the cereal yields achieved in Taiwan have been higher than those in the Indian Punjab, where the size of farms is effectively unrestricted and the bigger ones make use of large-scale mechanization. This is a strong argument for those policies collectively known as land reform.

The demands made by hundreds of millions of small farmers for agricultural inputs, for marketing facilities and for basic consumer goods would also stimulate the development of small towns in the rural areas. The development would create more employment, as well as possible alternatives to the big cities as the goals of migration.

Finally, increased food production provides governments with an opportunity to experiment with ambitious public works programs as a partial solution to their unemployment problem. Of course, if the programs are of the leaf-raking variety, the effect on employment is likely to be short-term, but it is possible to use public works as a means to create investment that in turn will increase production and create new jobs. If the labor in these programs is used to build canals, roads, dams and tube-wells, it will help create the infrastructure essential to the speeding up of rural regeneration. Furthermore, these projects are likely to be far more profitable in the context of rapidly increasing agricultural productivity. Returns on investment in farm-to-market roads and in small-scale irrigation are very high when they enable farmers to use new agricultural technologies and to market their newly increased production at lower cost.

IV

All of these measures that can be taken by poor countries to ease their employment problems inevitably involve questions of distribution—who is to benefit from the growth of the economy? The national product of most developing countries is growing at rates which could provide increasing income per capita at rates equal to those in the industrialized countries during comparable periods. In actual terms, however, only a minority of people are benefiting significantly from the rapid growth in the developing countries. These include industrialists, larger landowners, government employees and factory workers. This was brought out in the recent International Labour Office study of Columbia.

It noted that even with considerable economic growth, urban unemployment today is probably worse than at the height of the Great Depression and the bottom third of the rural population may be no better off now than in the 1930s. Of course, it is sometimes argued that unequal distribution of income is necessary in poor countries because it is the wealthy who save, and these savings are essential to future economic growth. But the recent performance of most poor countries has not borne this out. Rather, some of the countries with the highest savings rates, such as Japan, Taiwan and Korea, are precisely those with the most equal distribution of income—providing that they have suitable institutions to collect and use the savings.

Interestingly, solutions to the problems of both unemployment and distribution may go hand in hand. Raising the incomes of the poor will result in the creation of more jobs than an equivalent rise in the incomes of the wealthy, for the luxury goods bought mainly by the wealthy tend to be relatively capital-intensive in nature, whereas the goods a poorer person normally buys require more labor to produce. The production of an automobile, for example, requires large amounts of capital but little labor, while the production of bicycles, shirts or food tends to use much more labor. Luxury products also generally put a higher strain on foreign exchange reserves, either because the luxury goods themselves are imported, or because their manufacture requires more complex, imported machinery than do labor-intensive goods. Thus the concentration of income in a few hands in most poor countries not only reflects the lack of job opportunities; it also contributes to the employment problem.

V

Despite all the efforts made by developing countries, the employment problem is becoming so monumental that they cannot cope with it alone, even where they take the initial—and painful—decisions to reorder their priorities. The rich countries have an indispensable supporting role to play in providing capital, research and technology, and access to their markets. Otherwise the poorer countries will never achieve substantially higher growth rates nor will they be able to make the major innovations which are required.

These facts are well illustrated in the field of trade, which currently is the source of nearly four-fifths of the poor countries' foreign exchange. The rest comes from aid and private investment. Unfortunately, despite the very rapid growth in world trade, most poor countries are not sharing fully in it. In the 1960s, for example, the value of total world trade grew by more than ten percent annually, but the exports of the developing nations only grew by some seven percent annually. In order to create more jobs in export production and to earn the foreign exchange required for expanded domestic production the poor countries must obtain a greater share of this trade.

In the past two decades, the policy of most developing countries has been to save foreign exchange by substituting domestic production for imports rather than to earn foreign exchange through aggressive export policies. However, this situation can be changed if the poor countries are prepared to capitalize on their advantages, and especially on their labor supply. By altering pricing policies and encouraging the use of appropriate technologies, many poor countries should be able to produce labor-intensive products that can compete on the world market in terms of price and quality. A few countries, especially in East Asia and Mexico, have shown how important these shifts can be.

When poor countries reach this stage, however, they begin to encounter problems. It takes two to trade. In the longer term, of course, both rich and poor countries would gain if workers in the former countries concentrated on products requiring high levels of skills and capital. Workers in the latter countries would concentrate on products with a high labor content at least while labor remains their most abundant resource. Unfortunately, the rich countries usually follow contrary policies. In the face of competition from cheaper labor abroad, they place the principal financial burden of adjustment on workers producing the same goods that the poor countries are trying to export. This is true of the cotton textile worker in South Carolina, the shoemaker in Maine, the French beet sugar farmer or the Japanese rice farmer. These groups usually are disadvantaged, they receive low wages and have little skill or training. Not surprisingly, they protest—politically. Thus, success in exporting by the poor countries is breeding restrictive reactions in rich countries.

Two highly significant pieces of legislation coming before Congress in 1971 and 1972 illustrate the conflicting tensions in the trade area. On the one hand, President Nixon will ask Congress in 1971 to pass preferential legislation to cut import tariffs to zero on all imports into the United States of manufactured goods from the poor countries. This request follows a series of negotiations in the Organization for Economic Cooperation and Development and the U.N. Conference on Trade and Development, in which all the Western industrialized nations agreed to this principle of preferences.

And on the other hand, the Trade Bill of 1970 may reappear in a similar format this year or next. The purpose of the original bill was to give the President power to limit imports of so-called "sensitive" products. These are mainly such products as textiles and shoes in which American industries face competition from the labor forces of poor countries. If passed, this legislation would not only restrict many of the present imports from the third world, but it would also discourage the building of new export industries there. It could, for example, restrict about one-fourth of Mexico's present exports to the United States, one-third of Korea's, and 40 percent of Taiwan's.

In addition to trade, the large multinational corporations are increasingly becoming factors in the employment picture, both in the poor countries and in the United States. These corporations have been increasing their investment in manufacturing in the third world, originally for local markets but more now as part of a new process of international production. In recent years, low-cost labor in certain countries has come to be treated as a valuable resource in its own right, and multinational corporations have worked effectively with these countries to utilize this resource. The U.S. electronics industry, for example, has reacted to tough foreign competition by moving most of its labor-intensive production overseas to countries like Taiwan, Hong Kong, South Korea and Mexico. The fruits of these labors are then re-imported for assembly in the United States. These imports from developing countries are made under Tariff Schedule 807 (which confines tariffs to the value added abroad for components shipped from the United States and assembled in foreign plants). They have been growing rapidly from $60.5 million in 1966 to $366.9 million in 1969.

This is the beginning of a new movement toward production based on the law of comparative advantage—not between different companies operating in different countries, but within a single company itself. Corporations organized on this model are producing components that require a lot of labor in countries where labor is cheap and capital-intensive parts where capital is cheap. Not surprisingly, this nascent innovation is being met with loud outcries from some people in the American labor movement who see U.S. jobs going abroad. They demand controls on foreign investment and protection against cheap foreign imports. Their position merits great sympathy. But are the solutions they propose really in their own long-term interest or that of the nation as a whole? As with restrictions in general, the proposed controls on multinational corporations would raise prices here in the United States. In addition, the dollars earned by the poor countries through exporting are spent in the world market on goods from the rich countries. The labor case would be stronger if it called for better adjustment assistance, not blockage of imports from poor countries.

In addition to improving the foreign exchange situation of the developing countries, the multinational corporations can make other significant contributions to the solution of the employment problem. But their

resources have only been partially tapped. Most importantly, the multinational corporations almost inevitably fall back on the most capital-intensive technology available. In present circumstances this is a rational action: these technologies are the ones with which they are most familiar; they are made profitable by the economic policies of the poor countries; and they avoid the possibility of trouble with large numbers of workers. However, if poor countries change their policies to make fuller use of their labor forces, the multinational corporations will increasingly find it worthwhile to invest in research into more appropriate technologies for their affiliates in the third world. Already some firms are beginning to do this. For example, a research division of the Dutch electronics manufacturer, Phillips, has developed small-scale, labor-intensive production methods for use in Indonesia.

The efforts of the multinational corporations, however, will not be enough to meet the problem of unemployment in the developing world. The need to create jobs in the poor countries, and the serious consequences of not doing so also add a new imperative to the case for financial assistance by the rich to the poor countries. Jobs cannot be created without investment. Therefore, the United States needs not only to reverse the downward trend of its aid but to increase it substantially, as most other developed countries are doing. Unfortunately, for the first time since the start of the cooperative global effort in 1961, the U.S. net official assistance to the developing countries will drop below $3 billion in 1971.

But money alone is not enough. If the approach to development is to be reexamined in the light of the employment crisis, then development assistance will also need to be reexamined. For example, many aid practices have tended to support the old approach to development, which has stressed modern capital-intensive equipment. Happily, there are ways in which the aid donors could modify their policies in order to make their help a major contribution to the solution of the employment problem.

This would involve, first, taking employment issues into consideration in the making of loans. By making more loans that are not tied to specific projects, and by supplying some of the local currency costs of projects, the aid donors would help remove the bias in favor of projects that emphasize the use of imported machinery. Second, removing the requirement that aid be spent in the donor country (tying) would allow the poor countries more latitude in choosing appropriate technologies. Third, increased and diversified food aid from the agricultural surpluses of North America, Western Europe and Japan could be used to support programs for expanding employment, by serving both as an interim source of supply pending expanded production and as standby against crop failure. Finally, technical assistance programs need to be revamped, particularly to stress research and development of appropriate technology.

The potential for dealing successfully with this problem is perhaps best illustrated by a few small countries such as Taiwan and Korea. They had very high rates of increase in their work forces in the 1960s, yet achieved rapid growth, improved income distribution and reduced both unemployment and birth rates. Of course, both these countries combined the right national policies with significant aid, foreign investment and access to rich country markets.

There are sobering implications in these success stories. At the very least, duplicating them elsewhere during the 1970s will require the rich countries to meet their aid and investment target of one percent of GNP. It would require a sharp upward revision in the seven percent target for increases in LDC trade. Most poor countries would need to make major, politically difficult, changes ranging from devaluation to land reform. Rarely, and then only for fleeting periods, are countries able to move quickly on such a broad range of reforms.

India is an excellent illustration in 1971 of both opportunity and problems. India is momentarily at a point where difficult reforms are possible, following the landslide electoral victory in March 1971 by Indira Gandhi. But Mrs. Gandhi may not be able to make these necessary moves without outside cooperation.

At best, the employment problem cannot be solved easily, and not fully until population growth is brought under control. Yet, with enough innovation, reform and increased effort, both within developing countries and between them and the rich nations, there are reasonable prospects of limiting the damaging effects of unemployment. Certainly, reforms within developing countries, as well as changes in trade and investment patterns between rich and poor countries, are now becoming more than requirements of justice; they are becoming requirements for survival of a world economic system.

EMPLOYMENT TAX CREDIT

Mr. CRANSTON. Mr. President, I invite the Senate's attention to a significant proposal designed to supplement the administration's program for economic recovery and help us return more quickly to full employment.

It is the result of the work of two economists at the University of California's Institute of Business and Economic Research, Dr. B. F. Roberts and Dr. Richard N. Thunen. Entitled an "Employment Tax Credit," it would provide tax reductions to businesses that increased the size of their labor force.

The new instrument will reduce the cost of labor input, thus making it more profitable for business to rehire employees and expand output. Because it affects supply rather than demand for goods and services, it will help us return to full employment without, at least theoretically, creating additional inflation.

The employment tax credit will be granted upon increments in wages paid, rather than simple increases in the number of workers. It should, therefore, provide incentives for rehiring all types of workers, be they scientists or machinists. Credits based upon man-hours alone, would encourage reemployment of only a limited group of lower income workers.

The credit will also include an automatic stabilization device that will allow for large tax benefits when unemployment is high and smaller benefits as the economy returns to prosperity. In this way, it avoids giving business an inflationary subsidy once the economy has regained its strength.

The University of California study, which employs a sophisticated econometric forecasting model, predicts that when used as a supplement to the President's program, the employment credit will yield an additional 1.9 million jobs by the fourth quarter of 1972. The unemployment rate would fall by an additional 0.7 percent and real GNP would rise by $17 billion. And the benefits would not be limited to labor, for the projection indicates that profits would also rise by an additional $3.7 billion while the Federal deficit would fall by $5.9 billion.

I believe that this proposal merits serious consideration. I therefore ask unanimous consent that the text of the proposal be printed in the RECORD.

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

EMPLOYMENT TAX CREDIT: PROPOSAL FOR STABILIZATION POLICY [1]

(By B. F. Roberts and Richard N. Thunen)

This paper suggests a fiscal policy instrument—employment tax credit—which in the current economic situation could significantly stimulate employment and production, increase both labor income and profits, reduce the federal deficit, and diminish inflationary pressures.

It is estimated that a modest application of this instrument as a supplement to the President's new economic program could, by fourth quarter 1972, increase employment by 1.9 million workers, GNP by $23.7 billion, real GNP by $17.0 billion, wages by $24.3 billion, and profits by $3.7 billion; and reduce the unemployment rate by .7 percent, and the federal deficit by $5.9 billion, more than can be obtained by the President's program alone. Also, it is expected that implementation of the employment tax credit will improve the unemployment-inflation trade-off and permit the phasing out of wage-price controls as early as 1972. In addition, this fiscal instrument can easily be structured as an automatic stabilizer which once implemented will not need adjustment, and can be administered by the Internal Revenue Service in cooperation with the Bureau of Labor Statistics without additional bureaucracy.

The proposed policy instrument is a tax credit granted to employers for net additions to employment. The tax credit associated with each net new employee would be calculated as a fraction of the wages paid to the employee during a specified period of time.[2] The magnitude of the credit fraction, or credit rate, granted the employer can be structured to depend progressively upon the unemployment rate, such that when the unemployment rate is high, the credit would be relatively large, but when the unemployment rate is low (at a level reflecting only transitional or fractional unemployment and generally regarded for practical purposes as "full employment"), the credit rate would go to zero. The employment tax credit would thus provide a progressive inducement, through labor cost reduction, to hire additional employees when labor markets are slack but would eliminate the inducement when labor markets are tight to avoid upward pressure on wage rates.[3] Structured this way, the employment tax credit has the character of an automatic stabilizer.

The presumption that the employment tax credit will induce additional employment rests on the plausible notion that entrepre-

[1] This revises and extends an earlier draft given limited circulation dated April 26, 1971.

[2] The employment tax credit is similar to the negative wage bill tax discussed by Ragnar Frisch, *Price-Wage-Tax-Subsidy Policies as Instruments in Maintaining Optimal Employment*, Economic and Employment Commission, Economic and Social Council, United Nations, April 14, 1949.

[3] Locational variations in the credit rate to preferentially promote employment in high unemployment areas could be obtained by calculating the credit rate as a function of the local unemployment rate.

neurs will find the utilization of additional factor inputs more profitable if the cost of additional input units is reduced. This notion has been the basis for numerous incentive schemes to promote local industry.[4] It is also the basis for belief in the effectiveness of the investment tax credit toward promoting expenditures for capital goods.[5]

While the employment tax credit shares the same conceptual foundation as the investment tax credit, and is in some ways symmetric with it, there are important distinctions relevant to the design of economic policy. The employment tax credit is tied to a primary factor of production (labor), provides a direct inducement to increase the productive employment of labor and thus increase the aggregate supply of goods and services and, subsequently, by increasing total wage income, stimulates demand. The investment tax credit is tied to a produced factor of production (capital), provides a direct inducement to order new capital stock and thus increase aggregate demand, and subsequently stimulates increased production of capital goods and the employment of labor.

The alternative channels of supply-demand versus demand-supply, through which the two instruments are routed, are of crucial importance for designing stabilization policies under the current circumstances of high unemployment and strong inflationary pressures (price rises are being confined by the freeze but inflationary pressures persist). The conventional monetary and fiscal instruments, including the investment tax credit, operate through the demand-supply channel and are currently thought to face an unfavorable trade-off between attainable unemployment and inflation.[6] By supplementing the conventional instruments by others, such as the employment tax credit, which operate through the supply-demand channel, the terms of the apparent unemployment-inflation trade-off might be substantially improved.[7] A crucial effect expected from the employment tax credit is an expansion of the aggregate supply of goods and services relatively faster than aggregate demand, thus shifting the unemployment-inflation trade-off.

Whether the employment tax credit will actually work is, of course, an empirical matter that can be verified only if implemented. Reasoned estimates of the effects can, however, be derived from simulation experiments with econometric models. The numerical results of two such experiments, using the California Economic Forecasting Project national econometric model, are reported here.[8] The two cases reported are:

Case I—President's New Economic Program:

The principal assumptions of this simulation are: the President's program of August 14 is enacted, wage-price control will be implemented after the freeze to restrict inflation to three percent annual rate, the import surcharge is converted to a five percent revaluation of the dollar, and monetary expansion is gradually slowed to seven percent annual rate.

Case II—President's New Economic Program Plus Employment Tax Credit.

The principal assumptions of this simulation are identical with those of Case I plus a modest application of the employment tax credit. The credit rates and dollar amounts of the credits for this simulation are:

	1971	1972				1973	
Quarters	IV	I	II	III	IV	I	II
Credit rate (percent)	26.0	23.8	20.0	16.6	12.2	8.2	5.0
Credit (billions)	$2.1	$4.0	$5.5	$6.6	$5.2	$3.7	$2.5

The credit rates shown here have been calculated as an increasing function of the unemployment rate of the preceding quarter. This formulation permits the credit rate which will apply for any specific period to be calculated and announced at the beginning of that period. These credit rates represent the percent of wages paid to net new employees (at wage rate prevailing when hired) for a period of one year. Employers must maintain or increase the level of their employment for a one year period in order to receive the full credit. Numerous other formulas, giving various degrees of employment incentive, are possible.

The simulation results of Cases I and II for selected variables are summarized in the following tables:

	1971		1972				1973	
	III	IV	I	II	III	IV	I	II
Total civilian employment (millions of dollars, seasonally adjusted):								
Case I	78.9	79.3	79.8	80.5	81.2	82.0	82.8	83.7
Case II	78.9	79.9	80.9	81.9	82.9	83.9	84.9	85.9
Unemployment rate (percent, seasonally adjusted):								
Case I	6.1	6.0	5.8	5.7	5.5	5.3	5.1	5.0
Case II	6.1	5.9	5.6	5.3	4.9	4.6	4.4	4.2
GNP (billions of dollars, seasonally adjusted annual rate):								
Case I	1,056.3	1,079.7	1,106.1	1,131.0	1,155.8	1,180.6	1,205.5	1,230.5
Case II	1,056.3	1,085.5	1,117.7	1,147.7	1,176.7	1,204.3	1,230.9	1,256.4
Real GNP (billions of dollars, seasonally adjusted annual rate):								
Case I	742.3	754.7	768.1	780.2	792.3	804.1	815.9	827.6
Case II	742.3	759.1	776.7	792.6	807.5	821.1	833.8	845.7

The simulation results for Case I, the President's program, represent a moderately optimistic view. Some forecasters are suggesting greater optimism based largely on greater consumer and investor enthusiasm than is suggested here. Regardless which view of the President's program is used, the employment tax credit supplements that program and the relative improvement represented by Case II is of the greatest importance for estimating the impact of the employment tax credit.

The Case II results show an immediate response to the fourth quarter 1971 introduction of the employment tax credit. Employment, output, inventories, wages, and profits all show substantial gains. With the pace of activity increased, the federal deficit is gradually decreased suggesting that the employment tax credit more than pays its way.

The employment tax credit rates used for the Case II simulation may actually be higher than required to induce these levels of hiring. The model's response to the credit was intentionally dampened to minimize the possibilities of overstatement in favor of the tax instrument. Even if the initial rate is higher than necessary, the automatic stabilization feature of the proposal would make the system self correcting during subsequent periods and there would be little if any federal revenue loss due to the initial high rate.

The assumption of wage-price control has been maintained for both simulations. All indications to date are that phase II of the President's program will include some form of wage-price controls so this assumption is probably realistic. However, it is interesting to question whether controls are actually necessary to contain inflation. The reasoning developed above suggests that the employment tax credit could be an inflation dampening force. To investigate this, simulations of Cases I and II with price controls removed mid-year 1972 have been run. For Case I (the President's program) the simulation suggested that the economy tends toward a stable situation characterized by a 5 percent unemployment rate and a 3.3 percent annual inflation rate, in terms of the consumer price index. For Case II (Case I plus employment tax credit) the economy tends toward a stable situation characterized by a 4.2 percent unemployment rate and a

[4] See John E. Moes, *Local Subsidies for Industry*, University of North Carolina Press, 1962, and Harry Richardson, *Regional Economics, Praeger*, 1969, for discussions of local incentives to industry.

[5] See Robert E. Hall and Dale W. Jorgenson, "Tax Policy and Investment Behavior," *American Economic Review*, June 1967, and subsequent related communications by Robert M. Coen; Robert Eisner, and Robert E. Hall and Dale W. Jorgenson, *American Economic Review*, June 1969, for detailed examination of the investment tax credit.

[6] It is widely believed that low unemployment and stable prices are competing objectives and that the unemployment-inflation trade-off is such that high inflation must be accepted to maintain relatively full employment or, high unemployment must be accepted to maintain stable prices. This topic has received considerable recent discussion. See for example: *Economic Report of the President, 1971*, Government Printing Office; Milton Friedman, "The Role of Monetary Policy," *American Economic Review*, March 1968; Arthur M. Okun, *The Politi[illegible]conomy of Prosperity*, Norton, 1969; [illegible]e L. Perry, "Changing Labor Markets and Inflation," *Brookings Papers on Economic Activity 3*, 1970; Robert J. Gordon, "Inflation in Recession and Recovery," *Brookings Papers on Economic Activity 1*, 1971.

[7] A reminder of this possibility was given by Professor Stefan Robock in the *Wall Street Journal*, May 18, 1970:

. . . strategy should shift to one of increasing supply rather than reducing demand. Inflation is most frequently described as an excess of demand over the supply of goods and services. But it is equally valid to consider inflation as a shortage of supply in relation to demand. In other words, inflationary pressures can be reduced by expanding supply faster than demand.

[8] A technical description of the CEFP national econometric model is in preparation.

3.7 percent annual inflation rate. Case II has a substantially lower unemployment rate but a higher inflation rate, but this combination seems to represent a favorable shift in the unemployment-inflation trade-off.[9]

The tentative nature of the estimates given in this paper should be recognized and their use in contemplating policy implications should be tempered with caution. They are estimates obtained through experiments with a specific econometric model and our judgments. Our work is continuing and we hope that the issuing of these estimates, while the nation is searching for effective new economic programs, will prompt other investigators to conduct independent experiments with the employment tax credit to evaluate its probable impact.

UNFAIR REPORTS FROM CREDIT BUREAUS

Mr. PROXMIRE. Mr. President, a recent television program entitled "The Bold Ones" depicted what can happen when a person looking for a job becomes the victim of an unfair report from a credit bureau. The program was most interesting to me because in many ways it closely paralleled a true case related to my Subcommittee on Financial Institutions in May 1969, by Prof. Alan F. Westin, director of the center, in American liberties, Columbia University. Professor Westin protected the real man by giving him a pseudonym, "Charlie Green."

In real life, "Charlie Green" was the victim of a report that—like Kevin Ireland in "The Bold Ones" script—said he had had trouble with neighbors. As in the script, "Charlie Green" was the victim of hearsay and unchecked reports. It was not "Charlie Green's" fault that erroneous information got into his character credit report. Nevertheless, that erroneous information cost him money in lost income and in attorney's fees.

"Charlie Green" has been living with his problem for nearly 10 years. Like Kevin Ireland, he went to court. But "Charlie Green's" case is still pending. We checked with him the other day. He does not know when his case will come to trial.

Fortunately, Mr. President, "Charlie Green" kept his family intact and has kept his sanity. Still, his real-life case is as interesting and as disturbing as the fictional life of Kevin Ireland. "Charlie Green's" experience was instrumental in the passage of the Fair Credit Reporting Act, which should help prevent other similar injustices.

Although magazines and newspapers across the country helped publicize the passage of the Fair Credit Reporting Act—and many of those articles were reprinted in the RECORD—"The Bold Ones" did what only a TV drama can do: bring home the lesson in an empathic fashion.

I congratulate Universal-Public Arts Productions, Producer Steve Heilpern, writer Jack B. Sowards, Roy Huggins (for his story idea), NBC, and the sponsors of "The Bold Ones" for giving the viewing public a chance to see the human side of the law.

Mr. President, I ask unanimous consent that the script of "The Bold Ones" be printed in the RECORD.

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

THE BOLD ONES—THE LAWYERS: THE INVASION OF KEVIN IRELAND

Tight shot—typewriter—night.

It is a late-model electric machine. There is utter silence. Hold for a few beats, then—swiftly into frame comes a large heavy metal lamp base (the lamp is not lit), and, with a thunderous crash, it practically decimates the typewriter. Camera pulls back to reveal:

Int. office—night—on Kevin Ireland, the man holding the lamp. In his late thirties or early forties. Normally well-behaved, he has been pushed to the wall by forces he cannot understand or control. While his present actions may be considered irrational, his eyes are *not* the eyes of a madman. He *is* angry, though, very angry, but this anger has not been spent on the destruction of the typewriter, for, as he grips the lamp tightly, he looks around the room as if to spot a next "victim."

The office—Kevin's point of view. As the camera pans we get our first good glimpse at the empty general office of a large company. It is dark and empty, the only light coming from the street lights outside. We see rows of empty desks, the cold, impersonal type that, during daylight hours, are peopled by secretaries and bookkeepers, as indicated by the typewriters, letter boxes, adding machines, etc., resting on them.

Close angle—Kevin. The expression of anger has not faded from his face. As he goes into action, we utilize a series of jump cuts to show:

a. Kevin breaking a chair over a desk.

b. An adding machine being smashed against the hard floor.

c. Kevin emptying file drawers, scattering their contents.

d. Kevin taking the lamp and smashing the glass-encased display box encompassing the logo of the company, which bears the legend: "Corporate Research Associates. We care."

e. The computer, staring back in its impersonal glory. Camera pulls back to reveal Kevin standing only five or six feet away from it, unlit lamp base in hand.

Med. shot—Kevin, as he looks at the computer, then down at his weapon. His decision is short in coming: he raises the lamp base with both hands and brings it savagely onto the glassed front of the computer.

The computer, as Kevin completes his downswing, smashing its "face" beyond recognition.

On Kevin. As he prepares for a second go at the computer, he reacts to the shrill sound of an alarm.

Insert—Alarm light, its face covered with several numbers. One of the numbers is blinking frantically.

On Kevin, motionless, unsure of what to do next. A beat, then the sounds of: footsteps, a door opening, the flip of a light switch.

Guard's voice. Put it down!

Angle—at the door. Two uniformed security officers are standing just inside the door, and are training their revolvers on Kevin.

On Kevin. Keeps looking straight ahead, the look of anger now gone from his face. He opens his hand and lets the lamp fall to the floor.

Int. courtroom—DAY—close on Brian Darrell cross-examining a witness.

Brian. Mr. Gale, you're in charge of the Southern California office of Corporate Research Associates, is that correct?

On Mr. Gale the witness being cross-examined. In his mid-forties, he is reasonable, capable, intelligent, and might be type-cast as the President of Princeton, or as an editor of Newsweek.

Gale. Yes, it is.

Brian. Is your firm nationwide?

Gale. Yes—we have thirty-five offices throughout the country.

Full shot—Courtroom. Carefully listening to the testimony are Walt and Kevin, seated at the defense table. Just a few feet away sit Deputy District Attorney Jeff Skinner, and a colleague, and, beyond them, the twelve members of the jury.

BRIAN. You stated that the information in your company's report on Kevin Ireland was completely accurate.

GALE. Yes, I did.

BRIAN. Would it surprise you, then, to learn that while your report stated Mr. Ireland has two children, he in fact has only one? Or, that while your report said he graduated from the U.C.L.A. School of Business Administration, he did in fact graduate from the *Engineering* School of U.S.C.?

GALE. I meant to say the *significant* facts were accurate. These things you just mentioned, in my opinion, have no great significance.

BRIAN. But they *are* errors, errors which tend to question the accuracy of your investigators and their reports.

GALE. We have honest, reliable investigators. They've been carefully trained never to put anything on a report other than the precise, unadorned information they've gathered.

BRIAN. In other words, because you know an investigator is honest and reliable, you're satisfied that he has picked up accurate, 'significant' information, and you then send it out.

GALE. Yes, that's correct.

BRIAN. What if you receive a *negative* report on someone? A report of *great significance?* A report that could damage, or destroy, a man's career? I assume reports of this kind (the *significant* kind) are *double-checked*—are they not?

GALE. We don't deal in terms like 'negative' or 'positive'. We don't *interpret* information—we just *gather it. Our clients* interpret it.

BRIAN. All right. Let's say you get a report on *me*—a 'significant' report that says every night at midnight I run up and down my street—without any clothes on—and scream my head off. Now would you call *that* a negative report?

GALE. I think *our clients* would call it a negative report.

BRIAN. And you wouldn't double-check it?

GALE. I'm not sure what you mean by 'double-check'. We make every effort to make our reports accurate, whether they're favorable or unfavorable.

BRIAN. You're not answering my question! Your investigators get information from *sources*. Are these *sources* then checked on?

GALE. Well, no, that wouldn't be possible.

BRIAN. Not possible? Why not?

GALE. We're a business. We provide a service, and Industry is willing to pay only so much for this service. We give them the best service we can for the money we're paid. Apparently Industry is pleased with us—they keep coming back. The men they hire on the basis of our reports generally prove to be good executives.

BRIAN. How about the good executives not hired because you file negative information on them?—some of which may be inaccurate.

[9] Estimated unemployment-inflation trade off curves for the U.S. economy have been constructed by Robert J. Gordon, "Inflation in Recession and Recovery," *Brookings Papers on Economic Activity 1*, 1971. The unemployment-inflation combination of 5 percent, 3.3 percent, respectively, of the President's program is compatible with these trade-off curves. The combination 4.2 percent, 3.7 percent of the President's program supplemented by the employment tax credit falls below Gordon's trade-off curves.

GALE. I challenge the term: "inaccurate". As far as I know, our investigators——

BRIAN (interrupting). Yes, I know—they're honest and reliable. But the sources—the people your investigators talk to? How do you know they are honest and reliable?

GALE. We assume they are.

BRIAN. You assume? How can you assume a person doesn't have an ulterior motive?

GALE. Well, ah—if that comes through—— if it's obvious—we don't include it in the report.

BRIAN. But what if it isn't obvious? You still report the information, correct?

Skinner is on his feet.

SKINNER. Objection, Your Honor. That's argumentative questioning.

JUDGE. Objection sustained.

BRIAN. I'll rephrase my question, Your Honor. Your investigators gather information from other people. Do you ever check on them—the other people?

GALE. No, we do not.

BRIAN. I see. How many reports per day does the average investigator make?

GALE. It depends. I'd say the average is ten to fifteen reports a day.

BRIAN (astounded). Ten to fifteen a day? A man can actually investigate that many people in one day? I find that astonishing.

GALE. Again, it's a matter of economics. I'd give anything to be able to charge prices that would allow us to hire more men, but our clients will pay only so much. So, we do the best we can, and, I might add, we do one helluva good job.

BRIAN. I'm sure you do, and to do a "helluva good job" you must have highly-qualified investigators.

GALE. Yes, we certainly do.

BRIAN. How highly qualified? Do all your men have degrees in psychology, sociology, or other related social sciences?

GALE. No, but——

BRIAN (interrupting). Do all your men even have college degrees?

GALE. Over half have attended college, and——

BRIAN (interrupting). You're not answering my question! *How many of your investigators have colege degrees?—in any subject?*

Gale doesn't answer.

BRIAN. How about twenty percent?

GALE. Yes, that's about right.

BRIAN. Thank you. Now, you've stated that your average investgator makes ten to fifteen reports a day. How about the '*good diggers?*' Are they faster, or slower, than average?

GALE. Good diggers?

BRIAN. You surely know what '*good diggers*' are. Ralph Nader knows. In a recent magazine article he wrote that 'good diggers' are investigators who meet the minimum quota for negative reports. Mr. Nader claims that investigators in your business are required to turn in negative reports on eight to ten percent of your cases. Do you have such a quota system?

On the reference to Ralph Nader, Skinner has moved to the edge of his seat.

GALE. We have no quota system.

BRIAN. But it *does* turn out that you file negative reports on eight to ten per cent of your cases.

GALE. Uh . . . yes. Those are the approximate figures.

BRIAN. But you have no quota system.

GALE. No, we do not.

BRIAN. I have no further questions, Your Honor.

Brian returns to his seat.

JUDGE. Any re-direct, Mr. Skinner?

SKINNER. No, Your Honor.

JUDGE (to Gale). Witness may step down.

Gale does so.

JUDGE (to Skinner). Your next witness, Mr. Skinner.

SKINNER. We have no further witnesses, Your Honor. The People rest their case.

JUDGE. Very well. (Looks at the defense table.) Is the defense ready?

WALT. We are, Your Honor.

JUDGE. You may proceed.

WALT. We are only going to call one witness, Your Honor . . . The defendant, Kevin Ireland.

Angle on Kevin as he hesitates, then rises. The camera pans with him as he approaches the witness stand with:

CLERK. Raise your hand.

Kevin does so.

CLERK. You do solemnly affirm that the testimony you may now give in the cause pending before the Court shall be the truth, the whole truth, and nothing but the truth, this you do under the pains and penalty of perjury?

KEVIN. I do.

CLERK. Please be seated. Kevin sits and Walt approaches him.

New angle—day—on Walt and Kevin.

WALT. Mr. Ireland, did you make forceful entry into the offices of Corporate Research Associates on the night of June twenty-first?

KEVIN. I did.

WALT. And did you do any damage to the property while you were there?

KEVIN. Yes, sir . . . A great deal of damage.

WALT. Now, would you tell the Court why you did these things.

KEVIN. Because Corporate Research Associates had libeled me, slandered me, defamed my reputation—

Skinner is on his feet objecting with the word "libeled," the Judge is pounding his gavel on "slandered," but Kevin goes angrily through to the end of the line.

SKINNER. Object! . . . I object, Your Honor!

JUDGE (glaring at Walt). Mr. Nichols . . .!

WALT. May we approach the bench, Your Honor?

JUDGE. Please do.

Nichols and Skinner move to the bench and talk to the Judge in semi-whispers. The Court Reporter removes his machine from its tripod, moves to the end of the Judge's bench where the attorneys have congregated, and places it on the bench. He hears and records the following:

SKINNER. Corporate Research Associates is not on trial here, Your Honor. What they did, or did not do, is not an issue.

JUDGE. Mr. Nichols . . . on what path do you intend to take us with this line of questioning?

WALT. Your Honor, there are mitigating circumstances in this case. The defendant has been deprived of earning a livelihood for two and one-half years. His reputation, his career have been all but distroyed. His marriage *has* been distroyed. *All* of these things, Your Honor, are a direct result of capricious and irresponsible actions by Corporate Research Associates, as we intend to prove.

SKINNER. Your Honor, what Mr. Nichols says is totally irrelevant to the case. The defendant stands accused of a serious crime—he allegedly destroyed over fifty thousand dollars' worth of private property! Now that's——

WALT (interrupting). Your Honor, if, through the patience of the Court, we are allowed to pursue this line of questioning, the defense will show its relevancy to the charge.

The Judge considers it for a long moment, then nods.

JUDGE (to the Court Reporter). Strike the witness's last answer from the record. (to the Jury) The Jury will disregard it. (to Walt, for Kevin to hear) I will allow you to pursue this line of questioning—for the moment. But caution the witness to confine himself to facts, and to make no further indictments from the witness stand.

WALT. I'm sure my client understands, Your Honor.

Walt, Skinner and the Court Reporter return to their respective seats.

JUDGE (to the Court Reporter). Read the last question.

REPORTER. 'Now, would you tell the Court why you did these things.'

Close on Kevin Ireland. He starts to speak then stops. The pain, anger, frustration, and hurt of the last four and a half years run through his mind. He feels every moment of it . . . and he is on the verge of tears. The moment of silence stretches out, longer and longer, as Kevin searches for the thread of what he wants to say.

Wider angle—including the Judge. After a beat he turns to look at Kevin, and sees his look.

JUDGE. Do you understand the question, Mr. Ireland.

KEVIN ("lost"). I don't know where to begin . . .

JUDGE (gently). Begin wherever you like.

Angle–Kevin finding the thread . . .

KEVIN. I'm what they call an international merchandising and marketing expert . . . I worked twelve years for The Crawford Company until, like so many companies today, it was absorbed by a conglomerate—Trans-Coastal Industries. Trans-Coastal brought in its own people to take over, and most of the executive personnel at Crawford were let go . . . For some of the men it was a trying time, but I looked on it as an opportunity. . . .

Int. Commissary—Day—Angle on Kevin Ireland. It is a modern Commissary, like you might find at NCR (or Universal Studios). Kevin enters . . . a little younger. There is a spring in his step, confidence in his manner. He is a man who's good at his job and knows it. He crosses to the counter, sits down, and smiles at the waitress.

KEVIN. Just coffee. . . .

She takes a pot from under the counter and pours the coffee.

FRED'S VOICE. What are you so happy about?

Camera adjusts to show Fred Carter sitting at another part of the counter. Kevin picks up his coffee and moves over to sit beside Fred. (At the moment Fred is in the throes of his own personal trauma. He is a man in his early forties who has just lost his job.)

KEVIN. (in answer to the question) The future, Fred.

FRED. Oh yeah, I used to have one of those . . . I seem to have lost it somewhere around forty.

KEVIN. What's wrong?

FRED. I'm forty-two years old . . . and out of a job. And in this day and age, that's just about the end of the line.

KEVIN. Don't think of it that way. Think of it as another chance . . . fresh horizons . . . new worlds to conquer.

FRED. New worlds are for young people.

KEVIN. (half-joking) Yeah? Well, Columbus was forty-six when he sailed across the Atlantic . . . Giovanni Verrazano was forty-five when he charted the unknown coast of North America. . . .

FRED. And they probably did it because they were too old for any of the jobs back in the old country.

KEVIN. (smiles) At least you still have your sense of humor. (Kevin's smile fades) Look, don't worry about it—You're good at what you do. You'll get something.

FRED. Yeah . . . I suppose so.

KEVIN. Let's keep in touch . . . maybe we can help each other. Deal?

FRED. (smiles) Deal.

They shake hands, and Kevin starts out.

Int. courtroom—Day—Angle on Walter Nichols.

He approaches the witness stand.

WALT. Now . . . After leaving The Crawford Company . . . about how long was it before you applied for another position?

Angle—Walt and Kevin.

KEVIN. Almost immediately.

WALT. Were you hired?

KEVIN. No, I wasn't

WALT. And how many other applications did you make?

KEVIN. I made seven.

WALT. You sent letters of recommendation from your former company each time?

KEVIN. Yes, I did.

WALT. Were you accepted for employment by any of these companies you applied to?

KEVIN. No, I never got as far as an interview. Each company sent me a form letter thanking me for my application, and telling me the position had already been filled.

WALT. And you suspected . . . nothing?

KEVIN. No. I knew about these companies that investigate prospective employees, but I had nothing to hide, nothing to worry about. So, for a few months I was kind of enjoying the vacation.

Ext. a house—day—full shot.

It is a large home, well landscaped, in the hundred thousand dollar bracket. A Mercedes-Benz 280 SL pulls into the driveway, and Kevin gets out and goes into the house.

Int. the house—day—angle on Kevin.

He enters through the front door, and stops.

KEVIN. Hey, Maggie . . . Where are you?

MAGGIE'S VOICE. In the bedroom . . . Kevin goes out toward the bedroom.

Int. bedroom—day—angle on Margaret Ireland.

She is an attractive woman in that middle-thirties area where it is hard to determine a woman's true age because of the trouble she goes to in hiding it. She is brushing her hair. Kevin enters and gives her a mild leer.

KEVIN. Oh, you were expecting me.

MAGGIE. No, I just finished washing my hair.

KEVIN. (sits beside her) Good. Now make it all nice and neat . . . (he gives her a soft, lingering kiss) . . . so I can mess it up.

MAGGIE. (liking it) I told them we'd be there at six . . . What's gotten into you lately?

KEVIN. I don't know . . . Maybe it's just being alone with you for the first time in seventeen years. Or having the time to enjoy each other without Jerry popping in through the door . . . looking over my shoulder . . . saying, "What are you doing, Daddy?" "Just wrestling with your mother, son. Run along and play." Not having to get up and go to work every morning . . .

The thought reminds him he is out of work. He frowns briefly, rises, and crosses to the bed, taking off his tie.

KEVIN. Any calls?

MAGGIE. (missing a beat with the brush) Jerry. He wants to know if he can go to Florida over Easter vacation instead of coming home.

KEVIN. (lying down on the bed) Why not? He's a big boy now.

MAGGIE. (crosses to the bed) And nobody wants a big boy looking over his shoulder on his second honeymoon . . . Right?

KEVIN. Right. . .

MAGGIE. (sits) He needs two hundred dollars.

KEVIN. I'll wire it to him this afternoon.

He pulls her down on the bed beside him and kisses her.

KEVIN. And cheap at the price.

The telephone rings and Maggie starts to get up, but Kevin pulls her back down beside him.

KEVIN. Whoever it is . . . they'll call back.

The phone continues to ring. Maggie gives him a look.

MAGGIE. Answer it.

Kevin shrugs and picks up the phone from the bedside table.

KEVIN. Hello? . . . Oh, hello, Fred . . . How are things?

Int. city street phone booth—day—on Fred Carter.

FRED. (disconsolately) Great, if you like long vacations.

Intercut:

KEVIN. Oh, that's too bad. Im in the same boat.

FRED. Then I guess I dont have to tell you: Its cold out here.

KEVIN. Yeah . . . but it shouldn't be long now—for either of us. Let's keep in touch . . . you, too.

Back to scene.

Kevin hangs up the phone thoughtfully, and lies staring at the ceiling for a moment, then remembers Maggie. He turns and puts his arms around her.

Int. courtroom—day—Angle on Kevin and Walt.

KEVIN. Trans-Coastal kept me on the payroll for six months, as a form of severance pay. But at the end of six months the checks stopped coming and I still hadn't found a job. I had a little money saved, but there were payments on the house and the cars . . . I had a son in college. I had to have a job. Any kind of job. So I lowered my sights a little . . . and finally got an interview.

Int. office—day—Angle on Mr. Cox.

Neither the office nor Mr. Cox is particularly well-appointed or neat. They both have a slightly rumpled look. Cox is a man in his late thirties . . . flexible, with round edges . . . even gentle. He is reading Kevin's resume. Camera pulls back to show Kevin waiting tensely for Mr. Cox to finish. After abeat, Cox puts down the papers, and pushes his glasses up on his forehead. He looks thoughtfully at the papers.

Cox. Very impressive. Especially the recommendation from Trans-Coastal. . . .

KEVIN. They didn't terminate my employment because of my work. . . .

Cox. The letter explains all that.

KEVIN. Your ad stated you wanted someone who'd worked in merchandising . . . On an executive level.

Cox. I'll have to admit you fill the bill on that count . . . But. . . .

KEVIN. But what?

Cox. (checking the resume) You made forty-five thousand dollars a year in your last job. I can't afford to pay more than twenty.

KEVIN. I'm willing to work for that.

Cox. Why?

KEVIN. Because I need the job.

Cox. With your qualifications . . . these letters . . . you should be able to get a job almost anywhere.

KEVIN. You'd think so, wouldn't you?

Cox. (shaking his head) I'm sorry, Mr. Ireland, but. . . .

KEVIN. (cutting him off) Look, Mr. Cox. You know I can do the work . . . That I'm qualified. . . .

Cox. Qualified? You're more than qualified. You're *over* qualified. You wouldn't be happy here. I want a man whose loyalty I can buy for twenty thousand dollars a year, who's going to love me because he thinks I'm grossly overpaying him. And that's not you . . . You'd always be looking for a better paying job, and you'd find it. And then I'd have to start looking for someone all over again. I'm sorry. . . .

Kevin rises slowly . . . defeated. He takes the papers that Mr. Cox holds out to him.

KEVIN. Thank you for your time.

Int. courtroom—day—on Walt and Kevin.

WALT. After this had been going on for six months didn't you begin to wonder if there was a reason you weren't being called on for interviews by these companies—the ones that would have been willing to pay your normal salary?

KEVIN. Yes. By that time I couldn't understand it at all. The severance pay had run out, I had nothing left in savings, and I was living on my unemployment insurance—and I was worried.

WALT. Were you able to live on that sixty-five dollars a week?

IRELAND. No, sir. My house alone was about six hundred dollars a month. The bank was very cooperative, but they could only do so much, and no more. And when my son was ready to start his second year of college . . . I put the house on the market.

Int. Kevin's house—day—angle on living room, where Mr. Allen, a bright, pleasant real estate salesman, is in the midst of a conversation with Kevin at a coffee table. Allen's open briefcase and some papers are on the table.

ALLEN. We've had an offer of ninety thousand.

KEVIN. That's ten thousand dollars less than I paid!

ALLEN. You said you wanted to sell quickly. . . .

KEVIN. I do. But I've had this place five years. I thought property was supposed to *increase* in value.

ALLEN. That's true . . . and I'm sure we can get you a much better price . . . if you're willing to wait six months to a year.

KEVIN. (hotly) Mr. Allen—I can't afford to wait. I can't make the payments.

ALLEN (at a loss). Well . . . I . . . uh . . . don't know what to tell you.

Kevin paces angrily for a moment.

KEVIN. Just tell me this . . . Suppose I take the offer . . . How much cash will I come out with.

ALLEN. About six thousand dollars.

Kevin stops and looks at Allen . . . He is stunned by the figure.

KEVIN. (shocked disbelief) You must be joking. I put twenty thousand dollars *down*. I've been making payments of six hundred dollars a month for the past five years. That's about . . . (figuring quickly) . . . fifty-six thousand *cash* dollars I've invested in this house.

Allen heaves a sigh . . . He's probably been through this same scene a hundred times in his comparatively young life. And as he goes through it with Kevin, he goes quickly . . . like a man who's had the practice. Allen pulls out a sheet of blank paper and a pen. Kevin moves over to sit beside him.

ALLEN. Okay . . . let's write that fifty-six thousand right here.

He does, then begins to write quickly further down the page.

ALLEN. Now, interest on the unpaid balance of eighty thousand ran you about five thousand dollars a year for the five years . . . that's twenty-five thousand in interest. Property tax, which was amortized in the monthly payment ran about a hundred and fifty dollars a month for five years . . . that's another nine thousand dollars. Twenty-five and nine is thirty-four thousand dollars. Subtracted from your figure of fifty-six thousand, leaves you a balance of twenty-two thousand. You're losing ten thousand dollars on the sale of the house; so ten from that twenty-two leaves you a balance of twelve thousand. Broker's fee is six per cent of the selling price, or fifty-four hundred dollars. Closing costs—another six hundred dollars. Subtract that from the twelve, and that leaves you with about six thousand dollars . . . cash in hand.

Kevin sees it, but he still doesn't believe it. He shakes his head, searching for words.

ALLEN. (brightly) Would you like me to go over it again?

KEVIN. No . . . I think I understand . . .

ALLEN. Now . . . about the offer . . .

Kevin just looks at Allen for a beat.

ALLEN. Perhaps you'd like some time to think it over.

KEVIN. No . . . No . . . Go ahead. Make the deal. Sell it.

Int. courtroom—Day—On Walt and Kevin.

WALT. I see. Then you began driving a truck, Mr. Ireland?

KEVIN. Yes, sir. I managed to convince a furniture company I was an aging high-school drop-out. They gave me the job—driving a truck.

WALT. And how long did you have that job?

KEVIN. Almost nine months.

WALT. Nine months. In other words, you just stopped trying to get a job in the field that you were an expert in for twelve years?

KEVIN. Yes, sir, I did.

WALT. Then you made no effort to try to find out why you were denied employment?

KEVIN. I *did* make an effort. I wrote a dozen letters, and got a dozen polite replies. I made phone calls—and I was always told there were no openings, that they didn't need anybody.

WALT. Mr. Ireland, didn't you at some point begin to think there was something wrong?

KEVIN. Yes, but I couldn't figure out what it could possibly be. I began to think it might be because I was over forty-five, or maybe someone in my old company hadn't liked me, and maybe some way or another that recommendation was checked on and not borne out. I found that wasn't the case. I never let up—but I couldn't get at the answer! I couldn't find out what it was.

WALT. So you drove a truck for nine months?

Ext. a street—day—high angle long shot.

A street in a run-down neighborhood. Not realy a slum yet, but fast going down. A beat-up "transportation" car moves down the street, finds a place to park. Kevin gets out. He is dressed in rough work clothes.

KEVIN'S VOICE. Yes, sir. Even after we moved into the apartment it was hard to make ends meet. There were still a lot of unpaid bills from the old days.

WALT'S VOICE. And what effect was all this having on your private life?

Kevin walks up the steps of an apartment house, and disappears inside.

KEVIN'S VOICE. Exactly the kind of effect you'd expect.

Int. an apartment—day—angle on Maggie.

She sits in the shadows of the darkened room, her face lit by the glare of a television set. The "laugh track" on the show would have you believe that everyone was having a fine old time. Maggie glances up briefly as the door opens and Kevin enters.

Angle—including Kevin. He throws his jacket across the back of a chair and flops down on the chair. He sighs wearily.

KEVIN. Supper ready?

MAGGIE. On the table . . .

Kevin rises, crosses to the television set and changes the channel to a news program. Then he crosses to a rickety table in the corner of the room, sits down, lifts the napkin covering the plate and looks at the food on the plate.

Angle on Maggie. She sits watching the news program for a beat, then she gets up, goes to the TV and switches it back to the program she had when Kevin came in.

Wider angle—Including Kevin. He rises from the table, carrying the plate. As he passes the TV set he turns it off. Maggie gives him a dirty look. He sits down in the scruffy easy chair and takes one more bite, then puts the half-empty plate on the table beside the chair . . . and makes a face at it. Maggie doesn't respond. She just sits and stares at the darkened TV tube.

KEVIN. So . . . What happened on "The World of Constance Blake" today?

MAGGIE. (not caring) No one knows yet that Susan is mentally unbalanced, and was the one who actually murdered Marty, and planted the evidence that makes them suspect George. . . .

KEVIN. How can you stand to watch that junk?

Maggie sits silently, staring at Kevin, who resumes eating. For a few beats neither person speaks. Finally:

KEVIN. When did you eat?

MAGGIE. I had something about two-thirty . . . I'm not hungry.

Kevin continues eating. Maggie continues staring. Then:

KEVIN. (motioning to the TV set) Go ahead. Turn it back on.

MAGGIE. No. That's okay. If it bothers you, I don't have to have it on.

More eating by Kevin. More silence by Maggie. Finally, Maggie breaks the silence with:

MAGGIE. Maybe I ought to get a job. Kevin drops his knife and fork.

KEVIN. Are you gonna start that again?

MAGGIE. I just thought—

KEVIN. (interrupting) What *kind* of job? What're you *trained* for? A stewardess? . . . a model? . . . A secretary? . . . You can't take shorthand you can't type. *What would you do?*

MAGGIE. I . . . maybe I could sell something in a department store. . . .

KEVIN. You don't have to do that! I'm making enough for us to get by on! . . . and this rotten luck isn't gonna last forever!

Maggie is near tears.

MAGGIE. All right, I don't *have* to do it. But I *want* to do it. I can't stand sitting here, in *this place* . . . *day after day* . . . waiting for you to come home . . . And we're *not* getting by! I can't take it! Living like . . . *this!* . . . I've got to get out of here!

KEVIN. Now that's it! *You've gotta get out of here!* That's what you're talking about, isn't it! That's what you're *really* saying, isn't it?

He is bending over her, shouting in her face. She pushes him aside as she scrambles out of the chair . . . sobbing. She turns on him.

MAGGIE. Stop it . . . stop it . . . stop it . . . you're killing me!

Both of them stop . . . stunned by the outburst for a beat. The dam has broken, and it all comes out . . . but she has a little more control of herself.

MAGGIE. This isn't an apartment, it's an arena . . . where we fight, fight, fight . . . and it's killing me!

She stops . . . She is having difficulty breathing.

MAGGIE. I've got to get out of here . . . I've got to get out . . . I can't breathe . . .

During this last speech she starts for the bedroom door. Kevin moves to stop her.

KEVIN. Maggie. . . .

MAGGIE. Don't touch me! It'll hurt.

He stops.

MAGGIE. Everything about you hurts me. The sight of you . . . the sound of your voice . . . just knowing that you're near. It hurts. . . .

KEVIN. (hurt) Please. . . .

MAGGIE. (pleading) Please. . .

They stand looking at each other for a beat . . . all the anger and hostility is gone . . . along with all the love and caring. Two people who never met, saying good-bye. She finally turns and goes into the bedroom, closing the door behind her.

Angle—Kevin. He watches the door for a moment, then turns and wanders back into the living room. He stops by the television set for a moment, not even looking at it. After a beat he turns on the TV, and crosses to sit in the chair where Maggie had been sitting. He blankly stares at the screen while the laugh track screams mindlessly in the vacuum.

Int. the courtroom—Day—Angle on Kevin and Walt.

KEVIN. She packed her bag and was gone within an hour.

WALT. And when was the next time you saw her?

KEVIN. About six months later . . . in her lawyer's office . . . when we signed the divorce papers.

Angle—Walt, as he approaches the witness stand and stands looking at Kevin.

WALT. How long had you been unemployed—in your usual line of work—before you finally got hold of some hint as to what was keeping you unemployed?

KEVIN. About two years.

WALT. This was three months ago, was it?

KEVIN. Yes.

WALT. Please tell the Court—and the Jury—what happened three months ago.

KEVIN. I received a phone call.

Int. Kevin's apartment—Day—Tight on telephone.

The camera pulls back to reveal Kevin rushing to the ringing phone. He picks up the receiver.

KEVIN. Hello?

Int. Fred Carter's office—Day.

It is well-appointed, sort of Prudential modern. Fred is on the other end of the phone conversation. He's self-assured now, friendly.

FRED. Kevin? Fred Carter. . . .

KEVIN. Oh . . . hi, Fred. How are you?

FRED. Fine—in fact, very well. I'm over at United now. . . .

KEVIN (having to force it just a little). Well . . . that's wonderful!

FRED. Thanks. Listen, Kevin, heard you're still looking. . . .

KEVIN. You could say that.

FRED. Well, there might be something for you here. Something *good,* and you'd be perfect for it. . . .

KEVIN (brightening, but the words not coming easy). I . . . I . . . can't think——

FRED (interrupting good naturedly). I know, but skip the thanks for now. We made a deal, remember?

Int. courtroom—Day.

KEVIN. . . . So I applied for the job.

WALT. And what happened?

KEVIN. Nothing. Like all the other times. I tried to find out, but I couldn't even get Fred on the phone. So I went looking for him . . . there had to be more to it than that.

Int. Fred Carter's outer office—Day—Full shot.

The secretary looks up as the door opens and Kevin enters. He is wearing his rough work clothes, and he is unshaven.

KEVIN. I want to see Mr. Carter.

SECRETARY. You're Mr. Ireland, aren't you?

Kevin moves toward the door of the inner office. The secretary moves to head him off . . . but is a step late.

SECRETARY (quickly). Mr. Carter is out. . . . He's at a meeting of the Board of Directors. . . .

Kevin opens the door, and we can see Fred in the b.g. sitting at his desk. He looks up and frowns at Kevin. The secretary looks past Kevin to Fred.

SECRETARY. I'm sorry . . . I tried to stop him. . . .

FRED (with a sigh). That's all right. . . . Come on in, Kevin.

Kevin enters and closes the door.

Int. Carter's office—Day.

Before Kevin can say anything, Fred is talking. He is quiet, but firm and intense.

FRED. I'm going to give you about two minutes of my time. . . . Two minutes. Then I want you to go away, and not come back. Understand?

KEVIN (more bewildered than angry). Fred, what the hell is going on? Why are you talking to me this way? Just because I broke into your office? After all, why did I *have* to break in?

Fred has remained relatively calm but his patience is beginning to wear thin. He rises.

FRED. Don't you think if I could have gotten you the job I *would* have? Why are you embarrassing me like this?

KEVIN. *Embarrassing you?* We were *friends!*

And I've been out of work now for two years. You may know why! I've got to know! I've *got* to!

FRED (nervous, unhappy). Don't you know that if I could have given you the answer I'd have picked up the phone and called you? You're asking me something I can't answer!

KEVIN. My life is ready to go right down the tube. I've lost my wife, I've lost everything I had, and there's a great big blank wall out there I've been hitting my head against for two years! And you stand there and tell me that I've *embarrassed* you? That you can't tell me? Well, you're *going* to tell me!

Kevin pauses, keeps looking straight at Fred.

KEVIN. If you're not allowed to tell me, okay—I swear I'll keep that secret. But you've got to let me know! Have you forgotten you worked at that company for ten years because *I* got you in there? *You owe me something!*

FRED. Wait a minute . . . calm down. If I answer your question I could lose my job. I'd be violating a confidence that I——

KEVIN (interrupting). Don't give me those weasel words! If you know the answer to what's happened to me, tell me! (he pauses, becomes calmer but is still intense).

Fred stares at Kevin for a long, long moment. Finally:

FRED. Sit down.

They both sit.

FRED. When I heard you didn't get the job I tried to find out why. All they'd tell me here was that Corporate Research Associates turned in a negative report on you.

KEVIN. Negative report? And what the hell is Corporate Research Associates?

FRED. Every company like this one orders a checkout on potential employees. There are just a few companies in this area that do these checkouts. The company that compiled the dossier on you is Corporate Research Associates . . . Their report on you was *very negative.*

KEVIN. Negative? How?

FRED. They wouldn't tell me in Personnel, except that it was negative.

KEVIN. There couldn't be anything negative in an investigation of me!

FRED. But there *is*! In fact, I lost some points in this company because I recommended you—it's one of those things you can feel, and I felt it. I'm just getting back to where I was. So whatever they've got on you, it's bad.

Kevin looks dazed.

WALT'S VOICE. And what did you do when you left Fred Carter's office?

Int. courtroom—Day—On Kevin and Walt.

KEVIN. Well, first I went to Corporate Research Associates. I got nowhere there. They refused even to let me in to see anybody, or to discuss any investigation of me, or to let me look at my file.

WALT. And then what did you do?

KEVIN. Then I came to see you.

Int. Walt's office—Day.

As Walt, seated, listens, Kevin paces back and forth.

KEVIN. What can it be . . . that has kept me out of work for two years? Whatever they've got in their files has got to be false!

WALT. Sit down. Relax for a moment.

Kevin takes a seat opposite Walt.

WALT. Do you know for sure there can't be anything negative in your file?

KEVIN. *Yes.*

WALT. Have you ever had any difficulties with your credit?

KEVIN. No. Never. I've got every kind of credit card—or, at least, I *did* have.

WALT. Did you ever get into credit difficulty that wasn't your fault? Like being billed for something you never received?

KEVIN. No.

WALT. In other words, you've never had trouble of any kind with your credit?

KEVIN. Never.

WALT. Were you ever in the service?

KEVIN. Army. Two years. Nine months in Korea. Honorable Discharge.

WALT. Anything else? Ever been arrested, and acquitted?

KEVIN. Never been arrested.

WALT. Ever been arrested for anything—I mean, were you ever accused of drunk driving and then they found out you weren't drunk.

KEVIN. No! Never as much as a speeding ticket!

WALT. All right. I guess we're going to have to get hold of that file.

KEVIN. Can you do that?

WALT. I think so. After all, there's no reason in the world why *I* can't consider hiring you—and subscribe to the services of Corporate Research Associates!

Int. Kevin's apartment—night.

The phone is ringing in the darkened apartment. There is the sound of a key in the lock. Kevin enters the apartment. The light coming from the hall reveals that the apartment has deteriorated. There are dirty dishes on the tables, and clothes hanging on the backs of chairs and on doorknobs. Kevin hurries to the phone and answers it.

KEVIN. Hello? Yeah . . . You did? When can I see it? . . . What about right now? I mean, if you're going to be in for a while . . . Yes. I can come right over. Thank you, Mr. Nichols.

He hangs up the phone, and hurries out of the apartment, slamming the door behind him.

Int. Walt's office—night.

Kevin enters, closes the door behind him . . . then just runs out of steam. He leans back against the door, looking at Walt and Neil.

WALT. Good evening, Mr. Ireland (indicates Neil) This is my associate, Neil Darrell.

The two men shake hands, and Kevin moves to the desk and looks down at the dossier on Walt's desk.

KEVIN. Well, what's in it? What is this negative information?

Walt leafs through the pages as he talks.

WALT. Sit down, hmm?

Kevin sits down, almost reluctantly.

WALT (studying report). Legal record . . . clean. Educational background . . . excellent. Health . . . good. Credit . . . A-1. (he looks up at Kevin) Now we get into the material that's been causing you all this trouble.

Kevin rises, then sits down again, his eyes steadily on Walt.

WALT. Now, Mr. Ireland, please don't say anything until I've finished. You'll want to, but don't. When I'm finished I'll want to hear what you have to say.

Kevin nods and Walt starts reading.

WALT. One: You and your wife gave wild parties that required police action.

Walt gives Kevin a glance. Kevin is stunned.

WALT. Two: You used physical violence against a neighbor. He had planned to bring charges against you, but he died of "mysterious circumstances"—possibly linked to you—before he could pursue those charges.

Walt again gives Kevin a look. Kevin's jaw has dropped.

WALT. And three: You were accused of hit-and-run driving. The case was dismissed as a result of your settlement with the victim.

Walt closes the folder and looks up at Kevin, who is by now stunned beyond belief.

WALT. That's it.

KEVIN (standing, pacing). This is—It's a nightmare! *Are people allowed to do this sort of thing? Is it possible?*

WALT. Not only possible, it happens thousands of times every day in this country. About eight percent of these reports contain this type of information. Now, what's your response to it?

KEVIN. *It's insane!*

WALT (gently). All right. It's insane. Tell me *why* it's insane.

Kevin continues to pace.

KEVIN. Sure. Fine. Let's take them one-by-one. The Wild Party. My wife and I rarely gave parties, but one night we did—for the neighborhood association we belonged to. That year it was our turn to hold it. We all chipped in for a small orchestra, a combo. And my *next-door* neighbors complained to the police that the music was too loud. At one time or another, *they accused every family on the block* of throwing *wild parties!* The police were used to them. The policemen did their duty, came by, told us about the complaint—and left. (pauses briefly) Point two: I used physical violence against a neighbor. The same neighbor—the husband, who was cordially disliked, no: *despised,* by everyone in the neighborhood. I found him on my property one day—chopping down a bush. I politely asked him to leave, but he said 'I'm not leaving till I've cut this thing down! It blocks my view when I come out of my driveway!' So I *gently* took him by the arm and escorted him back to his property. I told him never to set foot on my property again. The next day I had my gardener remove the bush. If the investigators had only checked any of my other neighbors they would have gotten the truth. As for his 'death under mysterious circumstances', there was no mystery about it—he had a heart attack about three months later—*he was over seventy years old!* . . .

NEIL. How about the hit-and-run? Is that a lie also?

KEVIN. No, it's true—if you call distortion out of all proportion *true.* I got a letter from court citing me for a hit-and-run offense. It scared me to death, so I drove down to the courthouse and found out someone had reported I had backed my car into someone else's in a parking lot, and had driven off without leaving my name. (he pauses) *It simply wasn't true!* The parking lot was at the Keith and Edwards Department Store over in Millfield. I've never been to that store—it's twelve miles from where I lived. There *is* a Keith and Edwards store *three* miles from where I lived. Someone obviously took down the wrong license number. (bitter) . . . small mistake.

NEIL. If you didn't do it, why did you settle?

KEVIN. On the advice of my attorney—something to do with insurance rates. It was only a sixty-seven dollar claim. I sent a check to the owner of the damaged car, along with a letter that said I wasn't admitting any guilt. I still had to appear in court, but the other person didn't show up, and the case was dismissed because I had paid for the damage.

Kevin pauses, and his looks to Walt, then Neil, indicate he's told them all he can tell.

KEVIN. Well . . . now you know. Is there anything you can do?

Int. Gale's office—Day—Close on Mr. Gale.

GALE. Just what is it you want, Mr. Darrell?

The camera pulls back to reveal Neil Darrell sitting across the desk from Gale. We remember Gale as the man cross-examined (X) by Brian earlier. Gale, as he was on the stand, is sharp, efficient, no-nonsense. He doesn't think of himself as a heavy; rather, he is a sincere professional who is dedicated to his work, work he believes to be important and necessary.

NEIL. (polite, but to the point) Mr. Gale, unless you agree to take immediate steps to rectify these errors, we are going to sue you for at least three million dollars!

GALE. You mean *if* your client's willing to wait two or three years to get his case on a court docket. I can see you haven't handled many cases of this kind. I'm not a lawyer, but I know more than a little about

this area of law. I know, for instance, that you can't successfully sue in a case like this unless you can prove *malicious intent.*

NEIL. As you just said, you're not a lawyer—you happen to be wrong. But Mr. Ireland is *not* asking us to sue you—he's only asking that you correct those errors so he can get to work.

GALE. How can we 'correct' information that is accurate? After you called, I checked with the man who investigated Mr. Ireland. His sources of information were court records and reliable citizens of good reputation.

NEIL. *Reliable? Good reputation?* If your man had bothered to check, he would've found out the neighbor was *un*-reliable and had a *lousy* reputation—and that the court records went *further*—like to *'case dismissed'* But he *didn't* check! You don't double-check *anything!*

GALE. We can't! Where would it stop? Do you want us to double-check and *triple* check—and so on and so on? We *don't have the budget*—it would be economically unfeasible!

NEIL. *Economically unfeasible?* So that's the answer! Destroy a man's *life,* but don't double-check the facts—it's *economically unfeasible!*

GALE. If we started to double-check everything, no company could afford us! Now, don't tell me how to run my business, Mr. Darrell!

NEIL. Don't worry—I won't! But my business is law, and lawyers often take people like you to court!

GALE. Be my guest. We've got a very good legal staff here, and they're used to coming up against people like you!

Neil calms down, tries a different tack.

NEIL. All right, let's not talk law for now. Let's talk humanity. Let's talk about a man, a good man, who has had his life practically destroyed by distortions of truth, by innuendo—

GALE (interrupts). Distortions and innuendos—according to what *he* told *you.* How do *I* know *that's* true?

NEIL. Double-check it and you'll find out—but, I know, that would be *economically unfeasible!* . . . Look . . . doesn't anything I've told you about Kevin Ireland, about what he's gone through, *disturb you?*

GALE. Lots of things disturb me. Pollution. The war. Sure, they disturb me, but I learn to live with them. Same thing in this business, too. But I do the best I can—under the circumstances. (pauses as he rises) Good day, Mr. Darrell.

Int. courtroom—Day—On Walt.

WALT. Now, Mr. Ireland, would you tell the Court what happened next?

Angle—Kevin and Walt.

KEVIN. Mr. Darrell telephoned me later that day. He told me about his conversation with Mr. Gale . . . I started walking for hours, I guess . . . walking the streets, thinking . . . The next thing I knew, I was in an elevator . . . in that building . . . I broke into the office . . . I started to break things. . . .

WALT. In other words, you remember everything you did?

KEVIN. Just pieces . . . I remember almost getting hit by a car while I was walking . . . I don't remember consciously thinking of going to that building . . . I don't remember how I got there, whether I walked there, took a cab, or what. I do remember being in the elevator, breaking in, breaking up things in the office. I remember the security guards coming in.

WALT. Do you remember *planning* to destroy anything in the office? Or steal anything?

KEVIN. No, sir. I don't.

WALT. Do you remember *looking* for anything in the office?

KEVIN. No, sir.

WALT. Thank you, Mr. Ireland. (to Skinner) Your witness.

Skinner rises.

SKINNER. Your Honor, in view of the fact that the defendant in testimony has completely confirmed the State's case, I have no questions.

Int. courtroom—Angle—The Jury.

They sit waiting. Angle shifts to show Walt as he walks to the jury box and stands looking at them before he speaks.

WALT. Ladies and Gentlemen, I've pled many cases—more than I like to think of. I've pled many a case right here, in this courtroom. I suppose I should be as they say, "calloused" by now.

Perhaps, sometimes I am, but not today. For today I am pleading a very special case. As Kevin Ireland told you his story I couldn't help but think what I would have done had these terrible things happened to me. And I wonder what each one of you has been thinking. Could it have happened to you? Or, *might* it happen to you, say next week, when you return to your normal pursuits. I think you'll agree that Kevin Ireland is all the things *we* are, or try to be. He went to school, got a job, got married, became a father. Not a great man, but a good man. Then he lost his job—through no fault of his own. And, what did he do? What you, or I, would do—he looked for another one. And then he came across something new in our society, a procedure in our employment practices: Most large companies go to investigative organizations for information on the private lives of job applicants. But a curious thing happened to Kevin: Information about him, which was untrue, was never checked out. Mr. Gale, whom you heard earlier, admitted this. His company couldn't *afford* to doublecheck the report on Kevin Ireland—or on *anyone*—Industry won't pay for thoroughly substantiated information. You heard Mr. Ireland refute each item of negative information. Was this challenged by the prosecution? No. The Prosecutor, who is an extremely able man, didn't contest one thing Kevin Ireland said. Why? Because *Kevin Ireland told the truth.*

This man's *life* was destroyed by a dossier, and, for a moment, he lost control—and committed a crime. Ladies and gentlemen, the question I present to you is whether or not you want to find him culpable for what he did. Soon you will retire to consider your verdict, a verdict that is yours and *yours alone* to make. You will be instructed by the Judge as to the law, but he cannot instruct you as to your verdict. You are not required to apply the law *as if no human consideration were before you.* You *are* required to seek *justice.* And please keep this in mind as you deliberate: What happened to Kevin Ireland could have happened *to any one of you.* Thank you.

Int. the courtroom—Day—Full shot.

There is a bustle of activity . . . People returning to their seats and hurrying back to their places. Walt enters and moves down the aisle toward the defense table, where Kevin, Brian, and Neil are waiting . . . Camera moves in on them.

BRIAN. Jury's coming back.

WALT. That was fast.

KEVIN. Is that good or bad?

WALT. That depends . . .

KEVIN. On what?

WALT. The verdict.

The Judge enters and takes his seat on the bench:

COURT CLERK. Remain seated. Court is now in session.

A moment later, a door is opened and the Jury files in as the room settles.

JUDGE. Will the Jury Foreman please pass the verdict to the Bailiff?

The Bailiff crosses to the Foreman, takes the verdict slip from him, and hands it to the Judge. The Judge take a long moment to read the verdict, then hands it to the Clerk.

COURT CLERK. (reading) In the case of the People versus Kevin Ireland . . . we find the defendant—*Not Guilty.*

Angle—The judge.

He looks at the jury for a moment, thoughtfully.

JUDGE. Thank you, Ladies and Gentlemen . . . The Jury is dismissed with thanks . . . The defendant is released . . . and this Court is adjourned.

He rises. Everyone rises, and when the Judge is gone there is a general buzz of conversation. Kevin warmly shakes Walt's hand; then, as Kevin shakes Brian's hand:

Angle—The prosecution table, as Walt walks over to Skinner.

WALT. Well, Jeff, another case of jury nullification. They decided *against* the written law and *for justice.* How do you feel about that?

SKINNER. (smiles) Walt, you don't really fight for justice all the time—you fight for your *clients.* You have to—you're a defense attorney. I don't have your problem. Any time justice is done, I win. (pauses) And I think justice was done here (holds out his hand) Congratulations, Counselor.

They shake hands warmly.

Wider angle.

Walt joins Brian and Kevin, who are still at the defense table.

KEVIN. (to both) Gentlemen . . . whatever I could say now wouldn't be enough, so . . . thank you.

As the attorneys ad lib best wishes, etc.:

KEVIN. Well . . . I better get going . . . I've got some resumes to write!

Quick cuts. Kevin (A) Int. Kevin's apartment—night, working at the rackety table in his apartment. Papers spread out on the table. He is thinking . . . and writing . . . (B) Ext. street—day, carrying a small bundle of envelopes to a mail box, giving them one last look to make sure they are all stamped, then dropping them in. (C) Ext. office building—day, walking up to a large, modern office building. He stops outside the glass door, checks his appearance in the reflection of the exterior doors, makes a minor adjustment on his tie and goes inside. A little of the oldspring is back in his step.

Int. Kevin's apartment—Day—Angle on Kevin.

He sits patiently in the deep shadows of the room, gazing at the dark shape of the telephone on the f.g. He watches it like a mouse might watch a snake. He continues to sit for a long moment, then he leans forward, gently puts his hand on the phone . . . he waits, then picks it up and listens for the dial tone, then he dials 'O'.

KEVIN. Operator . . . I think my phone is out of order. Would you dial this number for me, please? . . . 555–8037 . . . thank you.

He hangs the phone up and waits . . . After a moment the phone rings and he picks it up again.

KEVIN. Hello . . . Yes, it rang. Thank you....

Kevin hangs the phone up slowly, then leans back to wait He doesn't move. Kevin sits looking at the phone for a moment. It rings. He starts to reach for it, then stops himself . . . His hands hovering over the phone. It rings again. He doesn't move. The phone rings again. He picks it up quickly to stop the ringing, then brings it slowly to his face. He is curt and wary.

KEVIN. Hello? . . . Oh, hello, Mr. Nichols . . .

Int. Walt's office—On Walt and Brian who both can hear Kevin's voice on the desk loudspeaker connected to the phone

WALT. We haven't heard from you, Kevin, so I thought I'd call and see how things were going.

Intercut:

KEVIN. Fine. Just fine . . . except that I haven't paid your fee yet.

WALT. I'm not worrying about the fee. How about the job situation?

KEVIN. It's still a little early to get any answers.

WALT. It *has* been quite a while, though. Don't you think you should have heard something by now?

KEVIN. (some impatience) They don't move that fast.

WALT. I see. . . .

KEVIN. (brightening) Don't worry . . . you'll get your money as soon as I go to work, and that's going to be any day now. Things are looking good.

WALT (sensing something is wrong) well . . . that's fine, Kevin . . . fine . . . Now stop worrying about our fee . . . Just keep in touch . . . Goodbye.

Walt hangs up by clicking off the desk speaker. Walt and Brian are plainly worried. Walt rises and heads for the door. Brian follows. During that:

WALT. (grim) Come on, Brian. I'm going to see a man, and I feel like I'm going to clobber him—you'd better come along and hold me back!

On Brian's puzzled look, we: Cut to Int. Kevin's apartment—Day.

Kevin, as in the beginning of Scene 71, is sitting patiently, staring at the phone. After a long beat, there is a knock on the door. Kevin doesn't react. The knock comes again, more insistent . . . Then:

WOMAN'S VOICE. I know you're in there Mr. Ireland. You might as well answer the door.

He doesn't react, and the knock comes again.

WOMAN'S VOICE. Don't play "cat and mouse" with me . . . I'm not asking for the rent . . . *again*—I told you it's *next* Monday, or out you go—There's an envelope here that was too big for the mailbox.

Kevin still doesn't answer.

WOMAN'S VOICE. Here!

The woman slides a large manila envelope under the door, then we hear her footsteps move away from the door.

Int. Gale's outer office—Day—Close on secretary (Miss Jackson).

Miss JACKSON. I'm sorry, sir, but Mr. Gale is busy right now.

Full shot to reveal Walt and Brian standing before Miss Jackson's desk. Walt is cat-like (for him) as he pounces on the intercom and pushes down the "talk" button.

WALT (like a volcano with whiskers, about to erupt). Mr. Gale, I would suggest you take the time to see us. *Right now!*

Pause, then:

GALE'S VOICE (filtered). Miss Jackson, show them in.

And Miss Jackson does just that.

Int. Gale's office—Day.

There are no amenities as Walt and Brian storm in and move toward Gale, standing behind his desk. Miss Jackson closes the door behind them. Brian remains standing, but Walt sits, his eyes are like cold, steel pellets, *never leaving Gale's.*

BRIAN. We want the current dossier on Kevin Ireland!

GALE. I don't have to show you that.

BRIAN. Mr. Gale, I have never seen my partner as angry as he is right now—and I have to tell you he's not someone I'd want angry at me! You know, he might just be angry enough to take a whole year off to see how vulnerable you are in a court of law! If you have any judgment at all, give us that file!

GALE. That sounds like a threat.

BRIAN. Not at all. It's just—how do you people say it?—*unadorned information.*

Walt finally speaks

WALT. But call it a *threat* if you like. There are just the three of us here. *Get the file!*

Gale stares at Walt and Brian, then figures "how can it hurt?", rises and walks over to a large filing cabinet. He opens one of the drawers, after a couple of moments finds the right file, closes the drawer, and returns to the desk. He tosses the file folder toward Brian, who picks it up, starts going through it. Walt remains his icy stare at Gale.

BRIAN (paraphrasing). Employment record . . . has worked at only menial jobs during past two years. Has drifted from one job to another . . . Credit: poor . . . car repossessed . . . bad debts with two banks . . . Legal Records . . . arrested and tried for breaking and entering and destroying almost fifty thousand dollars worth of private property . . . (to Gale) He was acquitted.

GALE. It says that, further on.

BRIAN (drops the folder on the desk). Everything in this folder is a direct result of *your company's irresponsible actions!*

GALE. Mr. Darrell, as I said in Court, we don't interpret. Those are facts, *only facts*—facts I have an obligation to report to my clients. Now if you can find anything in that file that isn't absolutely true, you tell me what it is!

Walt has risen during Gale's speech. He signals Brian that he'll take it from here:

WALT (controlled, icy). Once you told our other colleague that you couldn't be sued for libel by us because we couldn't prove *malice.* You were *right.* Kevin Ireland *wasn't* destroyed by malice—he was the victim of a *policy,* a policy you represent. But you had an opportunity to correct what that policy had done—and you didn't take it. And I think I know why. Kevin Ireland retaliated; and what did you do to strike back at him? You can't sue, he has no money. So there was only one way to strike back, and you've done. Now it's a *vendetta,* and a vendetta, Mr. Gale, means *malice.* We are going to sue you—and that's not a threat—it's a *fact!*

Walt and Brian move toward the door.

GALE. Go ahead. As I told your other colleague, we have an excellent legal staff here. You don't frighten me a bit.

Walt looks back at Gale.

WALT. No? Well, I'll try to *rectify* that—in court. Good day.

As Walt opens the door and he and Brian start to leave:

GALE. Oh, by the way, this time your client won't be able to complain he couldn't see his dossier, because I mailed him a copy.

Walt and Brian stare at Gale, then look at each other. They leave.

Int. Kevin's apartment—Day—Close angle on Kevin.

He is still sitting in the same chair talking to someone. He is apparently normal, casual, and under control . . . there is even a trace of the "old charm."

KEVIN. I've been thinking seriously of taking the job with Golden State Imports. It would mean moving, of course, since they're in Florida . . . And I never cared much for the weather there. No, I think I'd prefer to work for the Ryker Company.

There is a knock on the door, but Kevin doesn't seem to hear it.

KEVIN. Ryker's got a lot of imagination, and he pays good money (frowns). The only thing is . . . he and his top men are still young—not much room for advancement.

The knock is repeated, more insistent. Kevin doesn't react to the sound . . . He just goes right on with his conversation.

KEVIN. No . . . I think I'll turn that down and take the offer from Great Western.

The door behind Kevin opens slowly and Walt and Brian step into the room and stop behind the door. The camera starts to pan . . . slowly.

KEVIN (hasn't stopped talking). They're located in Chicago.

As the camera pans around the room during the above, we see for the first time that the floor is strewn with the pages from the dossier, and that, save for Kevin and the newly-arrived Walt and Brian, the room is empty. Kevin has been talking to the telephone. Walt and Brian look stricken.

WALT. (quietly) Kevin? . . .

Kevin doesn't react to them . . . He goes on without a pause, addressing that stolid, silent phone on the table several feet from him.

KEVIN. The only problem with Great Western is that they've got the lowest pay scale in the industry. And in the winter, the wind off that lake goes right through you. Maggie never could stand the cold. She's my wife . . . She should be back in a few minutes. She just went down to the school to pick up Jerry . . . Ten years old, and he's still not allowed to cross the street by himself, yet. She worries . . . You know what I mean?

During this last speech the camera has held on Kevin, and the focus has begun to blur. As he finishes the speech we: Slow crawl over: On April 25, 1971, Congress enacted legislation which gives every American the right to know the nature and substance of all personal information concerning him that has been compiled by a private company, and to contest and correct any errors he might find in that information. These companies, however, retain the right to investigate any area of a person's private life, relevant to their purpose or not.

BIGNESS AND AUTOMATION THREATEN SMALL FARMERS

Mr. HUMPHREY. Mr. President, today the last in a series of articles on the problems of small farmers appeared in the Washington Post. I placed the previous two parts in yesterday's RECORD.

These articles point out the problems of small farmers—largely on the west coast—who are finding that they are unable to compete with commercial agribusiness giants.

Mr. President, the articles point up one element in the problem of rural decay and outmigration. The people who operate 2 million of the 3 million farms in our Nation today are either elderly, poor, or marginal farmers. They produce only 10 percent of our Nation's total farm marketings.

These people have been forced off the land in vast numbers—the greatest migration of human beings in the history of mankind. The social cost to the country and the ruination of human lives has been a national disgrace.

Many of the policies of the Department of Agriculture have been designed to ruin the family farm. Recently a new tobacco picker was designed with Federal money that will force another 150,000 people to move from rural North Carolina to places like Washington and New York. And no one seems to care.

When are we going to learn that policies of bigness and efficiency for their own sake are not necessarily good for human beings?

Mr. President, I ask unanimous consent to have printed in the RECORD Mr. Nick Kotz' final article and an article published in the New York Times of October 4, 1971, about new automation techniques being employed in our tobacco-producing regions.

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

U.S. POLICY HANDCUFFS SMALL FARMER

(By Nick Kotz)

[Last in a series]

Tereso Morales has struggled all his life at the bottom of the richest agricultural system in history. Since he was nine years old, he has stooped in fields from Oregon to Texas, har-

vesting wealth owned by big farmers, retail food chains, canners and now, by agribusiness conglomerates.

Morales, 35, is still breaking his back in the fields, but with new purpose. His mind is now fired with a dream at sharing in some of the riches of American agriculture. He has joined with 30 other migrant workers and small farmers to grow strawberries in Watsonville, Calif. He hopes to earn $10,000 a year to raise his 11-member family in someplace other than a labor camp or a big city slum.

The 31 families of Cooperativa Compesina in many ways symbolize the problems and aspirations of 13 million poor rural Americans. They are among the 1.5 million small farmers and more than one million migrants who now work the land at far less than poverty-level incomes. They contribute to national statistics one-half of the nation's poverty and substandard housing.

The cooperative movement may give some of these people a way out of poverty. But the odds on their success are small.

They are competing—like the "family farmers" of the country—against powerful, efficient and aggressive "agribusiness" corporations that have moved into American agriculture on a large scale.

Morales and the other families of Cooperativa Compesina, for example, are competing in the California strawberry market with Tenneco, Inc., a $4.3 billion conglomerate corporation, and with S. S. Pierce Co., which both grows and distributes its own brand of premium-priced foods.

They are competing, in a larger sense, with political forces that have shaped federal agricultural policies in ways that favor the largest and most efficient interests in agriculture.

For more than 35 years—to take the most obvious case in point—American industrial workers have been represented by powerful labor unions that have secured minimum wage legislation, unemployment compensation, child labor regulations, workmen's compensation for injuries on the job, collective bargaining rights, and so on. Farm workers, like Morales, generally enjoy none of these rights and benefits.

UNDERCUT BY GOVERNMENT

When the United Farm Workers Organizing Committee, led by Cesar Chavez, sought to achieve some of the same benefits, government responded by undercutting the movement with policies permitting employers to import cheap labor from Mexico and Puerto Rico. When Chavez and his union sought to gain bargaining rights with a retail boycott of grapes and lettuce, the Defense Department increased its purchases of grapes and lettuce.

At the same time, the government has continued its subsidies to large farm operations through the provision of low-cost irrigation water, the development of labor-displacing machinery and generous tax laws.

The U.S. Department of Agriculture, through various policies and actions, has discouraged the development of cooperatives for low-income farmers on grounds that the industrialization of agriculture and the elimination of stoop labor is in the interests of both country and city.

"Government," says James Hightower of the Agribusiness Accountability Project, a foundation-financed operation, "has provided socialism for agribusiness and free enterprise for the small farmer and farm worker."

The problems created in "rural America" by these policies have prompted politicians and presidents to come up with new programs and new rhetoric to "save" the small towns and the small farms of the country. There have been, in recent years, "wars on poverty", "rural development" schemes and concept of "balanced national growth". But thus far, the powerful and impersonal forces of corporate agriculture have been the dominant factors in the changes sweeping the farm economy.

TREND REVERSERS ABSENT

The measures that might reverse the trend—strong farm worker labor unions, generous subsidies to small cooperatives, the redistribution of land from corporate farmers to individual farm entrepreneurs—have not been undertaken.

What is happening in American agriculture—bigness concentration, and the efficiency these things produce—may be good or bad for the country in the long run. But the implications of these tendencies transcend the question of whether Tenneco, Inc., or Tereso Morales will harvest strawberries in California. These implications include the following:

The future shape of the American landscape. Already in this country 74 per cent of the population lives on only 1 per cent of the land. If present trends continue, only 12 per cent of the American people will live in communities of less than 100,000 by the 21st century—60 per cent will be living in four huge megalopli and 28 per cent will be in other large cities.

Rural life, already seriously undermined by the urban migration, will be further eroded. Today, 800,000 people a year are migrating from the countryside to the cities. Between 1960 and 1970 more than half of our rural counties suffered population declines. One result is the aggravation of urban pathology—congestion, pollution, welfare problems, crime and the whole catalogue of central city ills.

The domination of what is left of rural America by agribusiness corporations is not only accelerating the migration patterns of recent decades but raises the spectre of a kind of 20th century agricultural feudalism in the culture that remains.

In response to this vision of the future, the federal government in the 1960s undertook limited measures to stimulate the survival of the small farm and the small towns of America. The antipoverty programs administered by the Office of Economic Opportunity touched the problem in certain ways.

A START THROUGH OEO

Tereso Morales, for example, learned to read and write in an adult education course sponsored by OEO for migrant workers. He learned too, that he and other farm laborers might earn a living growing high-value fruits and vegetables. So he persuaded three of his OEO classmates to join him in putting up $500 apiece to launch Cooperative Compesina, with Morales as president.

Working from sunup to dark in the co-op's 140-acre leased fields, Morales has little time or patience to talk with visitors about abstractions. He is laying several miles of irrigation pipe, and supervising the leveling of irrigation ditches. It is an exacting job. If the irrigation troughs vary by more than one inch in 100 feet water may slop over and mildew the precious strawberries.

The dream or heartbreak at the end of this labor will come next year. If all goes well, each acre of strawberries should produce gross sales of about $9,000. Then the cooperative will find out whether corporate competitors attempt to frustrate its marketing plans.

In a good year, I could earn $5,000 as a migrant," relates Morales, "but that meant traveling for 12 solid months. "It's very hard on the family. How are you going to do that and raise nine kids, send them to school, give them a chance? You can't keep running forever. I'm not moving anymore."

KEYED TO FAMILY

The coordination of cooperative farming is no easy matter, and has produced some failures. Cooperative Compesina divides up land and profits on the basis of family size and family contributions to work. Its members so far are sticking together.

"We want to benefit our community and do all we can to exist," says Morales. "Our members are not afraid to work. With what we have to go back to, this looks pretty good."

The co-op got its crop started with a $100,000 loan from an OEO-funded consulting firm, and a $150,000 loan from the Wells Fargo bank. When local growers tried to block the loan a local Wells Fargo official reportedly told them: "You'll take your money out of the bank, but they'll burn the bank down. What am I supposed to do?"

Despite the indirect assistance from OEO, the federal government—and particularly the Agriculture Department—has done little to assist Morales' co-op and similar ones that are being started by blacks in the South and whites in Appalachia.

TURNED DOWN BY FHA

The Farmers Home Administration turned down Cooperative Compesina's request for a loan.

"The low-income farmer problem is not personally my cup of tea," says Homer Preston, deputy administrator of USDA's Farmer Cooperative Service. "Our conventional co-ops are not exactly enthusiastic about them. They don't have much to offer except labor and it is less important today. These people were cotton choppers.

"They're tied in with idealism and civil rights, and a lot of romanticism. The purpose of cooperatives is not to keep mass numbers in farming but to help those who remain. You can't go against market trends when everything else points to bigness."

Although the conventional co-ops were started by struggling farmers of yesteryear, they today essentially represent big business and seek farmer members who can invest in processing and marketing.

In the course of assisting "bigness," Preston says the FCS is helping merger negotiation between the country's two largest dairy "super co-ops," which between them, control about 40 per cent of the fluid milk supply.

When he came to Washington seeking management training assistance for 100 low-income southern co-ops, says Father A. J. McKnight, FCS advised him to seek help from a private foundation.

"The USDA programs have favored the big commercial farmers and have deliberately tried to eliminate the small family farm," said McKnight, referring to research sponsored by the Agriculture Department and land grant colleges.

At a time when poor Southerners are starting to earn a living growing labor-intensive specialty crops like Okra, tomatoes, sweet potatoes, and cucumbers, McKnight said, USDA is developing strains of the same vegetables which can be harvested mechanically.

TOUGHER STRAWBERRY

Similarly, government-backed research at the University of California is developing a tougher variety of strawberry—with a primary emphasis not on flavor or nutrition, but on its ability to be shipped and picked by machine.

"When I asked about the effects of that strawberry picker on migrant workers," says Alfred Navarro, a consultant to Cooperativa Compesina, "the Extension Service guy said: 'All I worry about is the economic part of it. Let the sociologists worry about that'."

"Mechanization is a fact of life," says Navarro, "but the field worker can't eat the machine. Who deals with the social effect of these machines? The Agriculture Department has got to be responsive to more than one sector of the rural economy."

The clash of farm worker and grower has been high-lighted in recent years by the rise

of Cesar Chavez's United Farm Workers Organizing Committee.

UFOC's major successes to date have been in winning contracts from the new conglomerate farmers, who have entered California fruit and vegetable farming. Primarily because they fear boycotts of their nationally-branded products, the conglomerates say, they have signed contracts while most large independent growers have not.

In the Salinas Valley, for example, four of five contracts won by the union are with national firms: Purex Corp., United Brands, S.S. Pierce Co., and Heublin, Inc.

UNION STILL RESISTED

Meanwhile, the largest independent growers are still bitterly resisting the union, and seek state or national legislation that would restrict its activities. The growers want a law that would prohibit strikes during harvest season and the secondary boycotts by which Chavez has appealed to sympathetic consumers.

The outcome of these battles over agricultural wealth could be an industrialized system of conglomerate farmers and of unionized labor. However, Chavez so far has organized only a small percentage of California migrants, and even these victories are fragile ones, subject to renegotiation in a year or so.

Chavez's ultimate goal is to win economic independence for migrants by creating cooperatives such as Cooperativa Compesina.

They could be helped by a new system of crop subsidies, which base government assistance on economic need rather than on acreage.

Present subsidies, theoretically aimed at controlling overproduction, go mainly to the wealthiest farmers who own the most land. But John Schnittker, Under Secretary of Agriculture in the Johnson administration, argues that subsidy payments for wheat and cotton are far larger than those needed to control surpluses. A substantial part of these subsidies, says Schnittker, simply provide income supplements to the wealthiest farmers.

Some reformers argue that the small farmer can still be given a place in America if the government brings about "land reform," including enforcement of the 1902 Reclamation Law.

This law originally was designed to protect the small farmer. It provided that government-irrigated land could not be owned by absentee landlords, and that no individual could own more than 160 acres of government-irrigated land.

The law has never been enforced. In California alone, corporate landholders continue to occupy and benefit from more than one million acres subject to the 160-acre limitation.

Rep. Jerome Waldie (D-Calif.) and others have proposed legislation by which the government would buy this illegally-held land, and then resell it on generous credit terms to small farmers and low-income cooperatives.

Unless present trends are reversed, the ultimate cost of the new conglomerate revolution in agriculture will be paid by the small towns of the Midwest and of California.

CALLED DISASTROUS

Jack Molsbergen, a real estate man in Mendota, Calif., describes as "disastrous" the effects of conglomerate farming on his town in the western San Joaquin Valley.

Conglomerate farmers such as Anderson Clayton and Co., the country's 185th largest corporation with 1970 sales of $639 million, contribute little to the local economy, says Molsbergen. The conglomerates buy their farm machinery and supplies directly from the factory and their oil directly from the refinery, he says.

When Mendota tried to build a hospital several years ago, says Molsbergen, Anderson Clayton and two other large corporate landowners blocked the project, because it would increase their property taxes.

LIVES ELSEWHERE

"The guy who made the decision for Anderson Clayton lives in Phoenix," explains Molsbergen, "and if you live in Phoenix, you don't need a hospital in Mendota. These corporate guys don't go around with a Simon Legree mustache. They are nice men. It's just the way things are."

Agriculture Department economists do not see any future for the Mendota, Californias, of the country.

"These towns represent the unfulfilled dreams of the people who went there," says USDA economist Warren Bailey. "They are going the same way as the neighborhood grocery. People want to shop where they have a choice. With air-conditioned cars and good roads, they choose to do their shopping in the cities. Iowa really doesn't have room for more than 12 regional centers. The small town will remain only as a pleasant place to live."

As matters now stand, the small towns will die and the small farmer and farm worker will be replaced without any of the attention and national debate that has focussed on other economic disruptions.

LOCKHEED CONTRAST

There is a marked contrast between national concern shown over the economic problems of a Lockheed and over the problems of 150,000 small North Carolina tobacco farmers, who soon will be displaced by a new tobacco harvester.

Woodrow Y. Ginsburg, research director of the Center for Community Change, contrasts that concern:

"When tens of thousands of scientists and skilled technicians were threatened with loss of jobs in the aerospace industry, a host of industrialists, bankers, and others besieged Congress for large-scale loans and special legislation.

"But when even larger numbers of workers are threatened with loss of jobs in the tobacco industry, scarcely a voice is raised. What corporate executive speaks for such workers, what banker pleads for financial aid for them, what congressman or state official calls upon his colleagues to enact special legislation?"

Ginsburg believes no voice is heard because America lacks "a national rural policy that considers the needs and aspirations of the majority of rural Americans—farm workers, small farmers, small independent business men and the aged."

"The farmhouse lights are going out all over America," says Oren Lee Staley, president of the National Farmers Organization. "And every time a light goes out, this country is losing something. It is losing the precious skills of a family farm system that has given this country unbounded wealth. And it is losing free men."

TOBACCO FARMING ENTERS MACHINE AGE

(By William K. Stevens)

DORTCHES CROSSROAD, N.C.—Automation has come at last to the flatlands of the Carolina-Virginia tobacco belt, the last big stronghold of the small yeoman farm in this county, and it is expected to set off yet another wave of farm-to-city and South-to-North migration by blacks.

This year, for the first time, at least four North Carolina tobacco farmers harvested their entire crops using an automatic harvester—a four-legged, four-wheeled contraption of conveyor belts and hydraulic motors that moves down a row of tobacco plants and strips leaf from stalk almost as gently as a human hand would.

The machine was so successful during the harvest season just ended that tobacco experts and the farmers themselves believe it has proved itself in practice. They predict that it will soon be in widespread use.

"This was the breakthrough year," says Dr. F. J. (Pat) Hassler, head of biological and agricultural engineering at North Carolina State University in Raleigh, where the harvester's prototype was developed, beginning in 1948.

"Now that we've had four success stories," Dr. Hassler goes on, "we couldn't stop its spread if we wanted to. Nineteen seventy-one will go down as the year when tobacco finally gave in to the machine age."

One reason why the machine is expected to become popular among farmers is that tobacco is one of the few remaining crops that has required great amounts of expensive hand labor that is hard to recruit. The automatic harvester, operated by one man, does the amount of work customarily performed by a crew of eight farm workers.

The harvesting of most other crops has long since been automated. But unlike corn, cotton and soybeans, tobacco leaves on the same plant ripen at different times and require more delicate handling. This has required a more sophisticated technology that took more time to develop and was viewed more suspiciously by farmers.

Although no precise figures are available, the harvester is expected ultimately to displace thousands of small farmers—perhaps 50,000 of them in North Carolina alone—and their families. Their small holdings will simply be swallowed up by farmers whose automatic harvesters give them a competitive edge and who are encouraged by the harvester's capacity to buy or lease more acreage. In addition, the harvester is expected to eliminate thousands of part-time jobs for students and women.

Most of those expected to be displaced are black. They live in the Virginia-Carolina belt, where flue-cured or cigarette tobacco is produced, in a much smaller Georgia-Florida belt, and in North Carolina, whose 300,000 acres and $600-million-a-year crop give it about two-thirds of the flue-cured market. It is there that the biggest impact is expected.

"The blacks will probably be totally out of North Carolina agriculture by the end of this decade, and certainly by the end of the next decade," says Dr. Selz C. Mayo, head of sociology and anthropology at North Carolina State, and a recognized authority on Negro migration.

EXTENT OF MIGRATION

Indeed, says Dr. Mayo, if the harvester's social impact were to be concentrated in a two-to-three-year period, it would set off an exodus from the tobacco farms "that would make the migration of the children of Israel look like nothing."

Some tobacco buyers believe that the harvester's attractiveness as an economical replacement for hand labor will cause it to take over as much as four-fifths of harvesting operations in North Carolina within five years. Other estimates are more conservative.

One of the four farmers who bought and used the automatic harvester this year was George Dozier, a wiry, white-haired farmer whose ruddy face bears the lines and creases of nearly half a century in the fields. He paused recently at his spread here, 50 miles northeast of Raleigh, to talk about what it has meant.

The armpits of Mr. Dozier's forest-green shirt were wet from a morning of hauling the sweet, pungent tobacco leaves, heat-cured to a bright yellow, to market in nearby Rocky Mount. Squinting his sharp blue eyes against the sunlight, he said that so far he had sold nearly half his crop—about 50,000 pounds—at prices a little higher than the average.

"I just call myself an average farmer," he said. "If I can sell my tobacco a little higher than average on the Rocky Mount market, I'm doing all right."

Therein lay the ultimate test of the harvester.

To Mr. Dozier, the attractiveness of the harvester lay in its long-term economy. Last year, he estimates, he paid $9,000 in wages to field hands during the harvesting season. At that rate, his $11,500 harvester will pay for itself in less than two years. After that money that used to go for labor will turn mostly into profit.

In addition, Mr. Dozier and others say, young men and women just do not want to work the fields anymore. "The problem is not getting them into the fields," he says, "it's getting them to work when they get there."

Because of the economies effected by the harvester, Mr. Dozier believes that farmers equipped with it will soon gather in larger acreages and squeeze out smaller operators.

"There are a heap of four- and five-acre farms around here," Mr. Dozier said, "and I'd guess six to eight acres is the average. I say that in 10 years the man that ain't tending 25 acres is going to go broke." Mr. Dozier himself tended 30 acres this year and harvested another 12 acres of a sharecropper charging him $150 for the service.

SEVERAL "PASSES" NEEDED

Mr. Dozier's harvester makes use of a mechanical "defoliator" consisting of two large rubber screws mounted parallel to each other. As explained by one of the device's inventors, Dr. Charles W. Suggs of North Carolina State the tobacco stalk passes between the two screws, which turn in opposite directions and knock off the ripe tobacco leaves while leaving the stalk unharmed. The leaves then fall onto a conveyor belt that carries them to a trailer at the rear of the harvester.

The screws and conveyor belts are mounted on a four-poster frame with a wheel on the bottom of each post. The entire harvester is powered by hydraulic motors that, in turn, are activated by an air-cooled gasoline engine.

Since tobacco leaves ripen at different times, it is necessary to make several passes through a field. Luckily for the harvesters, ripening begins at the bottom of the stalk and proceeds gradually upward. It is necessary, therefore, only to raise the screws a little higher on each trip through a field.

The advent of the harvester has depended on many other developments since the "old-timey days," as they are called hereabouts, when tobacco production was dependent on human hands and mule power. Together, it is estimated that the new developments have reduced the requirement for human labor by 85 per cent.

First came the tractor and automatic planting equipment. Then automatic oil or gas burners to replace hand-tended wood fires in the curing barns. Then chemicals to kill "suckers," or worthless shoots that grow on tobacco plants and steal nutrients from the leaves. "Suckering" plants used to be done by hand and required much human labor.

Finally came "bulk curing," in which tobacco leaves are placed in metal racks to be cured instead of tied in small bundles and hung on sticks to be cured. Bulk curing was seen as a prerequisite to use of the automatic harvester. (Mr. Dozier this year bought five new bulk-curing "barns" or small aluminum sheds, worth $6,000 a piece.)

At the same time, Federal and state policies have been liberalized to enable farmers to buy or lease Government-imposed poundage and acreage "allotments" from other farmers and thereby to develop the large spreads that would make the use of a mechanical harvester worthwhile.

All of these developments have now crystalized around the automatic harvester. "All that remained," says Dr. Hassler of North Carolina State, "was for the farmers to gain confidence in it."

LEGAL ANALYSIS OF THE EQUAL RIGHTS AMENDMENT

Mr. BAYH. Mr. President, for 48 years the equal rights amendment has been pending before Congress. We all know that the history of this proposal has been one of inaction and delay on the part of Congress. Finally, however, we have at long last begun to see some action.

The House will soon vote on the amendment, and I am assured that they will be able to cast off the crippling amendments added by the House Judiciary Committee. Thus, this measure will soon be before the Senate once again.

In order to help Senators in studying this proposal, I ask unanimous consent to have printed in the RECORD an article entitled "The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women," published in the Yale Law Journal. This piece, written by Barbara A. Brown, Thomas I. Emerson, Gail Falk, and Ann E. Freedman, presents a well-documented case in support of the proposed amendment. While I do not necessarily agree with every opinion expressed therein, I found it to be a masterly piece of scholarship, which deserves to be brought to the attention of every Senator and the public.

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

[From the Yale Law Journal, April 1971]

THE EQUAL RIGHTS AMENDMENT: A CONSTITUTIONAL BASIS FOR EQUAL RIGHTS FOR WOMEN

(By Barbara A. Brown, Thomas I. Emerson, Gail Falk, and Ann E. Freedman†)

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification.

Proposed Amendment to the United States Constitution [1]

INTRODUCTION

American society has always confined women to a different and, by most standards, inferior status. The discrimination has been deep and pervasive. Yet in the past the subordinate position of more than half the population has been widely accepted as natural or necessary or divinely ordained. The women's rights movement of the late nineteenth and early twentieth centuries concentrated on obtaining the vote for women; only the most radical of the suffragists called into question the assumption that woman's place was in the home and under the protection of man. Now there has come a reawakening and a widespread demand for change. This time the advocates of women's rights are insisting upon a broad reexamination and redefinition of "woman's place."

Historically, the subordinate status of women has been firmly entrenched in our legal system. At common law women were conceded few rights. Constitutions were drafted on the assumption that women did not exist as legal persons. Courts classified women with children and imbeciles, denying their capacity to think and act as responsible adults and enclosing them in the bonds of protective paternalism. Over the last century, it is true, the legal status of women has gradually improved. Common law rules have been altered in many states and some additional rights conferred by legislation. A marked advance was made in 1920 with the adoption of the Nineteenth Amendment granting suffrage to women. Since then, there has been other progress. But the development has been slow and haphazard. Major remnants of the common law's discriminatory treatment of women persist in the laws and institutions of all states. In addition, efforts during the past century to protect working women have created a new set of laws which turn out to discriminate against women rather than secure equality.[2]

In the present legal structure, some laws exclude women from legal rights, opportunities, or responsibilities. Some are framed as legislation conferring special benefits, or protection, on women. Others create or perpetuate a separate legal status without indicating on their face whether the position of women ranks below, or above, the position of men. Many of the efforts to create a separate legal status for women stem from a good faith attempt to advance the interests of women. Nevertheless, the preponderant effect has been to buttress the social and economic subordination of women.

Our legal structure will continue to support and command an inferior status for women so long as it permits *any* differentiation in legal treatment on the basis of sex. This is so for three distinct but related reasons. First, discrimination is a necessary concomitant of any sex-based law because a large number of women do not fit the female stereotype upon which such laws are predicated. Second, all aspects of separate treatment for women are inevitably interrelated; discrimination in one area creates discriminatory patterns in another. Thus a woman who has been denied equal access to education will be disadvantaged in employment even though she receives equal treatment there. Third, whatever the motivation for different treatment, the result is to create a dual system of rights and responsibilities in which the rights of each group are governed by a different set of values. History and experience have taught us that in such a dual system one group is always dominant and the other subordinate. As long as woman's place is defined as separate, a male-dominated society will define her place as inferior.

The structured legal and social discrimination against women is now being challenged by the demand for women's liberation. This movement for equality is made possible by relative affluence, broader educational opportunities for women, and mechanization of industry. It has been given impetus by the weakening of family ties, the growing participation of women in the labor force, increasing life expectancy, and widespread concern about over-population. It accompanies more enlightened and flexible attitudes towards relations between the sexes. And it is allied with the struggles of minorities, youth, and other forces seeking new ways of life, and new ways for people to relate to one another, in a world that has so plainly failed to live up to its possibilities. As a result of these and other factors the movement for equality in the status of women seems on the verge of a major breakthrough.

Nevertheless, it is only recently that widespread discussion has begun about what changes in the legal structure are necessary to achieve a unified system of equality.[3] This article undertakes to contribute to this dis-

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cussion by exploring in detail some of these necessary changes. We consider first methods by which the legal structure can be changed, reaching the conclusion that a new constitutional amendment is necessary (Part I). We then trace the development in Congress of proposals for such a constitutional amendment (Part II). Thereafter we discuss the constitutional framework of the Equal Rights Amendment: its underlying principles and their place in the general structure of the Constitution (Part III). We then explore some aspects of the transition period after ratification (Part IV), and finally, we describe the anticipated operation of the Amendment in four significant areas: protective labor legislation, domestic relations law, criminal law, and the military (Part V).

I. THE NEED FOR A NEW CONSTITUTIONAL AMENDMENT

There are three methods of making changes within the legal system to assure equal rights for women. One is by extending to sex discrimination the doctrines of strict judicial review under the Equal Protection Clause of the Fourteenth Amendment. A second is by piecemeal revision of existing federal and state laws. The third is by a new constitutional amendment. These alternatives are not, of course, mutually exclusive. The basic question is what method, or combination of methods, will be most effective in eradicating sex discrimination from the law.

A. Extension of the equal protection clause

In past years many proponents of equal rights for women believed that the goal could be achieved through judicial interpretation of the Equal Protection Clause, as applied to both state and federal governments.[4] Thus the President's Commission on the Status of Women argued in 1963 that "the principle of equality [could] become firmly established in constitutional doctrine" through use of the Fourteenth and Fifth Amendments, and concluded that "a constitutional amendment need not now be sought." At the present time that viewpoint has been abandoned by active supporters of women's rights.[5] This shift in position is fully justified. An examination of the decisions of the Supreme Court demonstrates that there is no present likelihood that the Court will apply the Equal Protection Clause in a manner that will effectively guarantee equality of rights for women. More important, equal protection doctrines, even in their most progressive form, are ultimately inadequate for that task.

The Supreme Court's approach to women's rights has been characterized, since the 1870's, by two prominent features: a vague but strong substantive belief in women's "separate place," and an extraordinary methodological casualness in reviewing state legislation based on such stereotypical views of women. The result has been that the Court has never found a sex-based classification to violate the Equal Protection Clause; moreover, it has rendered this cumulative judgment with an off-handedness and tolerance for inconsistency which contrast sharply with its approach to discrimination in the areas of race, national origin, and poverty.

The Supreme Court's conception of women's "separate place" is rooted in its nineteenth-century decisions denying women such elementary civil rights as voting and the opportunity to practice law, on the grounds that these rights were not among the "privileges and immunities" of United States citizenship and hence were subject to exclusive state regulation.[6] In his well-known concurrence in *Bradwell v. Illinois*, the decision which approved the exclusion of women from the legal profession, Justice Bradley stated:

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Man is, or should be, woman's protector and defender. 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.[7]

The question for the Supreme Court in the voting and practice of law cases was not whether women, as compared to similarly situated or qualified men, were being denied a right or privilege in violation of the Equal Protection Clause. The question was not even formulated in these terms, much less considered, because men and women were seen as occupying separate spheres of social life.

The idiom of due process also generally perpetuated the belief in woman's separate place. In *Muller v. Oregon*,[8] one of the first cases to consider at length the constitutional position of women, the Supreme Court accepted the argument made in the famous Brandeis brief (largely prepared by Josephine Goldmark) that women required special protection in employment which could not, under the liberty-of-contract doctrine of *Lochner v. New York*,[9] be extended to men. Strictly speaking, the Court in *Muller* was only holding that the fixing of maximum hours for women by the state was not arbitrary or unreasonable under the Due Process Clause of the Fourteenth Amendment. It did not address itself to whether women were entitled to equal rights with men under the Equal Protection Clause. But the Court's long recitation of the inferior physical capacities and social position of women, its grouping of all members of the sex into one classification regardless of individual differences, and its conclusion that "she is properly placed in a class by herself" had far-reaching consequences for equal protection law.[10]

Muller has been widely utilized by federal and state courts to sustain not only factory legislation applicable only to women against due process objections, but also many kinds of sex-based laws against equal protection challenges.[11] The basic belief that women were different and that this justified different treatment under law became accepted doctrine, and when the claim for women's rights was at last raised directly under the Equal Protection Clause in 1948, the Court simply applied the style and content of its earlier decisions to the equal protection area as well. In *Goesaert v. Cleary* [12] several women challenged a Michigan statute providing that no female could be licensed as a bartender unless she was "the wife or daughter of a male owner," chiefly on the grounds that the exception was arbitrary and irrational. Justice Frankfurter, speaking for the Court, thought the question "need not detain us long." In putting it to rest he casually answered the broader and much more significant question of whether the state could distinguish at all between men and women in licensing bartenders:

Michigan could, beyond question, forbid all women from working behind a bar. This is so despite the vast changes in the social and legal position of women. The fact that women may now have achieved the virtues that men have long claimed as their prerogatives and now indulge in vices that men have long practiced, does not preclude the States from drawing a sharp line between the sexes, certainly in such matters as the regulation of liquor traffic . . . . The Constitution does not require legislatures to reflect sociological insight, or shifting social standards, any more that it requires them to keep abreast of the latest scientific standards.[13]

Having reaffirmed the doctrine of woman's separate place, Justice Frankfurter had no difficulty finding a "basis in reason" for the Michigan statute: the legislature might believe that "moral and social problems" would be less when no females except wives and daughters of male bar owners were permitted to be bartenders.[14] The *Goesaert* case thus employed the "reasonable classification" test in considering challenges to sex-based legislation under the Equal Protection Clause; the plaintiff had the burden of overcoming a strong presumption that the sex classification was valid and showing that it was in some way "arbitrary" and "unreasonable." In announcing such a passive standard of equal protection review,[15] the Court delegated to state legislatures almost complete discretion in their treatment of women's basic rights—a discretion which was considered intolerable, at the time *Goesaert* was decided, with regard to many other groups in the population.[16]

While Justice Frankfurter's off-hand dismissal of women's basic civil right to engage in an occupation might seem outrageous today,[17] the Supreme Court has never seriously re-examined its assumption of woman's separate place and the equal protection doctrines that flow from it. In *Hoyt v. Florida*,[18] the most recent Supreme Court case to give extended consideration to women's constitutional rights, the Court upheld a Florida statute which excluded women from jury service unless they voluntarily applied. Justice Harlan's opinion for the Court followed closely the reasoning of *Goesaert*, and even harkened back to Justice Bradley's concurrence in *Bradwell v. Illinois* almost ninety before.

[W]e [cannot] conclude that Florida's statute is not "based on some reasonable classification," and that it is thus infected with unconstitutionally. Despite the enlightened emancipation of women from restrictions and protections of bygone years, and their entry into many parts of community life formerly considered to be reserved to men, woman is still regarded as the center of home and family life. We cannot say that it is constitutionally impermissible 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.[19]

Supporters of equal rights for women in the 1960's relied heavily on the possibility that the Supreme Court would at last reject its assumption of woman's separate place and the related reasonable classification test, and apply to sex differentiation cases the standards of strict scrutiny that had evolved in equal protection theory. One such standard is the "fundamental interest" test. Under this formula, if a fundamental right is at stake, differential classification and treatment is permissible only if the government affirmatively demonstrates the most compelling reasons.[20] A second standard of strict scrutiny is the "suspect classification" formula developed in cases reviewing the state laws based on racial distinctions. The rule here is that any classification based on race is strongly suspect, "bears a heavy burden of justification," and "will be upheld only if it is necessary, not merely rationally related, to the accomplishment of a permissible state policy." [21]

The fundamental interest and suspect classification doctrines operate to cancel the normal presumption of constitutionality and to put a heavy burden on the government to justify the differential treatment. They are therefore more powerful weapons against discrimination than the "reasonable classification" test. Yet both doctrines are seriously deficient as instruments for achieving equal rights for women. The fundamental interest test applies only where the particular right claimed to be infringed is a "fundamental" one, and the Court has been torn with disagreement over what kinds of rights and in-

terests are embraced within this category of special constitutional protection.[22] Hence the fundamental interest test might not be applied to many important areas in which women are treated differently from men, such as the right to work overtime or to obtain damages for loss of consortium. The suspect classification test provides a potential basis for more comprehensive protection against sex discrimination; under its operation, sex-based classifications would be considered "suspect" and subjected to strict judicial scrutiny. But because this doctrine allows the government to justify even a suspect classification by "compelling reasons," it would permit some classifications based on sex to survive.[23] Thus this standard too would not guarantee an effective system of equality which, as we shall argue, demands the elimination of all such classifications.[24]

The theoretical problems of achieving equal rights for women through judicial interpretation of the Equal Protection Clause are matched by serious practical difficulties. Whatever hopes were held in the 1960's that the Supreme Court would adopt stricter standards in sex differentiation cases have been undermined by its recent decision in *Williams v. McNair*.[25] Williams involved a challenge to sex segregation in the state university system of South Carolina. Under state law all the universities in that system admit both male and female students except two: the Citadel, primarily a military school, is open only to men, and Winthrop College, "a school for young ladies," permits only women to be regular degree candidates. A group of males challenged the sex restriction of Winthrop College on equal protection grounds. A three-judge court dismissed their suit, applying the reasonable classification test and finding that the classification was not "without any rational justification."[26] The Supreme Court, without hearing argument and without opinion, affirmed.[27] This summary disposition of the case, even more peremptory than in *Goesaert*, suggests that the Court is not about to impose strict standards of review in sex classification cases.[28]

Nor does a strong movement for the application of stricter equal protection standards seem to be emerging from decisions in the lower federal and state courts. In recent years some federal and state courts have struck down legislation or other official action establishing more severe criminal penalties for women than for men, providing for total exclusion of women from jury service discriminating in the admission of women to the principal state university, excluding most women from bartending, approving the refusal to serve women at a bar, and disallowing suits by women for loss of consortium.[29] On the other hand, federal and state courts have also upheld differences in social security benefits, exclusion of women from juries, exclusion of women from compulsory service in the military, differences in the age of majority, and incapacity to sue for loss of consortium.[30] Some of the language used in the decisions is more sympathetic to women's rights than that of the Supreme Court. But most of it follows the same nineteenth century view of women's status and function in society. There are no signs of theoretical or practical developments that would sweep the Supreme Court in a bold new direction.

On this state of affairs one cannot say that the possibility of achieving substantial equality of rights for women under the Fourteenth and Fifth Amendments is permanently foreclosed. But the present trend of judicial decisions, backed by a century of consistent dismissal of women's claims for equal rights, indicates that any present hope for large-scale change can hardly be deemed realistic.

B. Piecemeal revision of existing laws

Over the years, some proponents of women's rights have thought sex discrimination could be ended most effectively if legislatures prepared women and men gradually for equality by a series of step-by-step reforms. There is no constitutional obstruction to the elimination of discrimination in our legal system by the piecemeal revision or repeal of existing federal and state laws. However, such suggestions unrealistically assume a delicacy and precision in the legislative process which has no relationship to actual legislative capability. More importantly, the process is unlikely to be completed within the lifetime of any woman now alive. Such a method requires multiple actions by fifty state legislatures and the federal congress, by the courts and executive agencies in each one of these jurisdictions, and by similar government authorities in numerous political subdivisions as well. This government machinery would have to be mobilized to repeal or modify the statutes and practices in scores of different areas where unequal treatment now prevails. To be comprehensive such efforts would require a tremendously expensive, sophisticated, and sustained political organization, both nationally and within every state and locality. Campaigns to change the laws one by one could drag on for many years, and perhaps in some areas never be finished.

Even if it were possible to mobilize the nation's political machinery, legislative change alone would fail to provide an adequate foundation for the attainment of full legal equality for women. Any plan for eliminating sex discrimination must take into account the large role which generalized belief in the inferiority of women plays in the present scheme of subordination. As noted above, there is need for a single coherent theory of women's equality before the law, and for a consistent nationwide application of this theory. This is scarcely possible through legislative change alone, for the creation of basic policy would be divided among multiple federal, state, and local agencies.[31] Moreover, so long as they believe the laws against discrimination are subject to derogation at the option of the current legislature, many individuals and institutions will not undertake wholeheartedly the far-reaching changes which genuine sex equality requires. An unambiguous mandate with the prospect of permanence is needed to assure prompt compliance.

In essence, piecemeal legislative reform is what has been going on for the past century. Considered realistically, this approach, at least by itself, simply lacks the breadth, coherence, and economy of political effort necessary for fundamental change in the legal position of women.

C. The case of a constitutional amendment

If expansion of the Equal Protection Clause and piecemeal legislation will not result in effective action, there remains the third alternative: a new constitutional amendment. Passage of a new amendment is a serious and difficult step, but we believe that it is a sensible, necessary means of achieving equal rights for women. A major reform in our legal and constitutional structure is appropriately accomplished by a formal alteration of the fundamental document. Claims of similar magnitude, such as the right to be free from discrimination on account of race, color, national origin, and religion, rest on a constitutional basis. The amending process is designed to elicit national ratification for changes in basic governing values, and those who feel that the Supreme Court has gone too far in recent years in effectuating constitutional change through interpretation should especially welcome the amending process.

Many of the reasons why piecemeal legislation is inadequate are also positive advantages in proceeding by amendment. The major political action—passage and ratification of the Amendment—can be accomplished by a single strong nationwide campaign of limited duration. Once passed, the Amendment will provide an immediate mandate, a nationally uniform theory of sex equality, and the prospect of permanence to buttress individual and political efforts to end discrimination. The political and psychological impact of adopting a constitutional amendment will be of vital importance in actually realizing the goal of equality. Discriminatory laws, doctrines, attitudes and practices are set deep in our legal system. They are not easily dislodged. The expression of a national commitment by formal adoption of a constitutional amendment will give strength and purpose to efforts to bring about a far-reaching change which, for some, may prove painful.

There are likewise strong reasons for developing a consistent theory and program for women's equality under the aegis of an independent Equal Rights Amendment, rather than by judicial extension of the Equal Protection Clause. An amendment that deals with all sex discrimination, and only sex discrimination, corresponds roughly to the boundaries of a distinct and interrelated set of legal relationships. As already noted, woman's status before the law in one area, such as employment, relates both practically and theoretically to her status in other areas, such as education or responsibility for family support. Coming to grips with the dynamics of discrimination against women requires that we recognize the indications of, the excuses for, and the problems presented by women's inferior status. An understanding of these dynamics in any one field informs and enlightens understanding of sex bias elsewhere in the law. This is because, in the past, the legal and social systems have been permeated with a sometimes inchoate, but nevertheless pervasive, theory of women's inferiority.

Moreover, the achievement of equality under the law for women presents its own special problems. These problems differ in many ways from those involved in eliminating discrimination in other spheres where equal protection theory has been applied. They are closest to those which are raised in the area of race discrimination. Yet even here there are significant differences. Women are not residentially segregated from men. The socio-economic connections which link different aspects of sexism are not necessarily the same as those that link the many facets of racism. Women are a majority, not a minority; thus, changes in the status of women may affect most of the population, rather than a small part. Furthermore, without a constitutional mandate, women's status will never be accorded the special concern which race now receives because of the history of the Fourteenth Amendment. For these reasons it is important to have a constitutional amendment directed to this specific area of equality, out of which a special body of new law can be created.

The adoption of a constitutional amendment will also have effects that go far beyond the legal system. The demand for equality of rights before the law is only a part of a broader claim by women for the elimination of rigid sex role determinism. And this in turn is part of a more general movement for the recognition of individual potential, the development of new sets of relationships between individuals and groups, and the establishment of institutions which will promote the values and respect the sensibilities of all persons. Adoption of an Equal Rights Amendment would be a sign that the nation is prepared to accept and support new creative forces that are stirring in our society.

II. THE DEVELOPMENT IN CONGRESS OF THE CURRENT PROPOSAL

The call for an Equal Rights Amendment is not new in 1971. The Amendment has been introduced in every Congress since 1923, and has been given serious consideration on four occasions: 1946, 1950, 1953, and 1970. The Congressional debates and action on those

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occasions suggest that while there has often been strong support for an amendment to secure equal rights for women, there has also been doubt and disagreement about the concept of "equality" and about the Amendment's consequent impact on existing laws and institutions. To some extent, this confusion or failure to state clearly the meaning and effect of the Amendment may have been due to political rather than intellectual considerations. In a virtually all male Congress, at a time when consciousness in this country about women's rights was low, the proponents may have wisely refused to be too explicit about the laws and institutions the Amendment would reach. Whatever the reason, however, the debates reveal recurring uncertainty about two questions in particular: how absolute is the Amendment's central principle that "equality of rights shall not be denied or abridged by the United States or by any State on account of sex;" and should the Amendment explicitly exempt certain kinds of laws from its basic principle? [32]

The absoluteness of the Amendment's substantive provisions (which have remained unchanged since 1943) was questioned when the Senate first debated the Amendment in 1946. Although the proponents stood for unified treatment of men and women in the majority of cases, they wanted to create some exceptions. As Senator Pepper said, "[s]ome of us want this record beyond any question of doubt to be distinct that we believe that this amendment . . . would not deprive the legislatures or the Congress of the power to make reasonable classifications in the protection of women." [33] However, the proponents were unable to translate this policy into concrete guidelines which could distinguish "reasonable" from "unreasonable" classifications.

The question of whether exceptions should be explicitly written into the Amendment was raised when the Senate next debated the Amendment in 1950 and 1953. On both occasions Senator Hayden succeeded in amending the Equal Rights Amendment to provide that "[t]he provisions of this article shall not be construed to impair any rights, benefits, or exemptions conferred by law upon persons of the female sex." [34] Senator Hayden felt that women, in order to be equal, needed more and different "rights" than men possessed. He defined "rights" of women to mean only the benefits and privileges of citizenship; the duties of citizenship, in contrast, women could not be expected to perform. The proponents of the Equal Rights Amendment failed to counter this conception of a dual legal system with an alternative view that men and women should have equality on the same terms. As limited by Senator Hayden's resolution, the Equal Rights Amendment passed the Senate in both 1950 and 1953, but the House did not follow up on the Senate's action.[35]

The related issues of absoluteness and exceptions which were prominent in the earlier debates arose again in the very different theoretical and political context of 1970. The work and support of the Citizens' Advisory Council on the Status of Women, and other organizations, provided the Amendment's sponsors in the 91st Congress with a more coherent approach than had previously been articulated. Representative Martha Griffiths and Senators Birch Bayh and Marlow Cook presented the Amendment as a broad mandate for the unified treatment of women and men; the only qualifications of the principle, they suggested, would be based on compelling social interests, such as the protection of the individual's right of privacy and the need to take into account objective physical differences between the sexes.[36] There was some disagreement among the proponents, however, about the concrete impact of the Amendment on existing laws, particularly the Selective Service Act, and in this area the traditional debate about absoluteness and exceptions reappeared. Representative Griffiths said in the House that under the Equal Rights Amendment women would be required to serve in the Armed Forces, though, as is true of men, only in positions for which they were fitted.[37] Senator Bayh, sensing strong opposition in the Senate to the drafting of women, argued that the Amendment would allow Congress to exempt women from military service on the ground of "compelling reasons" of public policy.[38] Senator Sam Ervin was not convinced, and successfully offered an amendment, in the tradition of Senator Hayden's limitations, providing: "This article shall not impair, however, the validity of any law of the United States which exempts women from compulsory military service." [39] Although the Equal Rights Amendment had passed overwhelmingly in the House, acceptance of the Ervin amendment in the Senate effectively blocked final passage during the 91st Congress.[40]

The long and frustrating history has left many points in uncertainty. All the issues have never been raised in any one year, and while there may have been consensus on a point in one debate, it often vanished when the issue was discussed again years later. The articulation of a clear and cohesive position on the meaning and impact of the proposal, which would furnish a basis for legislative debate and provide a guide to future interpretation, has not emerged from prior Congressional consideration of the Equal Rights Amendment. We turn, therefore, to a consideration of the basic legal principles which the Amendment, as presently conceived, must be deemed to establish in our constitutional structure.

III. THE CONSTITUTIONAL FRAMEWORK

The Equal Rights Amendment embodies fundamental principles which are derived from the purposes the Amendment is designed to achieve, the operational conditions necessary to attain those objectives, and the existing context of constitutional doctrine. It is not possible here to do more than examine these principles in a general and preliminary way. They can be fully developed only by the usual process of constitutional adjudication.[41]

A. The basic principle

The basic principle of the Equal Rights Amendment is that sex is not a permissible factor in determining the legal rights of women, or of men. This means that the treatment of any person by the law may not be based upon the circumstance that such person is of one sex or the other. The law does, of course, impose different benefits or different burdens upon different members of the society. That differentiation in treatment may rest upon particular characteristics or traits of the persons affected, such as strength, intelligence, and the like. But under the Equal Rights Amendment the existence of such a characteristic or trait to a greater degree in one sex does not justify classification by sex rather than by the particular characteristic or trait. Likewise the law may make different rules for some people than for others on the basis of the activity they are engaged in or the function they perform. But the fact that in our present society members of one sex are more likely to be found in a particular activity or to perform a particular function does not allow the law to fix legal rights by virtue of membership in that sex. In short, sex is a prohibited classification.

This principle is already widely accepted with respect to many activities. To take an example, virtually everybody would consider it unjust and irrational to provide by law that a person could not be admitted to the practice of law because of his or her sex. The reason is that admission to the bar ought to depend upon legal training, competence in the law, moral character, and similar factors. Some women meet these qualifications and some do not; some men meet these qualifications and some do not. But the issue should be decided on an individual, not a group, basis. And in such a decision, the fact of being male or female is irrelevant. This remains true whether or not there are more men than women who qualify. It likewise would remain true even if there were no women who presently were qualified, because women potentially qualify and might do so under different conditions of education or upbringing. The law owes an obligation to treat females as persons, not statistical abstractions.

What is true of admission to the bar is true of all forms of legal rights. If we examine the various areas of the law one by one most of us will reach the same conclusion in each case. Sex is an inadmissible category by which to determine the right to a minimum wage, the custody of children, the obligation to refrain from taking the life of another, and so on. The law should be based on the right to a living wage for each person, the welfare of the particular child, the protection of citizens from murder, and not on a vast overclassification by sex.

This basic principle of the Equal Rights Amendment derives from two fundamental judgments inherent in the decision to eliminate discrimination against women from our legal system. First, the Amendment embodies the moral judgment that women as a group may no longer be relegated to an inferior position in our society. They are entitled to an equal status with men. This moral decision implies a further practical judgment—that such an equal status can be achieved only by merging the rights of men and women into a "single system of equality." By this we mean that the decision to eliminate women's historically inferior social position requires the prohibition of sex classification in the law. We reject an alternative conception of "equality"—that women's separate place should be "upgraded" in social status and material rewards. As already noted, such a dual system, in which women would have a different but "equal" status, has proven to be illusory. There is no reason to suppose that the present inferior status of women would materially change through adoption of a constitutional amendment which attempted to maintain a dual system of sex-based rights and responsibilities.

Second, the basic principle of the Equal Rights Amendment flows from the set of moral and practical judgments that have been made with respect to the fundamental rights of the individual in our society. Classification by sex, apart from the single situation where a physical characteristic unique to one sex in involved (as will be discussed in the next subsection), is always an overclassification. A permissible legislative goal is always related to characteristics or functions which are or can be common to both sexes. But in a classification by sex all women or all men are included or excluded regardless of the extent to which some members of each sex possess the relevant characteristics or perform the relevant function. Such a result is in direct conflict with the basic concern of our society with the individual, and with the rights of each individual to develop his or her own potentiality. It negates all our values of individual self-fulfillment.

To achieve the values of group equality and individual self-fulfillment, the principle of the Amendment must be applied comprehensively and without exceptions. Arguments that administrative efficiency or other countervailing interests justify limiting the Amendment contradict its basic premises.

First, the decision to protect the value of individual self-fulfillment embraces the judgment that efficiency in government operations is not a sufficient reason to ignore individual differences. In other words, the government cannot rely upon the administrative technique of grouping or averaging

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where the classification is by sex. There are some situations where it is permissible for the law to operate on the basis of groups or averages. For example, individuals can be classified by age—under 21 or over 65—even though there are individual differences as to maturity or senility.[42] In such cases individual rights are sacrificed to administrative efficiency. But the Equal Rights Amendment makes the constitutional judgment that this is not acceptable where the factor of sex is concerned. Here, whatever the price is efficiency, the classification must be made on some other basis.[43]

Examples of this judgment appear frequently in our law today. Thus the assertion that some women leave jobs to marry or to move with their husbands does not constitute ground for discrimination on account of sex in government employment under Executive Order 11478, or in private employment under Title VII of the Civil Rights Act of 1964.[44] A balance of values has been struck. The decision has been made not to penalize all women because of a behavior pattern characteristic of some women. And any greater efficiency in a classification based on sex, rather than on an individual basis, has been excluded as a justifying factor. The Equal Rights Amendment makes the same judgment, but on a broader scale and in constitutional terms.[45]

Second, the Equal Rights Amendment embodies the moral and practical judgment that the prohibition against the use of sex as basis for differential treatment applies to all areas of legal rights. To the extent that any exception is made, the values sought by the Amendment are undercut; women as a group are thrust into a subordinate status and women as individuals are denied the basic right to be considered in terms of their own capacities and experience. And, as noted above, the interrelated character of a system of legal equality for the sexes makes a rule of universal application imperative. No one exception, resulting in unequal treatment for women, can be confined in its impact to one area alone. Equal rights for women, as for races, is a unity.

A third, equally decisive consideration leads to the same conclusion. There is no objective basis available to courts or legislatures upon which differential treatment of men and women could be evaluated. As already pointed out, such judgments can be made only in terms of a dual system of rights, the rights of women being grounded in one set of values and the rights of men in another. Not only is such a system inevitably repressive of one group, but it affords no standard of comparison between groups. For example, in *Hoyt* v. *Florida* [46] the Supreme Court accepted a value system for women which viewed them as "the center of home and family life," and undertook to be "fair" to women by excusing them from jury service, a "benefit" not given to men. Upon what basis can it be said, however, that this outcome puts men and women upon a level of "equality"? Nor did the Court, in making that decision, attempt to weigh the countless other legal differentiations between the sexes in order to strike an overall balance of "equality."

Fourth, the judgment as to whether differential treatment is justified or not would rest in the hands of the very legislatures and courts which maintain the existing system of discrimination. The process by which they make that judgment involves the same discretionary weighing of preferences as has resulted in the present inequality. This is true whether the standard of judging is "reasonable classification," "suspect classification," or "fundamental interest." There is no reason to believe that such a decision-making apparatus will end up in a substantially different position from what we have now. Only an unequivocal ban against taking sex into account supplies a rule adequate to achieve the objectives of the Amendment.

From this analysis it follows that the constitutional mandate must be absolute. The issue under the Equal Rights Amendment cannot be different but equal, reasonable or unreasonable classification, suspect classification, fundamental interest, or the demands of administrative expediency. Equality of rights means that sex is not a factor. This at least is the premise of the Equal Rights Amendment. And this premise should be clearly expressed as the intention of Congress in submitting the Amendment to the states for ratification.

It is argued that this position is naive, impractical, and leads to absurd results. Various examples of supposedly outlandish consequences are given. Most of these examples, such as those relating to public toilet facilities, are dramatic but are diversions from the major issues. On the central problems—property rights, marriage and divorce, the right to engage in an occupation, freedom from discrimination in employment and education—the burden of persuasion is on those who would impose different treatment on the basis of sex. Before a judgment on the feasibility of the Equal Rights Amendment can be made, however, it is necessary to pursue the legal analysis somewhat further.

B. Laws dealing with physical characteristics unique to one sex

The fundamental legal principle underlying the Equal Rights Amendment, then, is that the law must deal with particular attributes of individuals, not with a classification based on the broad and impermissible attribute of sex. This principle, however, does not preclude legislation (or other official action) which regulates, takes into account, or otherwise deals with a physical characteristic unique to one sex. In this situation it might be said that, in a certain sense, the individual obtains a benefit or is subject to a restriction because he or she belongs to one or the other sex. Thus a law relating to wet nurses would cover only women, and a law regulating the donation of sperm would restrict only men. Legislation of this kind does not, however, deny equal rights to the other sex. So long as the law deals only with a characteristic found in all (or some) women but *no* men, or in all (or some) men but *no* women, it does not ignore individual characteristics found in both sexes in favor of an average based on one sex. Hence such legislation does not, without more, violate the basic principle of the Equal Rights Amendment.

This subsidiary principle is limited to *physical* characteristics and does not extend to psychological, social or other characteristics of the sexes. The reason is that, so far as appears, it is only physical characteristics which can be said with any assurance to be unique to one sex. So-called "secondary" biological characteristics and cultural characteristics are found to some degree in both sexes. Thus active or passive attitudes, or interests in literature or athletics, like degrees of physical strength or weakness, appear in members of each sex. Differences in treatment attributable to such shared traits must be based upon their existence in the individual, not upon a classification by sex.

Instances of laws directly concerned with physical differences found only in one sex are relatively rare. Yet they include many of the examples cited by opponents of the Equal Rights Amendment as demonstrating its nonviability. Thus not only would laws concerning wet nurses and sperm donors be permissible, but so would laws establishing medical leave for childbearing (though leave for child*rearing* would have to apply to both sexes). Laws punishing forcible rape, which relate to a unique physical characteristic of men and women, would remain in effect. So would legislation relating to determination of fatherhood.

Application of this subsidiary principle raises questions which should be carefully scrutinized by the courts. For one thing, while differentiation on the basis of a unique physical characteristic does not impair the right of a man or a woman to be judged as an individual, it does introduce elements of a dual system of rights. That result is inevitable. Where there is no common factor shared by both sexes, equality of treatment must necessarily rest upon considerations not strictly comparable as between the sexes. This area of duality is very limited and would not seriously undermine the much more extensive areas where the unitary system prevails. But the courts should be aware of the danger.

The danger is increased by the possibility of evasion in the application of the subsidiary principle. Unless that principle is strictly limited to situations where the regulation is closely, directly and narrowly confined to the unique physical characteristic, it could be used to justify laws that in overall effect seriously discriminate against one sex. A court faced with deciding whether a law relating to a unique physical characteristic was a subterfuge would look to a series of standards of relevance and necessity. These standards are the ones courts now consider when they are reviewing, under the doctrine of strict scrutiny, laws which may conflict with fundamental constitutional rights. It is possible to identify at least six factors that a court would weigh in determining whether the necessary close, direct, and narrow relationship existed between the unique physical characteristic and the provision in question.

These factors can be explained most easily in terms of a hypothetical case; a government regulation to reduce absenteeism at policymaking levels by barring women from certain jobs. Such a regulation might be defended by the government as being based on a unique physical characteristic of women, namely, the potential for becoming pregnant, and consequent need for leaves of absence for childbearing.[47] In considering whether to sustain this rule, a court would weigh the following factors on the basis of factual evidence presented by the party attempting to justify the regulation:

First, the proportion of women who actually have the characteristic in question. In this case, the issue would be the number of women eligible for the jobs who were actually capable of becoming pregnant.

Second, the relationship between the characteristic and the problem. In this example, the court would inquire about the proportion of women who were likely actually to become pregnant and also choose to bear the child; the length of time most women would require for childbearing; and the extent to which a leave of this duration would actually interfere with an important governmental function.

Third, the proportion of the problem attributable to the unique physical characteristic of women. Here the court would consider the fact that only a small proportion of the total problem of long-term absenteeism and job transfer was caused by pregnancy; it would inquire into the proportion which was attributable to other factors, such as military duty, political disagreements, childrearing, job mobility, and disability due to illness or accidents, all of which cause absenteeism among workers of both sexes.

Fourth, the proportion of the problem eliminated by the solution. Here it would seem clear that the solution of not hiring women would eliminate absenteeism caused by pregnancy, but as indicated in the third factor, this would only be a small proportion of the overall problem of absenteeism.

Fifth, the availability of less drastic alternatives. "Less drastic" in this sense may mean first, less onerous to the person being

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restricted; second, more limited in the number of persons or opportunities affected; or third, not based on sex at all, or "sex neutral." To determine whether less drastic alternatives were available to deal with the problem, the court would inquire into the feasibility of individualized procedures for screening out those who were likely to be absent, and the possibility of alternative devices such as job pairing and substitution.[48]

Sixth, the importance of the problem ostensibly being solved, as compared with the costs of the least drastic solution. Here the question would be the seriousness of the harm and dislocation that would actually result if an employee in one of the covered positions were absent for the length of time necessary for childbearing. The problem as thus measured would be balanced against the costs of the solution, in this case the continuation of sexual stereotyping and overbroad discrimination that would be caused by excluding all women from the jobs covered by the regulation.

How the courts would balance each of these factors is difficult to predict in advance of actual adjudication, although in the example given it is obvious that the combined weight of the overbroad classification by sex and the marginal relationship of the unique physical characteristic of pregnancy to the problem of absenteeism would require invalidation of the regulation. In any case, all of these considerations are of the kind that courts constantly deal with in similar cases where reliance upon a legitimate factor is used to achieve illegitimate ends. And however the borderline cases are resolved, the margin of error is not likely to be so large as to jeopardize the basic principle.

C. Classifications based on attributes which may be found in either sex

Classifications are a necessary part of lawmaking and the Equal Rights Amendment does not, of course, require an end to all classifications based on recognition of the differences among people. The Amendment forbids the use of sex as a basis for legal differentiation, but it permits the legislature to continue to classify on the basis of real differences in the life situations and characteristics of individuals. It is important to keep in mind the nature and uses of these legitimate classifications as well as to note the possibility of their being employed to evade or nullify the prohibition against sex classification.

As pointed out above, classifications based upon sex necessarily include members of one sex who should not be covered, or exclude members of the other sex who should be covered, by a given law. Unfortunately, legislatures have traditionally used sex classifications as shorthand for other classifications which, although they are more precise, are also somewhat more difficult to administer. Because sex classifications were acceptable, they were often employed merely because members of one sex actually or apparently predominated in the smaller group to whom the law was really directed, whether or not a narrower more equitable classification was practicable. This common practice reinforced the pre-existing majority of one sex in the regulated or protected activity; for example, if only women can get extensive leaves for childbearing, it becomes economically impossible for men to stay home to care for children while their wives work. Hence sex classifications begin to seem both natural and essential to sound legislation in many areas of public concern.

Elimination of sex classifications by the Equal Rights Amendment, however, does not prohibit the legislature from achieving legitimate purposes by other methods of classification. In 1965, Pauli Murray and Mary Eastwood proposed the substitution of realistic "functional" classifications for sex classification. They argued that:

"If laws classifying persons by sex were prohibited by the Constitution, and if it were made clear that laws recognizing functions, *if performed*, are not based on sex per se, much of the confusion as to the legal status of women would be eliminated." [49]

This analysis need not be limited to literal "functions." It also applies to classifications based on prior education and training, experience, skills, or other measurable traits and abilities. The term "functional classifications" can thus be used to refer to all non-sex-based classifications.

A legislature taking this approach would make laws which reflected and related to the changing reality of individual lives and potentials, regardless of sex, instead of legislating women into conformity with each other, and pretending that all men are different from all women in terms of a given legislative purpose. For example, a legislature could use a non-sex-based classification to provide job retraining to the class of individuals who had been absent from the labor force for a specified number of years, for whatever reason. The functional basis would allow both men and women in that situation to get necessary encouragement to re-enter the labor force, unlike a blanket sex preference which would unfairly select out for special treatment individuals of one sex to the exclusion of the other. Likewise, a rule allowing workers to take sick leave when any member of their household was sick would be an appropriate functional classification. Unlike a rule allowing such leave only to mothers, which denies parents the opportunity to choose which of them will stay home, the functional rule is neutral, allowing workers to choose whether they wish to follow traditional sex-roles or share childrearing and other familial responsibilities. A system of functional classification may thus be utilized in ways which achieve important social objectives without discriminating against individuals on account of their sex.

On the other hand such classifications, though formulated without explicit sex reference, may in practice fall more heavily on one sex than the other. This opens the possibility that non-sex-based classifications can be used to circumvent the Equal Rights Amendment. The fact that women's life situations, on the average, are different from those of men, partly or largely because of past discrimination, makes such an outcome more than a remote possibility. For example, today most women have little choice about whether or not to give up full-time jobs outside the home in order to care for any children they bear, at least while the children are young. This lack of choice is one important reason why women predominate among the housekeepers and childrearers of our society. Consequently, to use a modified form of our previous example, a law might prohibit adults with primary responsibility for child care from working in managerial jobs, on the grounds that the function of caring for children was inconsistent with substantial occupational responsibility. Such a law or government regulation would constitute a serious evasion of the Equal Rights Amendment. Its practical effect would be to exclude the majority of women and very few men in certain age groups from a whole range of relatively well-paid jobs which most people consider desirable.

The problem of formally neutral laws which may have a discriminatory impact arises under any law which attempts to eradicate discrimination based upon a single prohibited factor in a context where many other factors may legitimately be taken into account. The same issues have consistently appeared in the enforcement of laws prohibiting discrimination because of race, religion, national origin, and labor organizing activity. The courts have responded by looking beyond the adoption of the "neutral" classification into the realities of purpose, practical operation, and effect. Where the classification is seen to be a subterfuge, or to nullify the objectives of the anti-discrimination law, the courts have not hesitated to strike it down. As one court has stated:

A procedure may appear on its face to be fair and neutral, but if in its application a discriminatory result ensues, the procedure may be constitutionally impermissible.[50]

And recently the Supreme Court, in holding a North Carolina literacy test invalid under the Voting Rights Act of 1965, said:

From this record we cannot escape the sad truth that throughout the years Gaston County systematically deprived its black citizens of the educational opportunities it granted to its white citizens. "Impartial" administration of the literacy test today would serve only to perpetuate these inequities in a different form.[51]

In applying these principles to the Equal Rights Amendment the courts would follow standards similar to those set forth in the preceding section with respect to laws which propose to base differentiation upon a unique physical characteristic of one sex. Of those standards, only one would be different for functional classification. Since a functional classification is necessarily limited to those individuals who actually perform a given task or share a given characteristic, the first question—the proportion of women who actually have the characteristic in question—would not be asked by the reviewing court. However, unlike unique physical characteristic classifications, in which by definition some or all of one sex and none of the other are included, the extent of the disproportion between the numbers of women and the numbers of men included in a functional class may vary. A given functional classification may include 100,000 women and 10 men, or a disproportion of 10,000 to 1, while another may affect 45,000 women and 40,000 men, or a disproportion of 9 to 8. The first classification would obviously be a more likely vehicle for perpetuating sex inequality than the second, and the presence of this factor would thus go far to weight the balance against the law.

Protection against indirect, covert or unconscious sex discrimination is essential to supplement the absolute ban on explicit sex classification of the Equal Rights Amendment. Past discrimination in education, training, economic status and other areas has created differences which could readily be seized upon to perpetuate discrimination under the guise of functional classifications. The courts will have to maintain a strict scrutiny of such classifications if the guarantees of the Amendment are to be effectively secured.

D. The privacy qualification

The Equal Rights Amendment must take its place in the total framework of the Constitution and fit into the remainder of the constitutional structure. Of particular importance for our purposes is the relation of the new amendment to the constitutional right of privacy.

In *Griswold* v. *Connecticut* [52] the Supreme Court recognized an independent constitutional right of privacy, derived from a combination of various more specific rights embodied in the First, Third, Fourth, Fifth and Ninth Amendments. This constitutional right of privacy operates to protect the individual against intrusion by the government upon certain areas of thought or conduct, in the same way that the First Amendment prohibits official action that abridges freedom of expression. Thus in the *Griswold* case the right was held to invalidate a Connecticut statute which prohibited the use of contraceptives even by married couples

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and thereby infringed upon intimate relationships in marriage and the home. The position of the right of privacy in the overall constitutional scheme was not explicitly developed by the Court. Presumably the point at which the right of privacy cuts off state regulation will be determined by a test which balances the two interests at stake. Or it may be that the right of privacy, where found to be applicable, will be held to afford an absolute protection against government intrusion. In either event laws or other official action implementing the Equal Rights Amendment would have to be applied in a manner that was consistent with individual privacy under the constitutional guarantee.[53]

The exact scope of the right of privacy was likewise not spelled out by the Court in the *Griswold* case. Yet it is clear that one important part of the right of privacy is to be free from official coercion in sexual relations. This would have a bearing upon the operation of some aspects of the Equal Rights Amendment. Thus, under current mores, disrobing in front of the other sex is usually associated with sexual relationships. Hence the right of privacy would justify police practices by which a search involving the removal of clothing could be performed only by a police officer of the same sex as the person searched.[54] Similarly the right of privacy would permit the separation of the sexes in public rest rooms, segregation by sex in sleeping quarters of prisons or similar public institutions, and appropriate segregation of living conditions in the armed forces.

In such situations, the facilities provided for the sexes would have to be equal in quality, convenience and other respects. Likewise an employer could not refuse to hire women because he did not want to build or remodel rest rooms for them. Failure to provide separate facilities for one sex would not be permissible when the presence of such facilities is related to the exercise of some other right, such as the right to be free of discrimination in employment. Moreover, the separation of facilities for reasons of privacy would not mean that individuals or groups would be foreclosed from making flexible and various arrangements for the common use of facilities such as bathrooms. In the same way, hospitals could allow patients to choose a ward with individuals of the same sex or of both sexes. Such noncoerced decisions, springing from individual values and preferences in areas of private conduct, would not be affected by the Amendment.

It is impossible to spell out in advance the precise boundaries that the courts will eventually fix in accommodating the Equal Rights Amendment and the right of privacy. In general it can be said, however, that the privacy concept is applicable primarily in situations which involve disrobing, sleeping, or performing personal bodily functions in the presence of the other sex. The great concern over these matters expressed by opponents of the Equal Rights Amendment seems not only to have been magnified beyond all proportion but to have failed to take into account the impact of the young, but fully recognized, constitutional right of privacy.

It should be added that the scope of the right of privacy in this area of equal rights is dependent upon the current mores of the community. Existing attitudes toward relations between the sexes could change over time—are indeed now changing—and in that event the impact of the right of privacy would change too.

E. *Separate-but-equal, benign quotas, and compensatory aid*

In the field of equal protection law, particularly as it deals with discrimination on account of race, various other questions of constitutional interpretation have been presented for judicial determination. The most important of these are the separate-but-equal doctrine, the benign quota, and compensatory aid. Similar issues might arise under the Equal Rights Amendment.

1. Separate-but-equal

The separate-but-equal doctrine in race relations was established in *Plessy v. Ferguson* in 1896 and abandoned in *Brown v. Board of Education* in 1954. It has been suggested that a similar principle might be acceptable in sex relations in those situations, such as separate dormitory facilities in a university or separate toilet facilities in public buildings, where separation carries no implication of inferiority for either sex. A broader application of the doctrine is also conceivable, as in the field of education.[55]

Under the analysis here proposed, however, the separate-but-equal doctrine would have no place in the Equal Rights Amendment. It would simply operate to perpetuate a dual system of equality, different but not equal. Essentially the separate-but-equal doctrine is a device for keeping one group in a subordinate position. This is particularly true where the separated group, by virtue of past subordination, starts from a generally weaker position, with fewer opportunities, less training, and fewer material and institutional resources. Experience has shown, furthermore, that in practice separate-but-equal is rarely in fact equal.

The question of separate facilities for personal living is more appropriately solved by application of the privacy doctrine. Use of the privacy principle not only focuses attention on the real issue but avoids the necessity of determining whether different treatment imposes or implies inferiority. In all other contexts—such as public education and employment—the separate-but-equal doctrine is open to the same objections when employed in connection with sex relations as it is in race relations.

It should be noted that the Equal Rights Amendment applies only to government action, both state and federal. Separation of the sexes in the private sector is not foreclosed. Hence separate social, recreational, cultural or other facilities, so long as they do not affect areas of public concern, are available for those who wish to create them. As to facilities provided or subsidized by the government, however, the separate-but-equal doctrine is wholly inconsistent with the principles and objectives of the Equal Rights Amendment.[56]

2. Benign Quotas and Compensatory Aid

In the area of equal rights for women, as in other areas of equal rights, problems may arise of assuring equality in practice as well as in legal theory. The question then becomes whether or not the government can take sex into account in acting affirmatively to support the system of equal rights.

In the field of race relations various methods for taking affirmative action to secure actual, as well as theoretical, equality have been employed. One is the benign quota. As used in attempting to maintain integrated housing projects, this device establishes a quota for each race on the theory that once the percentage of one race gets beyond a "tipping point" members of the other race will not enter or stay in the project. Quotas have also been utilized in other areas, such as employment and education, to assure that a minimum number of the minority group will receive work or training. Other kinds of affirmative action consist of some form of compensatory aid. This involves special assistance to members of one race in order to give them the education, training or other help that will put them more quickly on a level of equality with the other race. The benign quota may result in denial of benefits to individual members of either group on account of their race; compensatory aid may deny benefits to members of the majority group on account of race.

The Supreme Court has not passed on the constitutional issues raised by these devices. It is not improbable, however, that in the field of race relations they will be sustained. In equal protection theory, while classification by race would be "suspect," it is not totally prohibited. And where the courts determine that the purpose of the differentiation is to benefit members of the minority race, rather than impose a status of inferiority, they are likely to find there are "compelling reasons" for the special treatment.[57] Such an approach would not be permissible under the Equal Rights Amendment. For reasons already stated, the guarantee of equal rights for women may not be qualified in the manner that "suspect classification" or "fundamental interest" doctrines allow.

This does not mean, however, that the government would be powerless to take measures designed to assure women actual as well as theoretical equity of rights. Authority to remedy the effects of past discriminations as well as to implement the provisions of the Equal Rights Amendments is available and unquestioned. Thus the courts have power to grant affirmative relief in framing decrees in particular cases. As in racial desegregation cases, such decrees could provide remedies for past denial of equal rights which take into account sex factors and give special treatment to the group discriminated against. Similar remedial measures, on a broader scale, could also be the subject of legislative action. This form of affirmative action may appear, paradoxically, to conflict with the absolute nature of the Equal Rights Amendment. But where damage has been done by a violator who acts on the basis of a forbidden characteristic, the enforcing authorities may also be compelled to take the same characteristic into account in order to undo what has been done. This form of relief is a common feature of laws seeking to eliminate discrimination, whether the restriction imposed be absolute or not.[58]

Similarly, the federal government under implementing powers granted by the Equal Rights Amendment, and the states under their general police powers, could enact legislation dealing with the various economic and social conditions that underlie and support the present system of inequality.[58] In addition, functional classifications in which members of one sex predominate but which include members of the other sex who are similarly disadvantaged can legitimately be used to support a system of equal rights.

The premise form these measures would take cannot be delineated in advance of the event. This is an area in which remedies must be fitted to particular problems as they appear.

F. State action

The Equal Rights Amendment as proposed provides that equality under the law shall not be denied or abridged "by the United States or by any State." Like the Fourteenth and Fifteenth Amendments, therefore, the legal effect of the Amendment is confined to "state action." How does this much-debated and increasingly complex concept apply in the context of women's rights?

Constitutional doctrines pertaining to state action have developed mainly in the area of race discrimination. They are intricate and confusing, but in essence they embody two concepts. One is that the existence of state action depends upon the nature and degree of state involvement. This may range all the way from a direct criminal prohibition of certain conduct to the maintenance of conditions in the society that permit private activity to exist; from direct action to apparent inaction; from de jure to de facto responsibility. The second is that state action depends upon the function being performed.

Footnotes at end of article.

The activity out of which the claim for equal protection arises may range from a clearly governmental operation, such as the election of public officials, to purely personal relationships, such as a private social gathering. Both the "state involvement" and the "public function" concepts lead in the same direction and ultimately to the same conclusion: "state action" takes place in the public sector of society and not in the private sector.[60]

The Supreme Court has not decided whether the "state action" required is the same for all kinds of constitutional rights involved, or even whether it is the same for all kinds of claims made under the Equal Protection Clause. In other words it is not clear whether the same showing of "state action" is necessary to assert a right under the Equal Protection Clause as under due process or freedom of speech guarantees; or whether "state action" is identical in cases alleging discrimination on account of race as discrimination on account of religion, wealth, nationality or politics. In general it may be assumed, however, that while the basic principles for determining state action remain the same, the relevant factors may apply differently in different situations.

So far as the Equal Rights Amendment is concerned the problem would be to determine what should be held part of the public sector, in which different treatment on account of sex is forbidden, and what is part of the private sector, in which different treatment is allowed. In some areas the factors relevant to that determination would tend toward a broad application of state action. Thus in the areas of voting (already covered by the Nineteenth Amendment), employment (including the right of representation by the collective bargaining agent), and education, the public character of the function would lead to the requirement that the state assume areas where the private sector would extend more broadly and the scope of "state action" would be correspondingly diminished. Such would be the case as to social, recreational and fraternal associations; facilities such as hotels, restaurants and theaters; and the right to dispose of property by will. Here the public effects of sex differentiation are less significant and a wider realm of individual choice is acceptable.

The application of the state action concept under the Equal Rights Amendment has been most widely discussed in connection with the area of education. There is no doubt that the Equal Rights Amendment would eliminate differentiation on account of sex in the public schools and public university systems. The decision of the Supreme Court in *Williams v. McNair*, noted previously,[61] could not stand. The question has been raised, however, as to how the Amendment would affect private schools and universities. The courts have so far consistently ruled that even the large private universities are not within the sphere of state action.[62] The decision of the Supreme Court in *Walz v. Tax Commission of the City of New York*,[63] upholding tax exemption for religious institutions, indicates that state-confered tax exemptions alone would not bring private schools and universities into the state action realm. Thus it appears that, in the absence of special factors, under present court decisions on state action private educational institutions would remain within the private sector, not subject to the constitutional requirements of the Equal Rights Amendment.[64]

The current state of the law on state action in the field of education, however, will be subject to further development as the goals of the Equal Rights Amendment are pressed upon the courts. It would seem clear that the basic principles of state action would, as a general proposition, require that the state eliminate male domination from the educational system. What this would demand in specific instances cannot be spelled out in detail at this point. To the degree that large private institutions, functioning in a quasi-public capacity, provide a significant share of the education which counts most heavily toward achievement in our society, they will be required to operate without discrimination against women. The public sector in education would never be construed to embrace all private schools or colleges. Nevertheless, under present conditions, the Equal Rights Amendment will operate to expand the area in which different treatment of the sexes is impermissible in the area of education.

In general, it may be said that the concept of state action would be rigorously applied up to the point necessary to achieve the objectives sought by the Equal Rights Amendment. In the long run, as discrimination against women disappeared, however, it would be desirable for the public sector, in which state action prevailed, to diminish, and the private sector, in which individual preferences were recognized, to expand.

G. Other matters of interpretation and wording

Several other questions of interpretation, as to which no serious problems arise, remain to be noted. One is the meaning of the word "rights" as used in the Amendment. The proponents have always made it clear that the exercise of rights entails the performance of duties and that the term "rights" includes all forms of privileges, immunities, benefits and responsibilities of citizens. By 1971, even the Amendment's opponents grant this, abandoning Senator Haydens distinctions.

Consensus has also been reached on the meaning of the enforcement clause of the Amendment. In 1943, the Senate Judiciary Committee used the language of the Eighteenth Amendment, that "Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation."[65] The committee intended that this provision be construed as limiting Congressional authority in implementing the Amendment to that already provided by some existing federal constitutional power. Such is not, however, the intention of the present proponents. And the ambiguity has been clarified in the resolution introduced in this session by Representative Griffiths.[66] The enforcement provision is now similar to that in the Thirteenth, Fourteenth, and Fifteenth Amendments, and reads: "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."[67] The states, not operating under a system of delegated powers, need no further grant of authority to implement the provisions of the Amendment.

There remains the question whether the present wording of the substantive provisions of the Amendment, which has been stable since 1943, can be clarified or improved. There is no persuasive reason to make any change. In the first place, the present language states the central idea succinctly. Its wording is similar to other constitutional amendments establishing and protecting fundamental rights, notably the Fourteenth, Fifteenth, and Nineteenth. Like them, the Equal Rights Amendment states a general principle rather than spelling out the concept of equal rights in detail. This permits development of more specific doctrines through constitutional litigation and adaptation of the basic mandate to unforeseen situations and new conditions, a process which has proved generally successful throughout our history.

Second, a search for more appropriate wording in the constitutions of other countries has not yielded positive results. Provisions granting equal rights for women do occasionally exist. Thus, Article 3, Section 2 of the Constitution of the German Federal Republic provides: "Men and women are equal before the law." This formulation, however, does not seem preferable to the Equal Rights Amendment.

Finally, use of this wording does not bind proponents to older, unacceptable theories sometimes advanced in previous debates. On the contrary, the responsibility rests upon the present Congress to attach to the Amendment the meaning it now intends.

H. Summary

We believe that the Equal Rights Amendment, broadly construed in the manner set forth above, furnishes a viable structure for achieving equality of rights for women. The basic proposition—that differences in treatment under the law shall not be based on the quality of being male or female, but upon the characteristics and abilities of the individual person that are relevant to the differentiation—is founded in the fundamental values of our society. Most of the objections which have been addressed to the absolute form of the Amendment are answered by the fact that the Amendment is inapplicable to laws dealing with unique physical characteristics of one sex or by application of the constitutional right of privacy. Such other objections as have been advanced simply run counter to the major premises upon which the concept of equal rights for women stands. Furthermore, they must fall before the intransigent fact that no system of equal rights for women can be effective which attempts to litigate in each case the judgment whether the differentiation is "reasonable" or "justified" or "compelled." As a matter of constitutional mechanics, therefore, the law must start from the proposition that all differentiation is prohibited.

IV. PROBLEMS OF TRANSITION

The Equal Rights Amendment provides for a two year period after ratification before it goes into effect. This time will give the states and the federal government an opportunity to conform their laws to the mandate of the Amendment. Some opponents of the Amendment claim that this attempt to revise laws and practices will prove hopelessly confusing and difficult. Undoubtedly the transitional problems are important and will entail the expenditure of much thought and energy. But they are often far overstated. Technically, reviewing state laws to discover those which violate sex equality and reformulating them to satisfy the Equal Rights Amendments is easily within the competence of our legislative and judicial institutions. This task ought, however, to be entrusted wherever possible to persons who are sensitive to the existence of sex discrimination and who are fully committed to extirpating it wherever it appears.

A. Legislative revision

Given a desire to comply with the Amendment, legislative revision of existing laws is quite feasible. In the first place, legislatures will have received a broad national mandate from the Congress, and will have begun to discuss these issues when ratifying the Amendment. Momentum and guidance normally unavailable to them will be provided by the simultaneous action of many states on the same project. Calling upon the legislatures to make changes in such an atmosphere will be far different from relying on them, without an Amendment, to revise all their laws. Moreover, broad changes in important and complex areas of legislation have been successfully carried out under such circumstances in the past. When the Social Security Act[68] was passed in August, 1935, every state found it necessary to enact an unemployment compensation statute—a form of legislation with which we had had no experience whatever in this country—and to establish a complex system of admin-

Footnotes at end of article.

istration. Yet all this was substantially accomplished in less than eighteen months. Many states have revised their commercial laws and adapted the Uniform Commercial Code to fit their needs. Connecticut and Illinois recently recognized the need for change in their criminal laws and enacted new penal codes.[69] These revisions of large bodies of legislation (and related judicial precedent) have been effected without causing widespread uncertainty or confusion.

Second, the amount of work involved is limited by the fact that the Equal Rights Amendment affects only state action. Furthermore, some of the changes in official policy will be accomplished by administrative agencies, most of which have full power to conform their practices to the Amendment, by regulation or otherwise, without going to the legislature for new authorization.

The procedures for accomplishing law revision vary throughout the country, according to the institutions and practices of the different states. Most states, however, have some official body, often a committee of the legislature, called the Law Reform Commission or the Legislative Council, which oversees statutory change. These commissions normally operate between sessions of the legislature and are the traditional instrument for reforming state law. They would normally be expected to be involved in the changes required by the Equal Rights Amendment.

In implementing the Equal Rights Amendment, however, it is particularly important that the group primarily responsible for the work include the Amendment's principal constituency, the women of the state. Two factors should be taken into account by governors in appointing a group to manage the review. One is the need for legal talent and familiarity with the areas of law requiring change. The other is the necessity that the group be responsive to women from all sectors of the community, for they are the ones whose needs and preferences are paramount in the revision process. This is not to suggest that these two components will be completely distinct in composition and role. Many of the lawyers involved ought to be women, and the representatives of community groups will aid in all aspects of the project.

In creating their commissions, the states can draw on a wide range of institutional resources. The state university law school, equipped to do research and drafting, will probably be the institution most often consulted and chosen to oversee the task. In some states, the Commission on the Status of Women would be an appropriate starting point. Such commissions, with women members, exist in every state, and an Interstate Association keeps the groups in contact. The State Association of Women Lawyers, the National Conference of Law Women, and the State Bar Association are other sources of legal skills. Likewise, groups such as the American Civil Liberties Union, Women's Equity Action League, and the National Organization of Women could provide advice and research in many states.[70]

The group given main responsibility for the legal study should include women from community groups such as the local chapter of the National Welfare Rights Organization, the League of Women Voters, women in union locals, and the state Democratic and Republican women's clubs. As members or close consultants to the working body, these women would take part in policy decisions regarding the new laws. They would also serve as conduits for the opinions and ideas of other women in the state.

On a national scale, several groups might offer aid to the states in their work. The Citizens' Advisory Council on the Status of Women, created by Executive Order in 1963,[71] has done much work on the Equal Rights Amendment. Its research would be a source of ideas and information for the state groups on the form and substance of new legislation. The Council of State Governments, mainly an information-sharing association, could also prove helpful by circulating data about action which the various states are taking to bring their laws into compliance with the Amendment. The National Conference of Commissioners on Uniform State Laws could draft uniform laws in some of the areas in which major change will have to be made. Their Uniform Marriage and Divorce Law, for example, already follows the principles of the Equal Rights Amendment, and many states might want to adopt that law instead of doing their own rewriting.

As the Uniform Marriage and Divorce Law shows, the task of revising state laws and practices is not one which must be undertaken as a totally new and fresh project. Much work has already been done. The Model Penal Code goes a long way toward removing sex discrimination from the criminal law. In virtually every legal area affected by the Amendment there has been some experience, some thinking, or some work in progress. The job that remains is to mould and complete the materials already partially created to suit the needs of the particular states.

Even after such good faith efforts have been made (or in cases of failure to complete the revision), there remain other problems of transition. The new legislation, or old law in areas in which the legislature did not act, will inevitably raise questions of construction and application. These matters the courts will be called upon to resolve.

B. The general rules for judicial application of the equal rights amendment

To the extent that Congress and the state legislatures have expressly indicated the impact the Equal Rights Amendment is meant to have on existing law, that legislative history will govern later judicial interpretation. However, in many instances there may be no clear legislative mandate available, and the courts will have to determine the impact of the Amendment in light of its general legislative history and settled principles of constitutional adjudication. The doctrines developed by the courts for this task have given them broad authority to make sensible and practical adjustments in conforming current laws to the requirements of the constitutional mandate. Thus, the courts have the power to construe legislation to avoid unconstitutionality or even to avoid constitutional doubts; they may hold certain sections or applications of a law to be separable from others in order to save parts of the law; they may extend the scope of a statute to reach those wrongfully excluded; or they may invalidate the law *in toto*. The considerations governing the use of these various methods of construction have not always been made explicit in judicial opinions. Nevertheless patterns emerge from an examination of the cases, and it is possible to predict with considerable accuracy what the courts will do in most situations.[72]

In cases challenging statutes under the Equal Rights Amendment the courts will be faced with essentially two alternatives: either to invalidate the estate or to equalize its application to the two sexes. If the latter alternative is selected, there may sometimes be a question as to the proper basis for equalization. However, the more difficult problems posed in the application of other constitutional doctrines, such as vagueness or chilling effect, are unlikely to arise here.[73]

In determining the impact of a constitutional provision upon a non-conforming statute, courts look primarily to the legislative intent behind the statute in question. Whether the statute falls completely or is modified in some way depends upon the court's assessment of what the legislature itself would have done had it known that all or part of its original enactment would be invalid. Of course, such legislative intent is often not easily ascertained. Where legislative history is scant, or lacking altogether, there is little for courts to rely on except their own judgment about what the legislature must have intended. Then, too, the further question arises as to which legislature's intent is relevant—the one which passed the bill originally, an amending legislature, if any, or the one currently in session.[74]

In these circumstances, critics have charged that legislative intent and the policy judgment of the reviewing court are nearly indistinguishable. However that may be, the courts have tended to structure their judgment in terms of certain standard factors which are thought to provide at least rough guides to probable legislative intent and, equally important, to rational results in adjusting statutes to constitutional requirements. Since several of these factors are often present in one case, it is useful to describe the factors briefly and then, by way of illustrating their operation, analyze selected cases.

The first of these interpretive factors is a practical consideration of the *importance* of the legislation and the *feasibility* of retaining it in the altered form required by the constitutional mandate. If the challenged statute deals with a subject of major significance, the court will attempt to find a saving construction, even if that requires a strained interpretation of the statutory language on its face. On the other hand, if the saving construction produces a result which is not workable as a practical matter, or requires drastic changes in other areas to be viable, the court will be inclined to strike down the statute. For example, a court would be most unwilling to invalidate a revenue law or a voting qualifications statute, because taxes and voting are crucial to the political system. However, it might refuse to extend a law prohibiting night work for women to cover men, because such extension of coverage would not be feasible without fundamental changes in industrial organization, and because the subject matter is one that could readily await legislative action.[75]

Second, the courts are influenced by the *proportional difference* between what the original enactment was designed to cover relative to how much it can or must constitutionally include. This factor may be reflected either in terms of the number of persons who would be added or excluded relative to the original number, changes in geographical area covered, the number of original provisions which remain, or other indices of the percentage of the statute added or subtracted. Thus if the class added by construction is small in comparison with the classes already included, the court will generally assume that the legislature would prefer the statute to stand despite a minor change and will probably extend the law to conform with the new constitutioal mandate. If the proportion is reversed, the court might, by invalidating the law, refer the matter back to the legislature for decision.[76]

A third factor which strongly influences the courts is whether the statute in question is *civil* or *criminal*. Courts have long observed a maxim that penal laws are to be strictly construed. To avoid judicial creation of new crimes beyond those established by the legislature, courts will refuse to extend a criminal law to cover groups of people implicitly or explicitly excluded on the face of the law. In other words, the courts will not presume that the legislature, faced with the problem of unconstitutionally under-inclusive penalties, would have chosen to extend them to a new group.[77] As one court put it, in the process of invalidating an entire penal statute:

By striking out the exemption as unconstitutional, it leaves subject to criminal pros-

Footnotes at end of article.

ecution those the Legislature expressly intended should be exempt.

As to them it would be making that a crime which was never intended should be. The exemption renders it impossible to enforce the legislative will.[78]

The three factors discussed so far are the principal ones which guide the courts in determining legislative intent when the legislative history of the statute or the constitutional provision itself does not explicitly resolve the issue. There are two additional considerations which may influence judicial resolution of a constitutional challenge, but they operate with less force and clarity.

The first is related to the criminal-civil distinction. If a saving construction has the effect of extending a *burden* to a previously excepted class, the courts are somewhat less likely to adopt it than if the new construction extends a *benefit* previously denied those excepted. Thus a statute prohibiting women from being bartenders would be stricken down rather than extended to men; but a law giving only mothers of illegitimate children a right to custody would be extended to fathers.[79] There are two kinds of ambiguities, however, in the benefit-burden analysis, both of which may make it difficult for courts to appraise the benefits and burdens involved. First, a law may have a variable impact within the covered classification. Thus, a law providing a lower age of termination of parental support and control for women than men, or a law setting maximum hours for female workers, provides benefits to some of the class covered by the law (those who want to be free of parental supervision and those who do not want to be forced to work long hours) and burdens to others (those who want to be supported through college by their parents and those who want to earn high overtime wages). Second, a law which provides a benefit to one class may entail a cost to another class. Thus, a law providing overtime pay for female employees may be intended to benefit them but also burdens the employer. Where the burden falls on the general public, as in the case of a benefit supported by tax funds, the court may be inclined to ignore the burden or cost aspect of the equation and extend the benefit to improperly excluded classes. But where the burden is borne by private individuals or groups the court may react differently.[80] For these reasons the benefit-burden dichotomy will often require further analysis.

The final consideration, which is probably the most frequently mentioned by judges, is actually the least important. In a series of cases dating back at least to *United States v. Reese*[81] in 1875, courts have claimed that they lack the power to add words to statutes, although they possess the power to exercise words or to interpret them freely: Several commentators have rightly been critical of this semantic distinction on the ground that the answer to the question of what the legislature would have wanted to happen is not contingent on whether the result requires the addition or removal of words.[82] An examination of the cases in which courts have refused to reach a given result for methodological reasons suggests that alternative bases exist for most of these decisions, including hostility on the part of the court to the substantive policy embodied in the challenged statute.[83] In other words, semantic considerations appear to play more of a role in the courts' description of what they are doing than in the actual results. This factor can therefore be largely ignored as a basis of decision, although it may tip the scales one way or another in an unusually close case.[84]

The factors outlined above do not exhaust all the possibilities. But they do suggest the principal guidelines for judicial determination of "legislative intent." Since these factors sometimes militate against each other in particular cases, judicial interpretation of the Equal Rights Amendment can only be predicted if the relative weights accorded each are taken into account. The way in which these considerations operate in the actual process of judicial decision can best be seen from a brief examination of cases in areas most comparable to the Equal Rights Amendment.[85]

In several cases arising under the Fifteenth Amendment, state voting statutes which discriminated on their face against blacks were automatically extended to cover blacks as well as whites.[86] In those cases, the number added by the court was small in proportion to the number of people already included; in addition voting statutes are of prime importance to the operation of government and the inclusion of the new group did not raise administrative problems. Under the Nineteenth Amendment, prohibiting denial of the right to vote on account of sex, the same result was reached even though a large number of new voters (potentially over 50 per cent) was added to the rolls.[87] In these cases the subject matter—voting—was clearly the dominant factor. Courts are unwilling to invalidate such laws, thereby leaving the state without a statute on voting qualifications and procedures. Even when the number added by the change is large in comparison to the number covered by the original enactment, the importance of the law requires extension rather than invalidation.

The equal protection decisions probably provide the closest analogies to the cases likely to arise under the Equal Rights Amendment. Dealing with discrimination against specified classes of individuals, they have usually resulted in the extension of benefits to the previously excluded group. For example, in *Sweatt v. Painter*[88] and *McLaurin v. Oklahoma State Regents*[89] the right of access and treatment substantially identical to that accorded white students in state institutions of higher education was extended to black students. Such extension of benefits has not been limited to cases involving racial discrimination. In *Levy v. Louisiana*[90] the right to recover wrongful death benefits was extended to illegitimate children and in *Shapiro v. Thompson*[91] the right to receive welfare benefits was extended to cover residents who had recently moved from another state. Extension in these cases was consistent with the general principles of construction discussed above: the statutes were civil, their subject matter was important, and the number of people added to the coverage of the law was small in comparison to the number already included. But even when the number of people affected is large, a statute involving an important civil benefit or duty is often extended. In *White v. Crook*,[92] the Alabama statute excluding women from jury duty was held to violate the Fourteenth Amendment; it was not struck down, but instead the right and duty of serving was extended to women.

On the other hand, when the discrimination is part of a criminal law, the coverage of the law is rarely if ever extended.[93] Thus, a criminal law providing special penalties for interracial cohabitation was struck down rather than extended to all cohabitation in *McLaughlin v. Florida*.[94] And the courts have invalidated state laws providing greater criminal penalties for women than for men, rather than extending the increased penalties to men.[95] Since persons prosecuted under a law are unlikely to urge that the law be extended to cover those discriminatorily excluded, and since individuals not prosecuted cannot urge this result, it might seem that the alternative of extension is not even before the court. However, in *Skinner v. Oklahoma*, a law which arbitrarily selected one class of habitual offenders for sterilization was remanded to the Oklahoma Supreme Court because, as Justice Douglas said:

> It is by no means clear whether, if an excision were made, this particular constitutional difficulty might be solved by extending on the one hand or contracting on the other . . . the class of criminals who might be sterilized.[96]

Apparently, the Oklahoma Supreme Court did not feel it could take upon itself the decision to extend the penalty to a class of offenders not included by the legislature, and therefore invalidated the law by failing to take action on remand.

Taken as a whole, the principles used by the courts have operated to produce results that are probably what the legislature would have done had it known of the new constitutional mandate. While no one can say that the outcome of every issue will be the same in every state, it can be said with some assurance that the courts have the powers, doctrines and experience to handle Equal Rights Amendment cases without wholesale invalidation of viable laws or other absurd results. The main problem which we have discovered is the necessity for state legislatures to direct particular attention to their criminal laws, as the courts are least likely to correct defects in this area.

V. THE AMENDMENT IN OPERATION

The theory of the Equal Rights Amendment, described above in Part III, will provide a framework for deciding whether laws and governmental practices are constitutional under the Amendment. The criteria for judicial application, discussed in Part IV(B), will function as ground rules guiding judges in implementing a decision that an existing law is unconstitutional. However, for most of those who are deciding whether or not to support the Equal Rights Amendment, it will not be enough to know the general theory underlying the Amendment. They will want to know how the Equal Rights Amendment will affect legal rights and responsibilities in important areas of their lives. They will want to assure themselves that the changes will not produce absurd or chaotic results, and that there will be a reasonable degree of predictability. This is so especially since the debate over the Equal Rights Amendment has been waged largely in terms of its impact on particular laws or institutions.

Many of the important changes which the Equal Rights Amendment will require are easy to predict and will serve to correct instances of clearcut sex discrimination in the law. Some of these changes are mentioned here simply to remind readers that, once the theory of the Equal Rights Amendment has been agreed on, much of its application will be obvious and direct. States with jury laws which make special exceptions or exemptions for women will no longer be able to discriminate on the basis of sex. For example, states which grant jury service exemptions to women with children will either extend the exemption to men with children or abolish the exemption altogether. The few state laws which still require women to comply with special qualifications to do business will be invalidated, as will laws which prohibit women from acting as trustees or executors. Age differentials on the basis of sex will be equalized: the age of majority will be the same for men and for women, and the child labor laws and juvenile court laws will cover young people until the same age, regardless of sex. Similarly, legal retirement ages will be equalized for men and women: where the permissive retirement age is lower for women, the chance to retire early will be extended to men; but where the compulsory retirement age is lower for women, women will be permitted to continue working until the same age as men. Men and women will be considered for admission to all state universities on an equal basis. Government benefit programs which currently discriminate on the basis of sex will be avail-

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able to men and women alike: manpower training programs will be required to accept young women on an equal basis with young men, and Social Security will be required to provide the relatives of working women with the same benefits it provides to the families of working men. Women will have the same right to sue for loss of a spouse's consortium that men now have.

In the remainder of the article, we explore the operation of the Equal Rights Amendment with respect to four important areas: protective labor legislation, domestic relations law, criminal law, and the military. These areas have been chosen because they appear to have raised the most serious doubts in the minds of some people. Each involves practices or sets of legal relationships which have been based on sex discrimination and sex differentiation for so long that untangling the effects of sex inequality requires more than an instant's consideration. In addition, many of the issues raised in the discussion of these subjects resemble problems that will arise in other areas. Thus, discussion of their resolution suggests the shape of the impact of the Equal Rights Amendment in other contexts.

In discussing the operation of the Equal Rights Amendment, we have not undertaken a comprehensive justification of the Amendment's beneficial effects. Other writers have explored the harms caused by the law's current discrimination and the benefits which will flow from their elimination by the Equal Rights Amendment.[97] We have not generally repeated the observations of these writers. Rather, we have concentrated on analyzing the legal changes which the Equal Rights Amendment mandates. It may be noted in passing, however, that the authors believe that fears about the socio-economic impact of the Equal Rights Amendment are based upon unrecognized sex bias, sexual stereotypes which do not take account of the actual capacities and circumstances of most men and women, and failure to consider the comprehensive impact of an absolute theory of legal equality.

A. Protective labor legislation

The impact of the Equal Rights Amendment upon so-called protective labor legislation applicable only to women has been and remains a source of major controversy. In past years many individuals and groups favorable to equal rights for women refused to support the Amendment because of fear that it would deprive working women of important gains achieved only after hard-fought battles in the late nineteenth and early twentieth centuries. Most of the labor groups currently opposing the Amendment invoke the same argument. Within recent years, however, two important developments have put these issues in a very different light. One is the realization that, whatever the original design, under present conditions legislation of this nature has on the whole proved to be more repressive than protective for women. The other is that Title VII of the Civil Rights Act of 1964,[98] which prohibits discrimination in employment on account of sex, has already largely eliminated such legislation or extended its protection to men. State legislative officials themselves, often explicitly in response to Title VII, are hastening this process of change.

While there are many types of labor laws applicable to women only, basically they may be grouped into three broad categories: (1) laws conferring supposed benefits, such as minimum wages, a day of rest, a meal or rest period, and the provision of chairs for rest periods; (2) law excluding women from certain jobs, such as mining or bartending, or from employment in any job before and after childbirth; and (3) laws restricting women's employment under certain conditions, such as at night, more than a maximum number of hours, or in jobs requiring the lifting of weights above a set limit. The tables on the following pages show the pattern of these laws as of 1968, and significant changes by state governments and federal courts as of April 1971.[99]

Evidence has been accumulating in recent years that these "protective" laws for women actually provide little real protection.[100] The uneven coverage, wide variation among states, proliferation of exceptions for jobs for which coverage seems most appropriate, and outright exclusion of women from many lucrative occupations demonstrate a lack of protective function. The conclusion that the laws serve primarily as an excuse for employers and unions to keep women in lower paying jobs, or out of the labor force altogether, is supported by the increasing number of women's lawsuits challenging these restrictions. Moreover, any sex-based law has an inevitably discriminatory impact, because a large number of women do not fit the female stereotypes on which the laws are predicated.[101] These women are unfairly denied the higher wages and other benefits of traditionally "male" jobs. To the limited extent that the laws do provide bona fide protection, men are discriminatorily denied benefits.

Title VII of the Civil Rights Act of 1964 confirms the judgment that sex is not a desirable basis for employment rights and practices. Title VII provides that it shall be an "unlawful employment practice" for an employer engaged in an industry affecting interstate commerce, who has twenty-five employees or more, to "discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, sex, or national origin."[102] Similar unlawful employment practices by labor unions and employment agencies are also forbidden. The Act establishes the Equal Employment Opportunity Commission (EEOC) as the agency charged with administration of these provisions. Remedy for violation is through conciliation by the Commission or, that failing, court action.[103]

TABLE I—*State labor laws as of December 1968*

A. State "benefit" laws

Type of law, number applicable to women only, number applicable to men and women

Minimum Wage: 7, 3 (not in operation); 29, D.C.*, P.R.*, Federal Fair Labor Standards Act.

Day of Rest Prescribed: 14, D.C.; 7, P.R., also 28 "Sunday blue laws" which achieve the same result.

Meal Period (20 minutes to one hour): 20, D.C., P.R.; 3.

Rest Period (10 minutes for each half day of work): 12, P.R.; 0.

Chairs to be provided: 44, D.C., P.R.; 1.

B. State exclusionary laws

Type of law, number applicable to women only, number applicable to men and women

Occupations (total exclusion from): 26—including 17-Work in or about mines, 10-Bartending, 1-Work in retail liquor stores, 11-Other occupations; 0.

Childbirth (employment before and after prohibited): 6, P.R.; —.

C. State restrictive laws

Type of law, number applicable to women only, number applicable to men and women

Weight limits (work requiring lifting more than set amount—ranging from 15 to 50 pounds—is prohibited): 10, P.R.; 0.

Hour limits (work over the limit—with desirable premium pay rates for overtime—is prohibited): 38, D.C. (3 of the 38 states cover both men and women in some industries; only women in others); 3.

Nightwork (either prohibited or regulated): 18, P.R.; 0.

Table II.—Significant changes in State protective laws since 1966

A. CHANGES BY STATE LEGISLATURES AND STATE OFFICIALS

Repealed hours laws: Arizona, Delaware, Montana, Nebraska, New Jersey, New York, Oregon, Vermont.

Extended weightlifting law to men: Georgia.

Rulings by Attorneys General that state laws are superseded by Title VII or State Fair Employment Laws: District of Columbia, Illinois, Kansas (by Commissioner of Labor), Massachusetts, Michigan, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Washington, Wisconsin.

Exemption from hours laws of those covered by Fair Labor Standards Act or comparable standards: California*, Kansas, Maryland, North Carolina, Tennessee, Virginia.

Exemption from hours law if employee voluntarily agrees: New Mexico.

No prosecutions now because of uncertainty as to effects of Title VII: North Dakota.

B. CHANGES BY COURT DECISIONS

Hours Laws (cases cited note 132 infra.): California, Illinois, Massachusetts, Missouri, Ohio, Pennsylvania.

Weight Laws (cases cited note 127 infra.): California, Ohio, Oregon.

The task of interpreting the prohibitions upon sex discrimination embodied in Title VII has not yet been completed by the courts. The statute's basic proscription against sex discrimination is absolute on its face. The statute does, however, include one significant qualification: the provisions do not apply "in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business enterprise."[104]

The precise meaning of "bona fide occupational qualification," or bfoq, has not yet been determined. The EEOC has adopted a narrow construction, saying that preference in employment to one sex is permissible only "[w]here it is necessary for the purpose of authenticity or genuineness," as in the case of actors or actresses.[105] The federal courts have recently tended toward equally strict interpretations, although often framing somewhat different tests than the EEOC.[106] Whatever the eventual interpretation of Title VII, however, the significant point here is the powerful impact Title VII has had on state protective labor legislation. Employers otherwise bound to comply with state legislation embodying different treatment for women than for men are now required to conform to the overriding federal legislation which forbids any discrimination on grounds of sex. Although the reasoning used to strike down state legislation under Title VII differs considerably from the Equal Rights Amendment standard of allowing differentiation only on the basis of unique physical characteristics of one sex or the other, the bfoq test as narrowly construed, is much like the Equal Rights Amendment in practical effect.[107] The consequence is that Title VII gives us a preview of the manner in which the Equal Rights Amendment would displace concepts of "protective" legislation with principles of equal rights. In this area, indeed, the transition is already far along. Therefore, we now turn to a closer examination of laws and cases under the three categories of state protective legislation set out in Table I.

Footnotes at end of article.

* D.C.—District of Columbia; P.R.—Puerto Rico.

* Exemption only partial.

1. Laws Conferring Benefits

Even laws providing benefits such as a minimum wage and a required rest period have operated to discriminate against either women or men, and sometimes both. Men are discriminated against whenever they are denied the benefits of such laws. Women are sometimes discriminated against when, for example, they are put on a schedule which includes the required rest periods, while men are not; this arrangement is then used to justify paying women less and limiting them to certain jobs.[108] These discriminations would no longer be possible, of course, if both men and women workers were covered by the benefit-conferring laws.

Title VII cases which have considered such laws have held that the employer could conform to both the state requirements and Title VII by extending the benefits to workers of both sexes.[109] Hence invalidation of the state law has been unnecessary. Where Title VII has not already operated, the courts would probably reach a similar result under the Equal Rights Amendment. Most of the laws which confer benefits may be extended to more workers with little extra burden on the employer, and with little disruption of industrial organization.[110] The courts are therefore likely to presume that the legislatures would prefer to have these laws remain in effect, on an equalized basis, rather than be completely invalidated.

2. Exclusionary Laws

Laws which exclude women from certain occupations or from all employment under certain circumstances are always discriminatory rather than beneficial and neither could nor should be extended to men. Exclusionary statutes, when carefully scrutinized, provide the best examples of two kinds of laws: those whose only apparent purpose is to protect men's jobs, and those which seem to assume not only that women are too weak to protect their own interests but also that they are too stupid or careless to do so. These laws, which are gradually being struck down under Title VII and would also be expected to fall under the Equal Rights Amendment, are discussed below under two classifications: occupational exclusions and compulsory maternity leave regulations.

a. *Occupational Exclusions.* Laws which exclude women from specified occupations—and, in some states, a bewildering variety of occupations are included—impose a burden on some women without helping any others. Presumably women who do not want to be bartenders or miners will not apply for such jobs, while women who do want to work in the covered occupations, some of which are highly remunerative, are excluded merely because of their sex. Courts have recently begun to invalidate laws of this kind on the grounds of conflict with Title VII and the Fourteenth Amendment.[111] Extension to men would mean the elimination of certain occupations altogether, and thus it would not be a feasible outcome. Furthermore, it is difficult to imagine an occupational hazard which is based on a physical characteristic unique to one sex; if the occupation is dangerous, it is dangerous to both sexes. Under the Equal Rights Amendments, courts are thus not likely to find any justification for the continuance of laws which exclude women from certain occupations. Legislatures which are concerned with real hazards in certain jobs will have to enact sex-neutral protections.

b. *Compulsory Maternity Leave Regulations.* Laws which require employers to impose leave on pregnant employees for a specified period before and after childbirth, without providing job security or retention of accrued benefits, such as seniority credits, are similarly exclusionary. Seven jurisdictions have enacted such restrictions into law; the stage of pregnancy at which mandatory leave is imposed varies between three weeks to four months before expected delivery.[112] None of these laws provides for any compensation by either state or employer, or job security, during the compulsory leave period, except that of Puerto Rico, which requires the employer to pay one-half salary during leave for temporary disabilities, including eight weeks compulsory leave for pregnancy, and provides job security during the required absence.[113] In addition to state laws, many state agencies have more restrictive regulations for their own employees; school board regulations are particularly significant, since a large number of women workers teach school. These regulations commonly require leaves to commence much earlier in pregnancy than the state laws discussed above.[114]

Under the Equal Rights Amendment, it will probably be argued in defense of these laws and state regulations that they deal with unique physical characteristics of women. It is true that the state may regulate conditions of employment for women in a physical condition unique to their sex, but the kind of regulation imposed would be subject to careful judicial review, utilizing the kinds of standards set forth previously in Part III.[115] Two recent federal court decisions provide a preview of the kind of close scrutiny which the Equal Rights Amendment will require. One struck down a compulsory maternity leave regulation under Title VII; the other reached the same result under the Equal Protection Clause of the Fourteenth Amendment. Both courts recognized that compulsory maternity leave provisions are not genuinely protective either of women's health or of their employment rights.[116]

In *Schattman v. Texas Employment Commission,*[117] a woman challenged the imposition of compulsory leave in her seventh month of pregnancy. Following the *Weeks* doctrine that Title VII prohibits sex-based employment practices unless the employer can demonstrate a strong factual basis for the policy in terms of safety and efficiency,[118] the court found no such evidence supporting compulsory maternity leave from the plaintiff's desk job.

This decision parallels an application of the Equal Rights Amendment's tests for regulations purporting to deal with unique physical characteristics. The maternity leave regulation in the *Schattman* case would satisfy only the most elementary of the unique physical characteristics tests: that the sex-based classification (i.e. pregnant women) be based in fact on a physical characteristic unique to one sex. The regulation would fail, however, if the state could not show the existence of a "problem" of legitimate legislative concern (such as the danger of job-related injuries to pregnant women) and a sufficiently close relationship between the problem and the physical characteristic in question. The state made neither showing in the *Schattman* case; if it *had* demonstrated a job-related problem which was tied to the condition of being seven months pregnant, the court might then have considered whether the regulation imposed was the least drastic solution to the problem demonstrated, and have balanced the importance of the problem against the costs of the least drastic solution.[119]

A similar state regulation was struck down in *Cohen v. Chesterfield County School Board,*[120] in which a female teacher challenged a school board regulation imposing maternity leave at least four months prior to the expected birth of her child. The district court reviewed the supposed medical and administrative reasons for the school board's policy, and found them to have no empirical basis or persuasive force. The argument that mandatory leave was justified by frequent "incapacitation" at that stage of pregnancy was found to be medically incorrect; the idea that pregnant teachers had to be protected from such physical hazards of employment as "pushing with resulting injury to the fetus" was found to be entirely speculative, as was the allegation of increased inefficiency on the job, such as inability to perform duties during fire drills.[121] The court concluded that "[b]asically, the four month requirement . . . was arbitrarily selected," and that "since no two pregnancies are alike, decisions of when a pregnant teacher should discontinue working are matters best left up to the woman and her doctor."[122] More broadly, the court held that "pregnancy, though unique to women, is like other medical conditions, and the failure to treat it as such amounts to discrimination which is without rational basis, and therefore is violative of the Equal Protection Clause of the Fourteenth Amendment."[123]

This decision, if cast in terms of the Equal Rights Amendment standards, would be similar to the *Schattman* decision discussed above: the state was unable to make an elementary showing of a job-related problem linked to the physical characteristic at issue. In addition, the court made two other findings that parallel the application of Equal Rights Amendment standards. First, the court held that in its relation to employment, pregnancy was only a small part of the larger problem of temporary disabilities which could not constitutionally be dealt with separately. Second, the imposition of compulsory leave was found to be impermissible where a rule letting a woman and her doctor decide when optional leave should commence would meet any medical need for leave and would be less onerous to pregnant women. In other words, the regulation discriminatorily selected out a small sex-linked part of a larger problem, and imposed a more drastic solution than was necessary. A court operating under the Equal Rights Amendment might also find that a sex-neutral rule, allowing any temporarily disabled worker and his or her doctor to determine the duration and timing of leave, would also be an available less drastic alternative.

3. Laws Restricting Conditions of Employment

Other types of laws cannot so easily be categorized as imposing either benefits or burdens on covered workers. In this category are most weightlifting limits, maximum hours laws, and night work prohibitions. As one commentator noted, "the reality is that such laws simply do not accomplish their aim—real protection," [because] sex as a criterion cannot predict with sufficient accuracy who needs what protection. If injury due to lifting weights is a problem the answer is to find out what every *individual* can safely lift with modern techniques and then forbid employers to fire individuals who refuse to lift weights above [their personal] limit. If some men and some women don't want to work overtime and unions want to protect the right not to work overtime, laws should be passed forbidding employers to fire those who refuse overtime, but those men and women who *do* want overtime pay should not be penalized because of the desires of those who do not want it.[124]

The same considerations apply to night work prohibitions. Night work is often better paid and may be more convenient for some women, including those whose husbands could care for the children at this time, or who wanted to work at night while going to school in the daytime. On the other hand some workers, both male and female, would consider it a benefit to be exempted from such assignments.

After an initial period of uncertainty, the EEOC took a strong position in 1969 against labor laws which impose restrictions only on women's employment. EEOC regulations now state:

The Commission believes that such State laws and regulations, although originally promulgated for the purpose of protecting females, have ceased to be relevant to our

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technology or to the expanding role of the female worker in our economy. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and tend to discriminate rather than protect. Accordingly, the Commission has concluded that such laws and regulations conflict with Title VII of the Civil Rights Act of 1964 and will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupation qualification exception.[125]

The courts have also dealt with the impact of Title VII upon laws of this ambiguous kind. While we cannot here analyze all the cases, we select a few typical decisions which illustrate the trends in these areas, and compare the Title VII developments to anticipated results under the Equal Rights Amendment.

a. *Weightlifting.* Several important court decisions on weightlifting have concerned company or union regulations rather than state laws. The principles involved in reviewing these private regulations under Title VII, however, are similar to those that would be used in reviewing state legislation under the Equal Rights Amendment. The great majority of decisions, whether dealing with state laws or industry regulations, have either invalidated weightlifting restrictions *in toto* or extended them on an individualized basis to cover both men and women. Since most of the limits are low, between fifteen and forty pounds, it would clearly not be feasible merely to extend the laws as presently written to cover men. If courts reached this result, no factory workers could ever lift even moderately heavy weights, and great changes would be necessary in many plants. Some courts have given employers the option of instituting an individualized testing program, as long as it is applied equally to both sexes.[126]

A more common result in weightlifting cases is complete invalidation, leaving all workers with no protection against employer pressure to engage in the lifting of heavy weights.[127] Under such circumstances the legislature would be free to enact individualized testing requirements, to set higher absolute limits applicable equally to both sexes, or to require employers to provide mechanical aids for the lifting of weights above a certain limit.

Under the Equal Rights Amendment employers, unions and state officials may defend weightlifting regulations for women on the grounds that a unique physical characteristic is involved, just as they argue that sex is a bfoq under Title VII for jobs requiring weightlifting. Although the theories and standards under Title VII cases and regulations differ from the Equal Rights Amendment standards set forth earlier,[128] proponents of weightlifting regulations who have been unable to meet the burden of proof for a bfoq will also probably be unable to satisfy the unique physical characteristics tests under the Amendment. If, under Title VII, one cannot prove by factual evidence that "all or substantially all women are unable to perform a given job safely and efficiently," [129] one almost certainly cannot prove by factual evidence that average weightlifting differences between men and women are caused by a unique physical characteristic possessed by all or some women and no men.[130] There is little reason to doubt, therefore, that courts will invalidate weightlifting regulations for women under the Equal Rights Amendment as well as under Title VII.

b. *Maximum Hours Laws.* Maximum hours laws vary as to the kind and quantity of limits imposed. Some states restrict women workers to a certain number of hours per day as well as per week. These laws are to be distinguished from state laws and union contracts which, while imposing no absolute maximum limit on the number of hours worked in any day or week, do require that all hours worked past a fixed number be compensated at premium rates, usually time and a half or more. A few such premium pay laws cover women only. These are easily extended.

Overtime work at premium pay, guaranteed by state and federal laws or union contracts, is a common feature of many male workers' jobs. Indeed overtime is often necessary for these workers to maintain their standard of living from week to week. Under the maximum hours laws, female workers who wish to work overtime are discriminatorily denied this added source of income. On the other hand, even under premium pay laws and regulations, there are many male and female workers who would prefer to be able to refuse overtime work and still retain their jobs.[131]

The trend of court decisions under Title VII is to invalidate maximum hours laws which apply only to women.[132] This result would also be predicted from principles of statutory construction under the Equal Rights Amendment. The extension of maximum hours laws to cover men would drastically change many work situations. Individualization by judicial fiat is even more difficult than in the weightlifting cases because there are many alternative ways to protect workers from having to work overtime against their will. Hence, while a law protecting both men and women from coerced overtime is desirable, the courts are likely to leave the matter to legislative decision, meanwhile equalizing both sexes under the Equal Rights Amendment by invalidating the law. This would seem to be one area, therefore, in which legislative attention between ratification and the effective date of the Amendment would be important.

4. Summary

The operation of Title VII to date thus foreshadows how, in one important area, the Equal Rights Amendment would function. In general, labor legislation which confers clear benefits upon women would be extended to men. Laws which are plainly exclusionary would be invalidated. Laws which restrict or regulate working conditions would probably be invalidated, leaving the process of general or functional regulation to the legislatures. The courts have already reached these results in a number of cases arising under Title VII. The Equal Rights Amendment would accelerate this trend, providing a new incentive to legislatures and unions to develop and implement programs of genuine protection for workers of both sexes.

B. Domestic relations law

Given the traditional social and economic view that woman's place was in the home, it is not surprising that laws affecting domestic relations have defined women's rights and duties with great specificity.

At common law, a woman who married became a legal non-person—a *femme couverte.*[133] Upon marriage, she lost virtually all legal status as an individual human being and was regarded by the law almost entirely in terms of her relationship with her husband. Statutory developments in the nineteenth and early twentieth centuries tended to frame a more dignified but nevertheless distinct and circumscribed legal status for married women. At the present time domestic relations law is based on a network of legal disabilities for women, supposedly compensated by a corresponding network of legal protections. The law in this area treats women, by turns, as mental incompetents and as more mature persons than men of the same age; as valuable domestic servants of their husbands and as economic incompetents; as needing protection from their husbands' economic selfishness and as needing no protection from their husbands' physical abusiveness. In many respects, such as name and domicile, the law continues overtly to subordinate a woman's identity to her husband's.

Much of the national discussion about women's status has focused on marriage and divorce laws, and rightly so, because the issues involved are important to people personally, and because women's domestic role has traditionally been considered their primary one. Unquestionably, the trend in marriage and divorce law is in the direction of treating the spouses equally or on the basis of their individual capacities. Progressive present-day models for change in the area of family law eliminate virtually all differentiation on the basis of sex.[134] Thus, in most instances, the effect of the Equal Rights Amendment on marriage and divorce law will be to move the law more directly, more forcefully, and more expeditiously, in the direction it is already going.

In considering the following discussion of the impact of the Equal Rights Amendment on some aspects of domestic relations law, the reader should keep in mind the law's limited power to predetermine and control the nature of intimate personal relationships. In the realm of marriage and the family, social customs, economic realities, and individual preferences have a far greater influence on behavior than the law. This is not to say that the law does not play an important role in shaping and channeling these other forces, but rather to point out that a change in the law—insofar as the change leaves room for choice, as do the possibilities suggested below—will not result in immediate widespread change in what are essentially social customs. Furthermore, it is important to remember that the impact of the marriage and divorce laws varies according to the economic class of the family. In preparing this section, we have been limited by the dearth of academic research about the differential impact of domestic relations law according to economic class.[135]

1. Laws Affecting the Act of Marriage

The statutory requirements for a lawful marriage are generally very simple. They include in most states a valid license, a waiting period before issuance of the license, a medical certificate, proof of age, parental consent for parties below the age of consent, and a ceremony of solemnization. Of these, only age requirements for marriage with and without parental consent involve widespread discrimination on the basis of sex.[136] A 1967 survey of state marriage laws by the United States Department of Labor showed that only ten states set the same minimum age for marriage (age below which marriage, even with parental consent, is prohibited) for men and women. Only eighteen states set the same age of consent (age at which marriage is permitted without parental consent) for both men and women.[137] In every state with an age differential, the minimum age for men was one to three years higher than the minimum age for women.[138]

Since the minimum marriage age in all states is now well above the normal age of puberty, physical capacity to bear children can no longer justify a different statutory marriage age for men and women. Instead, there seems to be two current rationales for the higher marriage age for men. One is that, mentally and emotionally, women mature earlier than men. Maturity is such a relative and subjective concept that a court could never use it as a test for an inborn characteristic distinguishing all women from all men. Furthermore, mere estimates of emotional preparedness founded on impressions about the "normal" adolescent boy and girl are based on the kind of averaging which the Equal Rights Amendment forbids. The other rationale for the age difference is that men should not be distracted during adolescence from education and other preparation

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for earning a living. This rationale is obviously untenable: the law should give as much encouragement to women to prepare themselves to earn a living as it gives to men.[139]

Under the Equal Rights Amendment, a court challenge to the age differential would most likely be made by a man suing to require issuance of a license to him at the lower women's age. Faced with such a challenge to the state law a court would have to find, for the reasons just discussed, that the marriage age differential did not meet the strict criteria of the unique physical characteristics tests required by the Equal Rights Amendment. Once it had concluded that a state could not constitutionally set one marriage age for men, and one for women, a court would be able to increase the marriage age for women upward to match the age for men, on the theory that the state should be equally solicitous of a women's training as a man's. Or a court might find that the legislature had pegged the age for men unreasonably high and revise the marriage age for men downward to correspond to the marriage age for women. A legislature reconsidering laws about the minimum age for marriage, either before or after a court challenge, would have to set a single age for men and women after weighing the policy considerations underlying the age limit. These considerations might indicate the higher age, the lower age, or an age in between the two.[140]

2. Merger of the Woman's Legal Identity into Her Husband's

a. *Name Change.* The requirement that a woman assume her husband's name at the time she marries him is based on long-standing American social custom. It is also firmly entrenched in statutory and case law.[141] In some states statutes indicate that a married woman must not only take but keep her husband's name.[142] Women who continue to use their maiden names after marriage may encounter resistance from the Internal Revenue Service, voting registrars, motor vehicles departments, or any number of nongovernmental sources.

The Equal Rights Amendment would not permit a legal requirement, or even a legal presumption, that a woman takes her husband's name at the time of marriage. In a case where a married woman wished to retain or regain her maiden name or take some new name, a court would have to permit her to do so if it would permit a man in a similar situation to keep the name he had before marriage or change to a new name. Thus, common law and statutory rules requiring name change for the married woman would become legal nullities. A man and woman would still be free to adopt the same name, and most couples would probably do so for reasons of identification, social custom, personal preference, or consistency in naming children. However, the legal barriers would have been removed for a woman who wanted to use a name that was not her husband's.

Some state legislatures might decide there was a governmental interest, such as identification, in requiring spouses to have the same last name. These states could conform to the Equal Rights Amendment by requiring couples to pick the same last name, but allowing selection of the name of either spouse, or of a third name satisfactory to both.[143] Similarly, statutes which now permit the judge in a divorce case to use discretion in determining whether to allow a woman to resume her maiden name or to take a new name would be extended under the Equal Rights Amendment to cover all men, or at least men who had changed their names at marriage. Moreover, any state coercion regarding an individual's choice of name might still be open to attack under developing constitutional principles of due process and privacy.

In a state where both spouses were required to have the same last name, the children would simply take their parents' name. If the state had no requirement that husband and wife take the same name, it could either require that parents choose one of their names for their children, or it could decide to have no rule at all. The Amendment would only prohibit the states from requiring that a child's last name be the same as his or her father's, or from requiring that a child's last name be the same as his or her mother's.

b. *Domicile.* The location of a person's domicile affects a broad range of legal rights and duties, including the place where he or she may vote, run for public office, serve on juries, receive free or lowered tuition at a state school, be liable for taxes, sue for divorce, and have his or her estate administered. The common law rule for determining the wife's domicile was simple: the domicile of the wife merged in that of her husband; moreover, she had the duty to follow him if his choice was a reasonable one, and her refusal to do so was considered desertion.[144] Legislative or judicial changes have modified this blanket rule in most states for some purposes, most commonly for divorce jurisdiction. However, only three states—Alaska, Arkansas, and Wisconsin—permit a woman to have a separate domicile from her husband for all legal purposes.[145]

A court suit challenging discriminatory domicile rules could arise after a woman had been denied some right or benefit because her husband's domicile had been imputed to her.[146] In such a suit a court would have to hold that the Equal Rights Amendment requires rules governing domicile to be the same for married women as for married men. Extending women's dependent status to men would simply create a circular situation with each spouse's domicile dependent on the other's. Thus, equal treatment of men and women for purposes of domicile implies giving married women the same independent right to choice of domicile as married men now have. A court would probably resolve the inequality by striking down whatever statute or portion of a statute sets out a special rule for married women. It would leave standing the general domicile law which would automatically be extended to married women. For similar reasons, a court would do away with the rule that refusal to accompany or follow a husband to a new domicile amounts to desertion or abandonment.[147] A husband would no longer have grounds for divorce in a wife's unjustifiable refusal to follow him to a new home, unless the state also permitted the wife to sue for divorce if her husband unjustifiably refused to accompany her in a move.

These results would cause little disruption and would be beneficial to those women who are now adversely affected by the domicile law. Professor Kanowitz concludes that the domicile rule "has become useless as an influence within the family. Its most important practical effects are to deprive wives of certain governmental benefits they would otherwise have and to create technical legal difficulties for third parties. The cases in which the issue is raised typically do not involve that resolution of a dispute between spouses in an ongoing marriage. . . . Its retention serves only to evoke bygone images of the husband as master and the wife as obedient servant."[148]

With respect to children, the traditional rule is that the domicile of legitimate children is the same as their father's.[149] Even those states which permit a married woman to have a separate domicile from her husband appear to retain this rule with respect to the child's domicile.[150] The Equal Rights Amendment would not permit this result. Either by legislative action or judicial determination, a state would have to devise a sex-neutral basis for determining the child's domicile. The most reasonable domicile would be the place the child actually lives most of the time. If the family lives together but one of the parents is domiciled in a separate place, the child's domicile should be the place of family residence. If the parents live apart, then the child's domicile should be the domicile of the parent with whom he or she lives most of the time. Alternatively, the state could allow the child to determine his or her own domicile on the basis of where he or she actually lives or works, if apart from both parents.

3. Rights of Husbands and Wives Inter Se

The reluctance of courts to interfere directly in an ongoing marriage relationship is a standard tenet of American jurisprudence.[151] As a result, legal elaboration of the duties husbands and wives owe one another has taken place almost entirely in the context of the breakdown of the marriage—either voluntary breakdown through separation, desertion, or divorce, or involuntary breakdown through incapacitation or death. Any legal changes required by the Equal Rights Amendment are thus unlikely to have a direct impact on day-to-day relationships within a marriage, because the law does not currently operate as an enforcer of a particular code of relationships between husband and wife.

a. *Rights of Consortium.* One of the law's most comprehensive efforts to define the rights and obligations of the partners to a marriage relationship occurs in personal injury actions, after one or the other spouse has been seriously incapacitated. In order to instruct the jury as to the proper standards for awarding damages, the judge must define what benefits the plaintiff should have expected from his or her now incapacitated spouse. At common law these standards were rigidly defined and totally male-oriented. A man had a right to recover damages for loss of his wife's services when she was injured by intentional or negligent action. In time, a husband's rights of consortium were defined to include love, affection, companionship, society, and sexual relations. A woman, by contrast, had no right to sue for loss of her husband's services, since in theory, he provided none.[152]

The Equal Rights Amendment would not permit men to have a greater right than women to recover for loss of their spouse's services and companionship. Courts in many states have already extended to women the right to sue for loss of consortium, although some courts continue to uphold this differential between men's and women's rights.[153] The Equal Rights Amendment would settle the current uncertainty and disagreement among the states by requiring them all to grant women the same right to sue that men now have.

More fundamentally, however, the Equal Rights Amendment would prohibit enforcement of the sex-based definitions of conjugal function, on which the discriminatory consortium laws are based. Courts would not be able to assume for any purpose that women had a legal obligation to do housework, or provide affection and companionship, or be available for sexual relations, unless men owed their wives exactly the same duties. Similarly, as discussed more fully below, men could not be assigned the duty to provide financial support simply because of their sex.

b. *Allocation of The Duty of Family Support between Husband and Wife.* In all states husbands are primarily liable for the support of their wives and children, although the details of this liability and the possible defenses vary. A wife may be liable for supporting her husband in many states, but generally only if the husband is incapacitated or indigent. In most states the mother

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is liable for support of the children only if the father refuses or fails to provide for their support.[154]

Criminal nonsupport laws are the legal system's most heavy-handed technique for enforcing the husband's current duty of support. Nonsupport was not an indictable offense at common law.[155] But criminal statutes in all but three states now penalize a man's desertion or nonsupport of his wife, and all American jurisdictions set criminal penalties for nonsupport of young children.[156] While these laws typically penalize either parent who fails to provide support for a minor child, the duty of interspousal support is placed solely on the man.[157]

The child-support sections of the criminal nonsupport laws would continue to be valid under the Equal Rights Amendment in any jurisdiction where they apply equally to mothers and fathers. However, the sections of the laws dealing with interspousal duty of support could not be sustained where only the male is liable for support. Applying rules of narrow construction of criminal laws, courts would have to strike down nonsupport laws which impose the duty of support on men only. Legislatures might decide not to re-enact any husband-wife criminal nonsupport laws. Criminal sanctions against the husband are widely recognized as poor compensation for a wife's unpaid domestic labor and discriminatory treatment against her in the labor market; a legislature might choose to use its resources for a more direct attack on these problems. Alternatively, a state legislature could adopt a law which makes no distinctions on the basis of sex, like the Model Penal Code's nonsupport provision.[158]

With regard to civil enforcement of support laws, courts could take a more flexible approach. The Equal Rights Amendment would bar a state from imposing greater liability for support on a husband than on a wife merely because of his sex. However, a court could equalize the civil law by extending the duty of support to women. With regard to child support this is already the rule in Iowa, where father and mother are under the same legal duty to support the children.[159]

Alarmists claim that the Equal Rights Amendment would change the institution of of the family as we know it by weakening the husband's duty of marital support in an ongoing marriage. This concern is based on a misunderstanding of the role laws about support actually play. Many courts flatly refuse to enter a support decree when the husband and wife are living together. In most such cases the husband, as head of the family, is free to determine how much or how little of his property his wife and children will receive.[160]

The Equal Rights Amendment would *not* require mathematically equal contributions to family support from husband and wife in any given family. A functional definition of support obligations, based on current resources, earning power, and nonmonetary contributions to the family welfare, would be permissible and practical under the Equal Rights Amendment, so long as the criteria met the tests of reasonable classification described above in Part III(C).[161] If husband and wife had equal resources and earning capacity, neither would have a claim for support against the other. However, if one spouse were a wage earner and the other spouse performed uncompensated domestic labor for the family, the wage-earning spouse would owe a duty of support to the spouse who worked in the home. Creating in each spouse equal liability for support might give creditors an advantage in some instances where they would not currently be able to reach the wife's resources. If this extra liability created hardship for families, the legislature could make rules limiting the extent of creditors' access to a family's resources.

c. *Ownership of Property.* The law has attempted to recognize women's contribution to the family by giving each spouse an interest in property acquired during the marriage. Two different systems have been adopted in the United States for distributing property rights within a family—the community property system and the common law system. In both systems the woman's right matures primarily upon separation or death of her spouse. As both systems currently operate, they contain sex discriminatory aspects which would be changed under the Equal Rights Amendment.

(1) *Community Property.* In the eight community property states—Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington—property acquired by each spouse during the marriage is owned in common by both husband and wife.[162] This system is sometimes championed by advocates of women's rights because it gives a housewife who earns no independent income a legal share in the family property.[163] However, in all the community states, except Texas and Washington, the husband has the community property; and in some states he can assign, encumber or convey the property without his wife's consent.[164] Thus, in some of the community property states a working wife may be put in the position of a woman before passage of the Married Women's Property Acts: she may lose control of her own earnings to her husband.[165]

Under the Equal Rights Amendment, laws which vest management of the community property in the husband alone, or favor the husband as manager in any way, would not be valid.[166] In the absence of new legislation, the courts would leave decisions about disposition of the community property to be made jointly by husband and wife. This would be consistent with the general judicial preference to allow married couples to work matters out between themselves.

Legislatures might prefer to follow the example of the recent amendment of the Texas community property law. The new Texas law provides that

each spouse shall have sole management, control and disposition of that community property which he or she would have owned if a single person.[167]

Rather than leaving decisions about the community property to husband and wife together, this rule would give the spouse who had earned or been given property the power to dispose of it. This rule obviously favors the wage-earning spouse, who in most instances under current conditions will be the man. Thus, it would require scrutiny as a rule neutral on its face, which falls more heavily on one sex than the other,[168] the Texas law also states that property of one spouse which is mixed or combined with property of the other spouse is subject to the joint control of husband and wife unless they agree otherwise. This part of the law would certainly be valid under the Equal Rights Amendment.

(2) *Common Law Ownership.* The other forty-two states have a common law basis for distributing marital property. However, Married Women's Property Acts in every state have modified the harsh common law principles that gave the husband complete control over his wife's property and the products of her labor. With certain exceptions these statutes give a woman the right to control property she owned before marriage as well as property she earns or receives by gift or devise during marriage.[169] Except for qualifications relating to the right of a surviving spouse to inherit, therefore, each spouse now owns his or her separate property free of legal control of the other spouse.

The Married Women's Property Acts did not automatically abolish the common law estates of dower and courtesy, but today most states have abandoned these cumbersome devices for protecting the interests of widows and widowers, and others have modified them substantially. In their place, the states have substituted other forms of protection of a marital share of the property of one or both spouses. All states except North Dakota and South Dakota give the woman a nonbarrable share in her husband's estate, but a number of states fail to give the husband a corresponding legal claim in his wife's estate.[170] The widow's allowance or family allowance, homestead, and limitation on gifts to charity are other devices to protect a surviving spouse against complete disinheritance.

Where these devices give the surviving husband rights equal to the surviving wife, they would be valid under the Equal Rights Amendment.[171] In the many states, however, where the wife still has a protected position, the discriminatory laws would either be invalidated or extended. Where a legal device has proved to be a useful protection, legislatures would probably be inclined to extend its coverage to men, but where the technique has provided little real protection, the legislature could take the opportunity for review provided by the Equal Rights Amendment to revise or repeal the law.

d. *Grounds for Divorce.* Professor Leo Kanowitz points out that "there is almost an air of unreality about the enumeration of specific grounds of divorce found in the statutes of all the states." [172] This is because the great mobility of middle class Americans permits them to go to a state which has liberal grounds for divorce, or abroad, when they want to dissolve a marriage. In addition, a high proportion of couples seeking divorce agree to allege as fictions the requisite grounds for divorce. Furthermore, divorce laws have typically been written in terms that make sense only to an ongoing marriage, permitting divorce if, and only if, a fundamental element of the marriage compact has been violated.

Recognizing these factors, as well as the unreasonableness of permitting divorce only for certain limited and specific reasons, proponents of legislative reform recommend evaluating the overall health of the marriage rather than pinning particular guilty action on one or the other of the spouses. The Uniform Marriage and Divorce Act, adopted by the National Conference of Commissioners on Uniform State Laws provides for a decree of separation or divorce to be granted upon a finding that "the marriage is irretrievably broken." [173] California currently permits divorce on a finding of irreconcilable differences between the parties.[174] North Carolina, Ohio, and the District of Columbia permit a divorce after voluntary separation for a year.[175] Nevertheless, the statutory grounds for divorce which remain in effect in most states are of concern because they still control in contested divorce situations because they affect the economic and personal relations of the parties, even in consent divorces, and because there is evidence that they cause a disproportionate amount of difficulty to poor people.[176]

In the past many grounds for divorce were highly sex discriminatory, today only a few apply solely to one sex or the other. These are non-age,[177] pregnancy by a man other than husband at time of marriage,[178] nonsupport,[179] alcoholism of husband if and only if accompanied by wasting of his estate to the detriment of his wife and children,[180] wife's unchaste behavior (without actual proof of adultery),[181] husband's vagrancy,[182] wife's absence from state for ten years without husband's consent,[183] wife's refusal to move with husband without reasonable cause,[184] wife a prostitute before marriage,[185] husband a drug addict,[186] indignities by husband to wife's person [187] and willful neglect by husband.[188]

Except for nonsupport and pregnancy, all

Footnotes at end of article.

the sex discriminatory grounds for divorce listed above are anachronisms, surviving in only one or two states, and are not deserving of extended discussion here. In each instance, a court could invalidate such a provision without doing any serious harm to the overall structure of the state's divorce law. On the other hand, the court could also extend the law to the opposite sex without risking serious criticism that it was usurping legislative authority. Even without the pressure of the Equal Rights Amendment, these provisions are likely to be dropped or extended to the opposite sex in the course of divorce law reform.

Of the thirty states which allow a woman a divorce for nonsupport, only two—Arkansas and North Dakota—give a husband whose wife has failed to support him a cause of action.[189] This disparity is a reflection of the sex bias in support laws, described above.[190] Like the duty of support during marriage and the obligation to pay alimony in the case of separation or divorce, nonsupport would have to be eliminated as a ground for divorce against husbands only, or else extended to the wife where the husband was without resources and the wife had the financial capacity to support him.

The laws that grant a husband a divorce because of the time of marriage he did not know his wife was pregnant by another man would be subject to strict scrutiny under the unique physical characteristics tests. As with paternity laws, the argument can be made that the ease of identifying the mother of a child, as opposed to the difficulty of identifying the father, is a kind of unique physical characteristic which justifies different rules regarding the relationship of mothers and fathers to illegitimate children. However, no reason exists for distinguishing between the duties and obligations of the mother and the father when the father of an illegitimate child has acknowledged paternity or has been adjudged the father in a paternity proceeding. Furthermore, the divorce laws are not based primarily upon the physical act of giving birth but upon other considerations. The laws derive, at least in major part, from the fact that any child born of a woman during marriage is presumed to be her husband's child. Whether the husband claims the child or not, the law imposes on him the duty to support the child and gives the child his name. In this respect the law places an unequal burden on the husband, for his wife receives no corresponding obligations to support or nurture any children her husband may conceive. Since the Equal Rights Amendment would require men and women to bear equal responsibility for the support and nurture of their children, it eliminates most of the justification for giving men alone this ground of divorce. The Equal Rights Amendment would permit resolution of the disparity either by giving a woman a claim for divorce if, at the time of marriage, she did not know that her husband had impregnated another woman, or by abolishing the ground altogether.

e. *Alimony.* Alimony following divorce involves issues similar to those discussed above in connection with support laws. However, a different set of laws and rules is involved. In jurisdictions where fault is still central to divorce proceedings, alimony awards are closely linked to the judicial determination of fault.[191] More than one-third of the states authorize divorce courts to grant alimony to either spouse, but the remaining jurisdictions permit alimony awards to the wife only.[192]

The Equal Rights Amendment would not require that alimony be abolished but only that it be available equally to husbands and wives. This result is consistent with the recommendations of Robert Levy to the Special Committee on Divorce of the National Conference of Commissioners on Uniform State Laws, who concludes:

"[T]he distinction [permitting alimony for wives but not husbands] is an historical idiosyncrasy; there is no principled reason for maintaining the distinction between husbands and wives; almost all recent commentators and official studies of divorce-property doctrines have recommended that the distinction be abolished.[193] "

Alimony laws could be written to grant special protection to a spouse who had been out of the labor force for a long time in order to make a non-compensated contribution to the family's well-being. Similarly the laws could provide support payments for a parent with custody of a young child who stays at home to care for that child, so long as there was no legal presumption that the parent granted custody should be the mother.[194] In short, as long as the law was written in terms of parental function, marital contribution, and ability to pay, rather than the sex of the spouse, it would not violate the Equal Rights Amendment.

The maintenance provisions of the Uniform Marriage and Divorce Act serve as an example of the kind of law which would be valid under the Equal Rights Amendment. The Act provides for maintenance to be paid from one spouse to the other if the spouse seeking maintenance lacks sufficient property to provide for his reasonable needs and is unable to support himself through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the parent not seek employment outside the home. The amount and duration of payments for maintenance are to be determined after the court considers the financial resources of the party seeking maintenance, the time necessary to acquire sufficient training to enable the party to find appropriate employment, the standard of living established during the marriage, the duration of the marriage, the age and physical and emotional condition of the spouse seeking maintenance and the ability of the spouse from whom maintenance is sought to meet his or her own needs while making maintenance payments.[195]

f. *Custody of Children.* At common law the father, if living, was the natural guardian of his child and as such was nearly always entitled to custody of the children in case of separation or divorce.[196] Some states, including California and Utah, changed this by statute which prefers the mother if the child is young.[197] Others, including Missouri, Florida, Minnesota, New York, and Colorado, give both spouses equal right to custody of the child.[198] In most states there is no statute favoring one parent or the other; rather, preference for the mother or father exists as a result of judicially created presumptions in favor of the mothers for girls and young children and in favor of the father for older boys.[199]

The Equal Rights Amendment would prohibit both statutory and common law presumptions about which parent was the proper guardian based on the sex of the parent. Given present social realities and subconscious values of judges, mothers would undoubtedly continue to be awarded custody in the preponderance of situations, but the black letter law would no longer weight the balance in this direction.

4. Summary

The present legal structure of domestic relations represents the incorporation into law of social and religious views of the proper roles for men and women with respect to family life. Changing social attitudes and economic experiences are already breaking down these rigid stereotypes. The Equal Rights Amendment, continuing this trend, would prohibit dictating different roles for men and women within the family on the basis of their sex. Most of the legal changes required by the Amendment would leave couples free to allocate privileges and responsibilities between themselves according to their own individual preferences and capacities. By and large these changes could be made by courts in the process of adjudicating claims under the Amendment. In any area where the legislature felt that sudden extension of the law to men and women alike would cause undue hardship, it could pass new legislation basing marital rights and duties on functions actually performed within the family, instead of on sex.

C. Criminal law

The Equal Rights Amendment will not affect most criminal laws because statutory definitions of criminal activity make men and women equally liable for most offenses; that is, men and women can commit and be punished for most crimes equally.[200] However, in the area of sexual activity the norm changes. Sex differentiation and sex discrimination pervade laws about overt sexual behavior and behavior with sexual overtones, reflecting the confluence of social stereotypes about gender and sexuality.[201] Many of the laws, such as seduction laws, statutory rape laws, and laws prohibiting obscene language in the presence of women, embody a stereotype of women as frail and weak-willed in relation to sexual activity. Others, such as the prostitution and "manifest danger" laws, display a contradictory social stereotype: women who engage in certain kinds of sexual activity are considered more evil and depraved than men who engage in the same conduct.

The Equal Rights Amendment would not permit such laws, which base their sex discriminatory classification on social stereotypes. Courts would generally strike down these laws rather than extend them to men because of the rule of strict construction of penal laws, described above.[202] Legislatures, of course, would be able to extend or re-enact any laws about sex offenses to apply equally to men and to women. A few types of criminal statutes, most notably rape laws, may be justified as deriving their sex bias from physical realities. Here the courts would closely scrutinize the laws to determine whether they fall within the scope of the exception for unique physical characteristics.

1. Sexual Assaults

Rape laws undoubtedly raise one of the most difficult problems under the Equal Rights Amendment because they deal with such a serious offense and because, though apparently simple, they involve two very different kinds of sex distinction. As most commonly defined in the laws of the states, as well as in the Model Penal Code, rape is the forcing of sexual intercourse by a man on a woman, without her consent.[203] This definition involves two kinds of sex differentiation: only a man can be found guilty as a perpetrator of rape and only a woman can be the victim of rape.[204] These distinctions are usually not made explicit in the language of the statutes, but their interpretation is central to the treatment of rape laws under the Equal Rights Amendment.

Insofar as rape is defined as penetration into the vagina by the penis, courts could uphold forcible rape laws which limit liability to men as based on a unique physical characteristic of men.[205] Laws which define rape as forced sexual intercourse could also be sustained in a court defined sexual intercourse as an act done only by a man and a woman together, and if the statute clearly and appropriately defined women as the sole victims of rape.[206] Using the criteria described in Part II for determining whether a law bears the necessary close relationship to a unique physical characteristic,[207] a court could conclude that, on balance, the law should be sustained. Among other things, the court might find rape is an extremely traumatic event for the victim; that most men are capable of

Footnotes at end of article.

penetration, and therefore, rape; that a major proportion of sexual assaults consist of sexual intercourse forced by men; that penetration by a man's penis carries with it the possibility of unwanted pregnancy for the victim and forcible penetration carries high danger of injury to the victim; that a criminal penalty is an appropriate way of deterring rape; and that, accompanied by procedural and substantive rights, the law is sufficiently narrow and specific in its scope to be upheld.

Similarly, insofar as a court could find the rape laws are intended to give special protection from assault to women's vaginas, it could sustain the laws even though their protection is limited to women. A court would conduct an inquiry analogous to that described above for determining whether, under the unique physical characteristics tests, the rape laws could properly be limited to female victims. All or nearly all women's genitals differ from all or nearly all men's genitals in that they can be penetrated in an act of sexual assault against the victim's will. Rape laws could thus be sustained as a legislative choice to give one part of the body (unique to women) special protection from physical attack. By contrast, the statutes which include penetration "per anum and per os" in the definition of rape, could not justifiably be limited to female victims because no physical characteristic unique to women is being protected by these laws. A court could choose between invalidating these broader rape laws or else limiting them to penetration of a woman's genitals. In the case of such a serious offense, courts would probably choose to retain the central and valid portion of the laws and invalidate only the part referring to "penetration per anum and per os." Alternatively, the legislature could extend the laws to cover the designated assaults on all persons, regardless of sex.

Rape is only one of a number of nonconsensual sexual acts which are penalized throughout the United States.[208] Laws governing such offenses are based on two related sets of concerns. The first is that unwanted sexual contact may be imposed on a person in ways ranging from physical force and threats to more subtle coercion in the form of deception and abuse of positions of trust and authority. The second range of concerns is that particular groups in the population may be especially susceptible to such sexual coercion. By merging these two aspects of the problem of sexual assault, traditional laws provide highly uneven and irrational coverage permeated by sex discrimination.

With a few notable exceptions, laws which punish sexual intercourse per se as a constructive assault rest on the premise that the female party is incapable of giving meaningful consent.[209] Best known among these are the statutory rape laws, which punish men for having sexual intercourse with any woman under an age specified by law, frequently sixteen.[210] Other laws, covering more specific situations, prohibit men from having sexual intercourse with female wards, patients, and students.[211] A related series of laws explicitly prohibit men from obtaining women's consent to sexual intercourse through misrepresentation, deception, or fraud.[212]

These laws suffer from a double defect under the Equal Rights Amendment. First, they single out women for special protection from sexual coercion, even where men in similar circumstances are equally in need of protection; in this sense the laws are "underinclusive." [213] To be sure, the singling out of women probably reflects sociological reality: in this society, young women, who learn both that marriage is the most important goal for them and that they may pursue it only passively, are undoubtedly more susceptible than young men to the lures of persons who want to take sexual advantage of them. Likewise, in this society, the bad reputation and illegitimate child which can result from an improvident sexual liaison may be far more ruinous to a young woman's psychological health than similar conduct is to a young man's. But the Equal Rights Amendment forbids finding legislative justification in the sexual double standard, and requires such statutes to be framed in terms of the general human need for protection rather than in terms of crude sexual categories.

Second, traditional laws protecting all women of a particular age or status against sexual assault are "overinclusive" to the extent that they punish sexual activity when unwanted penetration of the vagina is not involved. It might be argued that statutory rape laws and other laws which render a woman's consent inoperative should be sustained on the same theory that forcible rape laws are upheld: that the legislature wished to give special protection to young women's genital organs.[214] However, it is unlikely that such claims could withstand close court scrutiny under the unique physical characteristics tests. In particular, a court would be unable to find a close correlation between the activity being regulated (consensual sexual intercourse) and the justifying physical basis (susceptibility of the vagina to unwanted penetration).[215]

Even if it found noncoerced sexual intercourse rarely physically harmful to postpubescent girls, a court might find that sexual intercourse is physically dangerous to girls who have not reached puberty. Upon finding such a fact situation, the court would conclude that the class of women victims is defined too broadly. If it made such a determination, a court could limit the operation of the statutory rape laws to pre-pubescent children. In the alternative, the court could strike down the law altogether because of its overbreadth and because it fails to base its sex difference upon a unique physical characteristic of women.

If invalidated, some of the laws, such as the seduction laws, which derive from outdated standards of courting and morality, would probably not be resuscitated. Upon reexamination, legislatures might decide that the existing kidnap laws or other unlawful restraint laws already penalize any serious offensive deception or decoying, and that further penalties would be duplicative. Legislatures would be free, however, to extend the laws against sexual coercion to protect men as well as women. This is particularly likely where sexual relations with pre-adolescent children are involved.[216]

A slightly different problem is raised in states which set penalties for sexual activities initiated by women, as well as by men, but where different laws, standards of guilt, and penalties apply depending on whether the actor is a woman or a man. Michigan, for example, prohibits women from engaging in sexual intercourse with boys younger than fifteen.[217] But the law requires that the defendant actually knew the boy was under fifteen (the statutory rape law does not require actual knowledge of the girl's age), and the penalty is a maximum of five years, as compared with the lifetime maximum for statutory rape.[218] Aside from the forcible rape laws, whose special coverage can be justified on the basis of physical characteristics unique to men and women, the Equal Rights Amendment would require sexual assault laws to provide equal standards of guilt and penalties for men and women offenders.[219]

Considering the variety of laws regulating nonconsensual sexual activity, ranging from rape to sexual contact, it is surprising to realize that all of them can be reduced to a few basic elements: the touching of or with genitals, by means of force or deception, and, in the case of young people, the touching of genitals by an older person. The current sexual offense laws are highly duplicative, both of one another, and of general penal laws against kidnap, assault, and battery. The great degree of overlap in these laws, as well as the many distinctions without differences, provide a fertile field for confusion; they also encourage overcharging and extreme penalties. Moreover, the particular situations with which many of the laws deal evoke strongly emotional reactions and foster legislative mandates of higher penalties than the actual act usually merits. For instance, rape is singled out from other sexual offenses and classified with murder for the purposes of sentencing. This classification helps neither the accused [220] nor the victim.[221] Moreover, it tends to reduce the seriousness of other forms of sexual assault besides actual intercourse, which may well be equally disturbing for the victim.

The Model Penal Code has undertaken to bring together the confusing disparity of sexual offenses into a few categories structured in terms of the nature of the act, the vulnerability of the victim, and the coerciveness of the situation.[222] The Equal Rights Amendment would require legislatures in all states to reformulate at least some of their laws. While legislatures could very simply bring the laws into line with the Amendment by substituting the word "person" every time the words "female," "male," "man" or "woman" appear, hopefully they would be encouraged to re-evaluate, rationalize, and simplify this crazy-quilt area of criminal law.

2. Consensual sexual relations

Criminal laws in every state penalize some sexual liaisons, even though both partners are fully responsible for their conduct and engage in the acts voluntarily and privately. As with nonconsensual sexual conduct, legislatures have frequently linked the definition of these crimes to the sex of one or both partners.

Statutes prohibiting sodomy generally sweep in alike men and women, married and unmarried persons, heterosexuals and homosexuals.[223] As a result, most of these statutes would not violate the Equal Rights Amendment, prohibiting as they do certain acts regardless of the identity of the actor or the circumstances of the act. A few states, however, limit liability under their sodomy statutes to males.[224] Like rape, the definition of sodomy can be limited to penetration by the penis. Where sodomy is defined in this way, such that females are incapable of committing it, laws restricted to males may be sustained under the Equal Rights Amendment. However, a statute which defined sodomy more broadly, to include all oral-genital contact, would violate the Amendment if it were restricted to males.

A few adultery laws also contain sex discriminatory provisions which would be impermissible under the Equal Rights Amendment. Roman law defined adultery as sexual intercourse with another man's wife.[225] Some states reflect this one-sided view by failing to define intercourse between a married man and a single woman as adultery.[226] In Massachusetts and Oregon, an unmarried woman cannot be punished for relations with a married man, although an unmarried man is criminally liable if he participates in an adulterous relationship with a married woman.[227] Discrepancies like these in the liability of men and women derive from social attitudes toward the relative offensiveness of extramarital activity by men and by women. The singling out of married women's extramarital activity harks back to concepts of a married woman as the property of her husband, although common law justifications focused on the fact that a married woman's liaison might produce offspring who would have her husband's name and whom her husband would have the duty to support.[228] However, the core idea in adultery is that extramarital intercourse per se threatens the marriage relationship. If this is the case, a

Footnotes at end of article.

court could not permit a state to set stricter penalties for a woman's extramarital activity than for a man's.

Following the rule of narrow construction of criminal statutes, courts will most likely invalidate sodomy or adultery laws that contain sex discriminatory provisions, instead of solving the constitutional problems by extending them to cover men and women alike.[229] This is especially likely since statutes regulating consensual sexual activity are also open to attack under the constitutional right to privacy in intimate sexual matters.[230] However, a legislature intent on retaining criminal penalties for sodomous or adulterous conduct could easily bring the laws into line with the Equal Rights Amendment by extending them to apply equally to men and women.

3. Prostitution

At common law and still today in most parts of the United States prostitution is, by definition, a crime committed only by women.[231] Even statutes neutral on their face turn out to be enforced only against women offenders.[232] Prostitution laws have been the focus of much heated controversy about the proper role of law in regulating moral or sexual behavior, and many people believe prostitution should not be criminalized at all.[233] But more narrowly, prostitution laws have been attacked as discriminating against women. Two kinds of sex bias are written into the majority of prostitution laws: first, women who sell access to their own sexual conduct are penalized, whereas men who do the same thing are not; and second, the prostitute, who under current psychosocial conditions is usually a woman, is penalized, whereas the patron, who is usually a man, is not.[234]

Courts may be expected to hold that laws which confine liability for prostitution to women only are invalid under the Equal Rights Amendment. There is no unique physical characteristic of women which would justify outlawing prostitution when it is done by women, and not when it is done by men. Earlier beliefs that women are the carriers of venereal disease because of their sex have no scientific basis. Ideas that women who sell access to their bodies are social problems, whereas men who do the same thing are not, derive their only rationality from a social double standard which may not enter into legislative or judicial determinations under the Equal Rights Amendment. Even in the absence of the Equal Rights Amendment, recent reforms of prostitution laws have extended the coverage to men. Thus, the Model Penal Code refers to a person guilty of prostitution as "he or she." [235] The New York Penal Code contains a section explicitly stating that both men and women may be guilty of prostitution.[236] With the impetus of the Equal Rights Amendment, other state legislatures can be expected to move in this direction.

If prostitution laws were redefined to cover male prostitutes, then the courts would be unlikely to find a per se violation of the Equal Rights Amendment in the fact that prostitution laws penalize the "seller" but not the "buyer." In general, regulating the conduct of the seller and not the buyer is a rational governmental choice, although in the case of prostitution such a choice may not make sense, even in terms of effective deterrence.[237] Nevertheless, prostitution laws which penalize only the seller would be subject to judicial scrutiny as classifications which fall more heavily on one sex than the other.[238] Thus, to sustain its laws, a state would bear a heavy burden of demonstrating the rationality of regulating only the seller and not the buyer in a prostitution transaction. Reformed penal laws have already begun to regulate patrons as well as prostitutes.[239] It is likely, and desirable, that legislatures, in removing the sex bias from their laws, will follow this lead.

Just as the Equal Rights Amendment would invalidate prostitution laws which apply to women only, so it would require invalidation of laws specially designed to protect women from being forced into prostitution. In addition to many state laws of this type, the federal White Slave Traffic Act (Mann Act) prohibits the transportation in interstate commerce of "any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery or to engage in any other immoral purpose.[240]"

Related sections of the Act also prohibit persuading, inducing, enticing, or coercing a woman to travel in interstate commerce for the above purposes.[241] Cases interpreting the Mann Act have held that a woman may be found guilty as a principal under the Act; in some circumstances she may even be convicted of agreeing to transport herself in interstate commerce.[242] However, it is no crime to transport a man or boy in interstate commerce for the purposes set forth in the statute. Congress could easily bring the Mann Act into conformity with the Equal Rights Amendment by substituting the word "person" for the words "woman or girl" in the statute.

As prostitution laws are redefined to cover male as well as female prostitutes, a court faced with a challenge to the Mann Act might also be inclined simply to extend this law to apply to the transportation of men for illicit purposes. Under current conditions, such an extension would not subject a large number of additional people to criminal liability. However, this would disregard the legislative history and body of court decisions interpreting Congressional intent, which have placed great emphasis on the weakness of women. As late as 1960, the Supreme Court declared:

"A primary purpose of the Mann Act was to protect women who are weak from men who are bad." *Denning v. United States*, 247 F. 463, 465. It was in response to shocking revelations of subjugation of women too weak to resist that Congress acted. See H.R. Rep. No. 47, 61st Cong., 2d Sess., pp. 10–11. As the legislative history discloses, the Act reflects the supposition that the women with whom it sought to deal often had no independent will of their own, and embodies, in effect, the view that they must be protected against themselves.[243]

Given this background, a court might feel that extending the law to cover men would be expanding criminal liability further than Congress intended. Here, as with other criminal laws, a court would probably resolve doubts about congressional intent by striking down the law.

4. Indeterminate Sentencing

In addition to separate substantive law for men and women, some states have special sentencing provisions for women. These laws in effect require or permit judges to place women in a separate correctional status in which the lengths of their sentences are determined not by the judge but by correctional authorities within the limits set by statute. When women are placed in such a status, they may be subjected to longer sentences than those provided for in the substantive statute, thereby creating higher maximum penalties for women than for men convicted of the same crime.

In *United States* ex rel. *Robinson v. New York* [244] and *Commonwealth v. Daniel*,[245] two indeterminate sentencing laws were successfully attacked under the Fourteenth Amendment as denying women equal protection of the laws.[246] However, similar laws remain on the books in a number of states.[247] Such laws, if not invalidated under the Fourteenth Amendment, would be invalidated under the Equal Rights Amendment. In general, the special laws for sentencing of women are in the form of separate additional sentencing statutes. Thus, if a court invalidated the special law for women, it would simply leave women subject to the standard sentencing laws. This was the result in *Robinson* and *Daniel*.

5. Summary

Courts faced with criminal laws which do not apply equally to men and women would be likely to invalidate the laws rather than extending or rewriting them to apply to women and men alike. As a result, legislatures would need to devote attention to revising their penal laws in order to bring them into conformity with the Equal Rights Amendment. While necessary, this should not be an unduly burdensome requirement. Proposals for reform, like the Model Penal Code, already provide models for many new laws that would eliminate impermissible sex discrimination.[248] States such as New York, Connecticut, and Illinois, which have already reformed their criminal laws, would need to make only a few changes to bring them into line with the Equal Rights Amendment. Other states, whose laws regulating sex offenses are holdovers from Victorian or even Puritan times, may wish to revise their sex discriminatory criminal statutes as part of a broader modernization effort.

D. The military

The Armed Forces have always been one of the most male-dominated institutions in our society. Only men are subject to involuntary conscription. Various regulations of the Armed Forces restrict the access of women to the military, and indeed place an absolute limit on the number permitted to serve. Women with dependent children may not enlist, while men in the same situation may do so. Certain grounds for discharge apply only to women. Numerous other forms of differential treatment pervade the military services.

It is not difficult to explain why the military is structured in this way. In the past, physical strength was essential to military success. Weapons were heavy, long marches on foot were frequent, and hand to hand fighting was common. Women were considered in most respects to be weaker than men. Women were also handicapped by pregnancy. Lack of effective contraceptive methods meant that they were frequently, if not constantly pregnant, and disease and death were not uncommon accompaniments to childbirth. Men were therefore a more reliable and mobile group. Sociological factors reinforced this "division of labor." Women were considered too delicate to be exposed to battle and its attendant pain and discomfort. They were trained to be passive, dependent and without initiative. For men, on the other hand, armed struggle was seen as a catalyst of maturity, a symbol of aggressive masculinity, a test which would "separate the men from the boys." [249] Women who wished to fight had to disguise themselves as men.

In this country women have served in the Armed Forces with full military status only since World War II, when the need for personnel and the existence of many civilian-type jobs in the military made the utilization of women appear feasible to the Armed Forces. A Women's Auxiliary Army Corps with civilian status was created in 1942. It proved administratively unworkable, and in 1943 the Army took women under its direct command.[250] After World War II Congress decided to keep the women's arm of the services at reduced size. The Women's Army Corps is now permitted to total only two per cent of the full strength of the services.[251]

While many people look upon such restrictions on women's military service as relieving them of an unadulterated burden or evil, others feel that it would be advantageous for women to receive the training and bene-

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fits that accompany military service in this country. No one can doubt that military service has tremendous disadvantages, chief among them the danger of loss of life and the requirement of learning to kill others. Yet there are also benefits afforded the individuals who serve. The Armed Forces furnish in-service vocational and specialist training, medical care, and benefits for dependents. Veterans receive educational scholarships and loans, preference in government employment, pensions, insurance, and medical treatment.[252]

More subtle factors involve the effect of military service on one's self-image and on the way he or she is viewed by others. For large segments of the population, service is taken to prove that an individual has sacrificed for his or her country. He or she deserves to be taken seriously in return. As Professor Norman Dorsen has said:

"[W]hen women are excluded from the draft—the most serious and onerous duty of citizenship—their status is generally reduced. The social stereotype is that women should be less concerned with the affairs of the world than men. Our political choices and our political debate often reflect a belief that men who have fought for their country have a special qualification or right to wield political power and make political decisions. Women are in no position to meet this qualification.[253]

Having served or being liable to serve also tends to make an individual sensitive to and concerned about the country's foreign policy. Those who must carry out the decisions made in the upper echelons of the government will be interested in participating in the political process and trying to prevent the formulation of policies which involve unjustified killing and destruction, and unnecessary risk of injury and death.[254]

Under the present system few women enter the military and receive these benefits and lessons. Partly as a result, the social stigma and ridicule evoked by the idea of a woman in the military persist. Until women are required to serve in substantial numbers, stereotypes about their inability to do so will be perpetuated.

The Equal Rights Amendment will have a substantial and pervasive impact upon military practices and institutions. As now formulated, the Amendment permits no exceptions for the military.[255] Neither the right to privacy nor any unique physical characteristic justifies different treatment of the sexes with respect to voluntary or involuntary service, and pregnancy justifies only slightly different conditions of service for women. Such obvious differential treatment for women as exemption from the draft, exclusion from the service academies, and more restrictive standards for enlistment[256] will have to be brought into conformity with the Amendment's basic prohibition of sex discrimination.

These changes will require a radical restructuring of the military's view of women, which until now has been a narrow and stereotypical one. Until recently, only unmarried women were generally allowed to serve, and when married women were permitted, their dependents received none of the benefits that men's families receive. A woman was presumed to be the second worker in her family rather than the one responsible for its support, and benefits were therefore assumed to be unnecessary. Any woman who became pregnant or adopted a child was discharged. Women, being excluded from many benefits, were thus a particularly economical source of labor. These rules also effectively prevented women from rising in the ranks and becoming officers, for they would have to be willing to forgo marriage and children in order to do so. They were therefore denied the exercise of leadership skills and were viewed as inferior, deserving the subordinate tasks to which the military's discriminatory rules consigned them. Women were also seen as less flexible and less valuable workers than men incapable of serving in many positions. They were assigned to "women's work" as clerks and secretaries nurses or technicians. Many interested in training in fields such as photography were denied access to the programs.[257]

This view of women has begun to change. But it is happening slowly in some services and not at all in others. The Equal Rights Amendment will greatly hasten this process and will require the military to see women as it sees men—as a diverse group of individuals married and unmarried with and without children possessing or desiring to acquire many different skills and performing many varied kinds of jobs. The impact of the Amendment will now be examined in detail with regard to four important areas: the draft grounds for discharge assignment and training and in-service conditions.

1. The Draft

The Military Selective Service Act of 1967 governs the conscription of citizens into the Armed Forces.[258] The Act explicitly applies only to men in requiring registration and induction for training and service in the Army Navy Marines Coast Guard and Air Force.[259] Men have several times challenged the Act claiming that it violates constitutional rights of due process and equal protection by discriminating on the basis of sex. The courts have consistently rejected this contention.[260]

Under the Equal Rights Amendment the draft law will not be invalidated. Recognizing the concern of Congress with maintaining the Armed Forces, courts would construe the Amendment to excise the word "male" from the two main sections of the Act, dealing with registration and induction, thereby subjecting all citizens to these duties. A woman will register for the draft at the age of eighteen, as a man now does. She will then be classified as to availability for induction and training. If she meets the physical and mental standards, and is not eligible for any exemptions or deferments, she will join men in susceptibility to induction. The statute declares that no one may be inducted until shelter, water, heating and lighting, and medical care are available.[261] The military will clearly have sufficient time during the period after ratification to make the minor adaptations, such as the expansion of gynecological services, necessary to comply with the statute. This is particularly true since the eligibility of women will not necessarily entail an increase in the number of persons inducted.

The Secretary of Defense has the power to set the standards of physical and mental fitness which all inductees must meet. [262] A general intelligence test is used to determine mental qualifications, and a physical examination is given to check the general state of health of the individual. [263] Under the Equal Rights Amendment, all the standards applied through these tests will have to be neutral as between the sexes. Moreover, even after the physical standards have been made uniform for both sexes, they will have to be scrutinized carefully to assure that they are related to the appropriate jobs and functions and do not operate so as to disqualify more women than men. Such a result would raise the possibility that the test, though neutral on its face, was in fact being used to discriminate against women.[264] Achieving this goal of uniform, nondiscriminatory standards will require some changes.

First, height standards will have to be revised from the dual system which now exists. At present, men from 5'0" to 6'8" tall are permitted to serve as enlisted personnel in the Army and Air Force; the range in the Navy and Marine Corps is from 5'0" to 6'6". For male officers, the range of permissible height is from 5'0" to 6'8" in all services except the Army, where the minimum is 5'6". Women in all services and in all ranks may be from 4'10" to 6'0" tall.[265] Upon the Equal Rights Amendment, the same minimum and maximum will have to be applied to both sexes. Persons, male and female, up to 6'8" (or 6'6") would be accepted, if these remain the maximum limits. For enlisted personnel, the services could retain their current minimum for men of 5'0" as the uniform standard, or adopt the lower 4'10" minimum for both sexes. But if the Army retains its 5'6" minimum for officers, it would effectively exclude many women, and the minimum would therefore have to be shown to be closely job-related in order to stand.[266]

The height-weight correlations for the sexes will also have to be modified.[267] At most heights there is a large area of overlap between the normal weight of men and women. For persons above or below this range, an evaluation based on the health of the individual will be made. Since every inductee receives a comprehensive physical examination, this will entail little extra burden.

The same principles will have to be applied to the intelligence test. At present men and women take different tests for enlistment; [268] under the Amendment, both will take the same test. Similarly, the required minimum score will be the same for both sexes. If the test currently used for men is administered to women, and it is shown that women on the whole score lower on it, it will have to be demonstrated that the questions do test general intelligence and are not taken solely from areas of factual knowledge with which most men and few women in this society are trained to be familiar.

Most of the deferments and exemptions from military service could easily be adapted to a sex-neutral system. Women ministers, conscientious objectors, and state legislators will be treated as the men in those categories now are. Women doctors and dentists will be subject to call under the conditions governing medical and dental specialists. However, some provisions will have to be extended or stricken. The dependency deferment now provides that "persons in a status with respect to persons (other than wives alone, except in cases of extreme hardship) dependent upon them for support which renders their deferment advisable" may be deferred.[269] It also states that the President may provide for the deferment of persons who have children, or wives and children, with whom they maintain a bona fide family relationship in their homes. This has been interpreted to mean that a married person with a child will generally be deferred.[270]

There are several permissible alternatives to these deferment provisions under the Equal Rights Amendment. Deferment might be extended to women, so that neither parent in a family with children would be drafted. Alternatively, the section could provide that one, but not both, of the parents would be deferred. For example, whichever parent was called first might be eligible for service; the remaining parent, male or female, would be deferred. A third possibility would be to grant a deferment to the individual in the couple who is responsible for child care. The couple could decide which one was going to perform this function, and the other member would be liable for service. In a one-parent household Congress would probably defer the parent.

Each of these alternatives carries very different and significant policy implications for family structure and population growth. Given current draft calls, and the belief that having both parents present is beneficial for the children, it is likely that both parents will be deferred. However, Congress can choose any of the above policies, for they do not discriminate between men and women.

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The Selective Service Act exempts from the draft the sole surviving son of a family which has lost a member, male or female, in the service of the country.[271] Under the Equal Rights Amendment this exemption for men only cannot stand, for it will mean drafting women when men in identical circumstances are excused. The reasons for the exemption are twofold. One is the feeling that once a family has lost a member, or several members, it cannot be asked to bear a final loss. The other concern is that the family name and line be preserved. The second reason for the exemption will no longer be permissible, because it results in discrimination against women. But the first reason does justify extending the exemption to women, for the purpose is to spare a family its last child subject to induction. Thus the sole surviving child will be exempt.

The computation of the draft quota for a given area is based on the actual number of men in the area liable for training but not deferred after classification.[272] When the Equal Rights Amendment becomes operative the number of women available will be included in the pool of available registrants.

The Selective Service Act provides for the administration of the draft system by local and appeal draft boards.[273] The Act explicitly states that no citizen shall be denied membership on any board on account of sex.[274] However, women are now only a small percentage of total draft board membership. Black registrants have challenged their induction on similar facts, claiming that they cannot be legally inducted by a board which is disproportionately white or which has no black members. None of these claims has met with success.[275] The chances that women will be excused from induction because of the sexual imbalance on the boards is therefore small. Adoption of the Equal Rights Amendment, however, will undoubtedly stimulate the appointment of greater numbers of women to draft boards.

It is possible that an all volunteer army will be established in the United States in the foreseeable future. In that event, equalization of the draft becomes of academic interest only. Even if the volunteer system were approved, however, the draft would probably remain in effect for some years. More important, under either system of recruitment the Equal Rights Amendment will require a change in the status of women in the military and the conditions under which they serve.

2. Grounds for Discharge

In addition to the grounds for discharge applicable to both sexes, several grounds apply only to women. One such rules requires that a married or unmarried woman who becomes pregnant must be discharged. Another requires that a woman with dependent children cannot serve.[276] Men, married or single, who father children or have dependent children are not discharged for such reasons.

Several women have recently brought suits challenging these and similar military regulations on equal protection grounds.[277] Under the pressure of litigation the Air Force has modified some of its rules.[278] Whatever the outcome of this litigation, however, these policies will have to be reexamined and reformulated when the Amendment is passed. If the rules continue to require discharge of women with dependent children, then men in a similar situation will also have to be discharged. Since this will make it almost impossible to have any career officers, such a rule is unlikely to be adopted. The nondiscriminatory alternative is to allow both men and women with children to remain in the service and to take their dependents on assignments in non-combat zones, as men are now permitted to do.

Rules requiring discharge because of pregnancy will also change. The Army has recently provided that married women who plan to remain in the service with their children may receive a three and a half month leave to bear the child.[279] Such a leave is related to a unique physical characteristic of women, and if shown to be directly related to the physical condition of pregnancy, can be applied to women only.

Distinctions between single and married women who become pregnant will be permissible only if the same distinction is drawn between single and married men who father children. This is required because once the Army has allowed married women to continue to serve when they have children, it is clear that pregnancy and childbearing alone are not incompatible with military service. A rule excluding single women who become pregant would thus not be based on physical characteristics, but rather would rest on disapproval of extramarital pregnancy. Such standards must be applied equally to both sexes. Thus, if unmarried women are discharged for pregnancy, men shown to be fathers of children born out of wedlock would also be discharged. Even in this form such a rule would be suspect under the Amendment, because it would probably be enforced more frequently against women. A court will therefore be likely to strike down the rule despite the neutrality in its terms, because of its differential impact. To avoid these problems, the Armed Forces can treat both sexes similarly by permitting single people to father or bear children, and by regulating only the unique physical characteristic of pregnancy.

All people who have children will be treated equally by the Armed Forces in terms of child care. The military may want to provide day care; if it does not, it may allow a parent to be discharged to take care of his or her child if he or she cannot provide for adequate care while on active duty.

3. Assignment and training

All men who are drafted receive four to six months of basic training. All draftees are eligible for combat duty. The men are assigned to one of five broad areas of duty—administration, intelligence, training and tactics, supply, or combat. They are assigned and organized along two different but overlapping systems of classification. One is a numerical system, and the other is a functional one. "Corps" is the general name for the functional units, such as the Army Engineer Corps or the Army Nurse Corps, though the term "corps" is also used to designate a numerical grouping of two to five divisions. Although the members of a functional corps are physically dispersed in job assignments, the corps keeps separate records, and promotions and assignment are routed through its office. Almost all of the women in the Army are members of the Army Nurse Corps or the Women's Army Corps. Although the Army Nurse Corps is organized along job lines, the WAC has no unifying principle except that its members are women. It thus stands as a symbol of the unwillingness of the Army to abandon distinctions based on sex. Under the Equal Rights Amendment the WAC would be abolished and women assigned to other corps on the basis of their skills.

Women are only partially integrated into the training and assignment procedures applicable to men. They receive some basic training but it does not equip them for combat duty. They serve mainly in administrative and clerical jobs or as medical technicians.

Whether women ought to serve in combat units has provoked lengthy debate. Before discussing the arguments raised against it, it is important to place the problem in perspective. Some public debate has implied that hundreds of thousands of women will be affected by such a requirement. This is not true. Combat soldiers make up only a small percentage of military personnel. Even in combat zones many jobs of logistic and administrative support are no different or more difficult than the work done in non-combat zone. Thirty years ago, women were found capable of filling over three-quarters of all Army job classifications,[280] and there is no reason to prevent them from doing these jobs in combat zones. The issue of assigning women to actual combat duty, therefore, involves a relatively small segment of total military assignments.

Opponents of the Amendment claim that women are physically incapable of performing combat duty. The facts do not support this conclusion. The effectiveness of the modern soldier is due more to equipment and training than to individual strength. Training and combat may require the carrying of loads weighing 40 to 50 pounds, but many, if not most, women in this country are fully able to do that.[281] And women are physically as able as men to perform many jobs classified as combat duty, such as piloting an airplane or engaging in naval operations. In order to screen out those of both sexes incapable of combat service, it will be permissible to administer a test to measure ability to do the requisite physical tasks. Those who pass, or who will foreseeably be able to do so after training, will receive combat training. The test will have to be closely related to the actual requirements of combat duty. There will be many women able to pass such a test.

Another frequent objection to women in combat service is based on speculation about the problems that will arise in terms of discipline and sexual activity. No evidence has been found that participation by women will cause difficult problems. Women in other countries, including Israel and North Vietnam, have served effectively in their armed forces. There is no reason to assume that in a dangerous situation women will not be as serious and well disciplined as men.

Finally, as to the concern over women engaging in the actual process of killing, no one would suggest that combat service is pleasant or that the women who serve can avoid the possibility of physical harm and assault. But it is important to remember that all combat is dangerous, degrading and dehumanizing. That is true for all participants. As between brutalizing our young men and brutalizing our young women there is little to choose.

4. In-service Conditions

Women in the Armed Forces receive the same pay and are ranked the same as men. Most service and veterans' benefits are the same for both sexes. On the other hand the rules on dependents' allowances, in-service housing and medical benefits discriminate against women. Male officers are provided quarters on base, or a basic quarters allowance for their dependents if they live off base; male officers also receive a dependents' allowance based on their grade and the number of dependents, regardless of any money the officer's wife may earn. The husband of a female officer, however, is not recognized as a dependent unless he is physically or mentally incapable of supporting himself and is dependent on his wife for more than half of his support.[282] These discriminations are now under attack in a suit against the Air Force.[283] Should they not be stricken down, the Equal Rights Amendment will require that result. Women will receive housing, allowances, and medical benefits on the same basis as men.

Living conditions in the service will be changed by adoption of the Equal Rights Amendment to the extent that they separate men and women for functions in which privacy is not a factor. Officers' clubs, enlisted mens' clubs, and other social organizations

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and activities on military bases will be open to women as well as men. Athletic facilities will also have to be made available to women personnel. Eating facilities will likewise be integrated by sex. Sleeping quarters could remain separate under the privacy exception to the Amendment.

5. Summary

The Equal Rights Amendment will result in substantial changes in our military institutions. The number of women serving, and the positions they occupy, will be far greater than at present. Women will be subject to the draft, and the requirements for enlistment will be the same for both sexes. In-service and veterans' benefits will be identical. Women will serve in all kinds of units, and they will be eligible for combat duty. The double standard for treatment of sexual activity of men and women will be prohibited.

Changes in the law, where necessary to bring the military into compliance with the Amendment, will not be difficult to effect. The statutes governing the military will be amended by Congress, and the services can revise their own regulations. If these changes are made promptly, no disruption in the functioning of the military need result.

The drafting of women into the military will expose them to tasks and experiences from which many of them have until now been sheltered. The requirement of serving will be as unattractive and painful for them as it now is for many men. On the other hand, their participation will cure one of the great inequities of the current system. As long as anyone has to perform military functions, all members of the community should be susceptible to call. When women take part in the military system, they more truly become full participants in the rights and obligations of citizenship.

VI. CONCLUSION

The transformation of our legal system to one which establishes equal rights for women under the law is long overdue. Our present dual system of legal rights has resulted, and can only result, in relegating half of the population to second class status in our society. What was begun in the Nineteenth Amendment, extending to women the right of franchise, should now be completed by guaranteeing equal treatment to women in all areas of legal rights and responsibilities.

We believe that the necessary changes in our legal structure can be accomplished effectively only by a constitutional amendment. The process of piecemeal change is long and uncertain; the prospect of judicial change through interpretation of the Fourteenth Amendment is remote and the results are likely to be inadequate. The Equal Rights Amendment provides a sound constitutional basis for carrying out the alterations which must be put into effect. It embodies a consistent theory that guarantees equal legal rights for both sexes while taking into account unique physical differences between the sexes. In the tradition of other great constitutional mandates, such as equal protection for all races, the right to freedom of expression, and the guarantee of due process, it supplies the fundamental legal framework upon which to build a coherent body of law and practice designed to achieve the specific goal of equal rights.

The call for this constitutional revision is taking place in the midst of other significant developments in the movement for women's liberation in this country. The movement as a whole is in a stage of ferment and growth, seeking a new political analysis based upon greater understanding of women's subordination and of the need for new directions. The resulting political discussion has brought forth many possibilities, including changes in work patterns, new family structures, alternative forms of political organization, and redistribution of occupations between sexes. A number of feminists have argued for increased separation of women from men in some spheres of activity or stages of life. Dialogue and experimentation with many forms of social, political and economic organization will undoubtedly go on as long as the women's movement continues to grow.

Underlying this wide-ranging debate, however, there is a broad consensus in the women's movement that, within the sphere of governmental power, change must involve equal treatment of women with men. Moreover, the increasing nationwide pressure for passage of an Equal Rights Amendment, among women both in and out of the active women's movement, makes it clear that most women do not believe their interests are served by sexual differentiation before the law. Legal distinctions based upon sex have become politically and morally unacceptable.

In this context the Equal Rights Amendment provides a necessary and a particularly valuable political change. It will establish complete legal equality without compelling conformity to any one pattern within private relationships. Persons will remain free to structure their private activity and association without governmental interference. Yet within the sphere of state activity, the Amendment will establish fully, emphatically, and unambiguously the proposition that before the law women and men are to be treated without difference.

FOOTNOTES

† Barbara A. Brown, Gail Falk, and Ann E. Freedman are members of the Class of 1971 of the Yale Law School, and are active in the women's movement. Thomas I. Emerson is a professor of law at the Yale Law School. The authors express appreciation for the thoughtful assistance of Rand E. Rosenblatt of the board of editors of the Yale Law Journal.

[1] H.R.J. Res. 208, 92d Cong., 1st Sess. (1971); S.J. Res. 8, 92d Cong., 1st Sess. (1971).

[2] For accounts of the legal status of women in English and American history, see E. FLEXNER, CENTURY OF STRUGGLE (1959); L. KANOWITZ, WOMEN AND THE LAW (1969) [hereinafter cited as KANOWITZ]; A. KRADITOR, UP FROM THE PEDESTAL (1968); Crozier, *Constitutionality of Discrimination Based on Sex*, 15 BOSTON U.L. REV. 723 (1935); Note, *Sex, Discrimination and the Constitution*, 2 STAN. L. REV. 691 (1950). On the prevalence of discrimination in the American legal system today see, in addition to the above materials, PRESIDENT'S COMMISSION ON THE STATUS OF WOMEN, AMERICAN WOMEN (1963) AND REPORT OF THE COMMITTEE ON CIVIL AND POLITICAL RIGHTS (1963); CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN, REPORT OF THE TASK FORCE ON FAMILY LAW AND POLICY (1968), REPORT OF THE TASK FORCE ON HEALTH AND WELFARE (1968), REPORT OF THE TASK FORCE ON LABOR STANDARDS (1968), and REPORT OF THE TASK FORCE ON SOCIAL INSURANCE AND TAXES (1968); THE PRESIDENT'S TASK FORCE ON WOMEN' RIGHTS AND RESPONSIBILITIES, REPORT: A MATTER OF SIMPLE JUSTICE (1970); WOMEN'S BUREAU, U.S. DEPT. OF LABOR, HANDBOOK ON WOMEN WORKERS (1969) [hereinafter cited as 1969 HANDBOOK]; Cavanagh, *"A Little Dearer than His Horse": Legal Stereotypes and the Feminine Personality*, 6 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 260 (1971); Seidenberg, *The Submissive Majority: Modern Trends in the Law Concerning Women's Rights*, 55 CORN. L. REV. 262 (1970). Recent developments are reported in THE SPOKESWOMAN and WOMEN'S RIGHTS LAW REPORTER.

[3] An early suggestive analysis of legal discrimination against women can be found in Murray & Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 GEO. WASH. L. REV. 232 (1965). In March, 1970, the Citizens' Advisory Council on the Status of Women, in a memorandum prepared by Mary Eastwood, articulated the outline of a coherent theory of the Equal Rights Amendment; see CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN, THE PROPOSED EQUAL RIGHTS AMENDMENT TO THE UNITED STATES CONSTITUTION (1970). Since then, an increasing amount of national attention and scholarly writing has been focused on the Amendment. See *Equal Rights for Women: A Symposium on the Proposed Constitutional Amendment*, 6 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 215 (1971); Note, *Sex Discrimination and Equal Protection: Do We Need A Constitutional Amendment*, 84 HARV. L. REV. 1499 (1971).

[4] The Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." And the Fifth Amendment Due Process Clause has been construed to embody an equivalent protection against action by the federal government; *see, e.g.*, Bolling v. Sharpe, 347 U.S. 497 (1954). Both provisions will hereafter be referred to as the "Equal Protection Clause."

[5] The 1963 position of the President's Commission on the Status of Women is stated in AMERICAN WOMEN, supra note 2, at 44–45. Two leading advocates of women's rights who switched from judicial interpretation to the amendment as the preferred route of change are Dr. Pauli Murray, a member of the Committee on Civil and Political Rights of the President's Commission on the Status of Women, and Professor Leo Kanowitz, author of WOMEN AND THE LAW (1969). See their testimony before the Senate Committee on the Judiciary on the Equal Rights Amendment in September, 1970, *Hearings on S.J. Res. 61 and S.J. Res. 231 Before the Senate Comm. on the Judiciary*, 91st Cong., 2d Sess., at 161, 427 (1970). Other discussion comparing the treatment of sex discrimination through judicial interpretation and amendment of the Constitution can be found in Note, *supra* note 3, 84 HARV. L. REV. 1499, and *Equal Rights for Women*, *supra* note 3, 6 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 215.

[6] *See* Minor v. Happersett, 88 U.S. (21 Wall.) 161 (1874) (voting); Bradwell v. Illinois, 83 U.S. (16 Wall.) 130 (1872) and *In re* Lockwood, 154 U.S. 116 (1894) (admission to the bar).

[7] Bradwell v. Illinois, 83 U.S. (16 Wall.) at 141.

[8] 208 U.S. 412 (1908).

[9] 198 U.S. 45 (1905).

[10] 208 U.S. at 422. It should be noted that the employer in the case did argue for the invalidity of the statute because "it does not apply equally to all persons similarly situated, and is class legislation." 208 U.S. at 418. But this argument was addressed to the point that the law applied only to certain kinds of establishments and did not cover other kinds where women were employed. It did not raise any issue of *women's* rights under the Equal Protection Clause. Nor did the Court consider this to be the issue.

[11] Cases following *Muller* which sustained employment legislation applicable only to women against due process challenges include Radice v. New York, 264 U.S. 292 (1924), and West Coast Hotel v. Parrish, 300 U.S. 379 (1927); *contra*, Adkins v. Children's Hospital, 261 U.S. 525 (1923) (overruled in West Coast Hotel v. Parrish *supra*). For cases relying on *Muller* to sustain state exclusion of women from overtime work, juries, saloons, occupations, and public universities against equal protection challenges, *see, e.g.*, Ward v. Luttrell, 292 F. Supp. 162 (E.D. La. 1968) (women's equal protection challenge to state maximum hours laws denied), and cases cited in Note, *supra* note 3, 84 HARV. L. REV. at 1504 n.46. *But see* Mengelkoch v. Industrial Welfare Comm'n, 437 F.2d 563 (9th Cir. 1971), *reversing in pertinent part* 284 F. Supp. 950, 956 (C.D. Cal. 1968) (holding that an equal protection challenge to California's maximum

hours law for women posed a "substantial constitutional question" requiring the convening of a three-judge district court under 28 U.S.C. § 2281).

[12] 335 U.S. 464 (1948).

[13] *Id.* at 465–66.

[14] *Id.* at 466–67. Justices Rutledge, Douglas, and Murphy dissented, but solely on the narrow issue that the statute discriminated against female bar owners; they did not mention the broader equal protection question. Compare the treatment of the rights of women bartenders in Wilson v. Hacker, 200 Misc. 124, 101 N.Y.S.2d 461 (Sup. Ct. 1950).

[15] For a general discussion of the "reasonable classification" test under the Equal Protection Clause, see *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065, 1077–87 (1969) [hereinafter cited as *Developments—Equal Protection*]; another discussion of *Goesaert* can be found in Note, *supra* note 3, 84 HARV. L. REV. at 1503–04.

[16] *See, e.g.*, Korematsu v. United States, 323 U.S. 214 (1944) (strict review of burdens imposed on basis of race and national origins); Skinner v. Oklahoma *ex rel.* Williamson, 316 U.S. 535 (1942) (strict review of state law infringing man's right of procreation); Kotch v. Board of River Port Pilot Comm'rs., 330 U.S. 552, 564 (1947) (Rutledge, J., dissenting) (strict review of exclusion of persons from occupation on basis of lineage).

[17] *See* the California Supreme Court's discussion of *Goesaert v. Clearly* and *Muller v. Oregon* in Sail'er Inn, Inc. v. Kirby, — Cal. 3d —, 485 P.2d 529, 539 n.15, 95 Cal. Rptr. 329, 339 n.15 (1971). *Cf.* McCrimmon v. Daley, 2 FEP CASES 971, 972 (N.D. Ill. 1970); Paterson Tavern & Grill Owners Ass'n v. Borough of Hawthorne, 57 N.J. 180, 183–86, 270 A.2d 628, 630–31 (1970). For discussion of these and other cases concerning occupational exclusions of women, see note 111 *infra*.

[18] 368 U.S. 57 (1961).

[19] *Id.* at 61–62. Chief Justice Warren and Justices Black and Douglas concurred in an ambiguous opinion which indicated that they were not passing on the constitutional issue. In two earlier cases the Court had indicated that the exclusion of women from juries was constitutionally permissible; see Strauder v. West Virginia, 100 U.S. 303, 310 (1880) (dictum), and Fay v. New York, 332 U.S. 261, 290 (1947); *but cf.* Ballard v. United States, 329 U.S. 187, 193–94 (1946). The Court has agreed to hear the issue of exclusion of women from state juries again in Alexander v. Louisiana, *cert. granted*, 401 U.S. 396 (1971) (No. 5944).

[20] On the "fundamental interest" test see Shapiro v. Thompson, 394 U.S. 618 (1969); Kramer v. Union Free School District, 395 U.S. 621, 626–30 (1969). For discussion see *Developments—Equal Protection*, *supra* note 15, at 1120–23, 1127–31; Note, *supra* note 3, 84 HARV. L. REV. at 1506–07.

[21] McLaughlin v. Florida, 379 U.S. 184, 196 (1965). *See also* Loving v. Virginia, 388 U.S. 1, 11 (1967). While the suspect classification doctrine has been used most frequently in reviewing racial classifications, it has also been applied to legislative distinctions based on national ancestry and alienage. *See, e.g.*, Korematsu v. United States, 323 U.S. 214 (1944); *cf.* Hernandez v. Texas, 347 U.S. 475 (1954). For discussion see *Developments—Equal Protection*, *supra* note 15, at 1087–1120, 1124–27; Note, *supra* note 3, 84 HARV. L. REV. at 1507–16. The California Supreme Court recently overturned a state statute excluding most women from bartending on the grounds that classifications based upon sex should be treated as suspect. . . . Sex, like race and lineage, is an immutable trait, a status into which the class members are locked by the accident of birth. What differentiates sex from nonsuspect statuses, such as intelligence or physical disability, and aligns it with the recognized suspect classifications is that the characteristic frequently bears no relation to the ability to perform or contribute to society. Sail'er Inn, Inc. v. Kirby, — Cal. 3d —, 485 P.2d 529, 539–40, 95 Cal. Rptr. 329, 339–40 (1971). The suspect classification doctrine was also used in striking down heavier criminal penalties for women than for men in United States *ex rel.* Robinson v. York, 281 F. Supp. 8, 14 (D. Conn. 1968), discussed in note 246 *infra*.

[22] *See, e.g.*, Wyman v. James, 400 U.S. 309 (1971), *id.* at 338 (Marshall, J., dissenting); Dandridge v. Williams, 397 U.S. 471 (1970), *id.* at 508 (Marshall, J., dissenting); Kramer v. Union Free School District, 395 U.S. 621 (1969), *id.* at 634 (Stewart, J., dissenting); Shapiro v. Thompson, 394 U.S. 618 (1969), *id.* at 655 (Harlan, J., dissenting).

[23] As is pointed out in Note, *supra* note 3, 84 HARV. L. REV. at 1509–13, the number and kind of sex-based classifications which would be upheld under a suspect classification standard depend on the burden of justification which the Court requires the state to bear. If the Court requires the state to demonstrate a "perfect match" between the category "woman" and the legislative purpose (such as preventing job-related injuries), few (if any) sex-based laws would survive constitutional review. If, on the other hand, the Court adopts a "balancing" approach, and weighs the extent of legislative "mismatch" against the administrative inconvenience of abolishing the law, the results would be far more favorable to sex-based classifications. *See id.* at 1511–12.

[24] *See* pp. 888–92 *infra*.

[25] 401 U.S. 951 (1971), *aff'g* 316 F. Supp. 134 (D.S.C. 1970).

[26] 316 F. Supp. 134, 138 (D.S.C. 1970).

[27] 401 U.S. 951 (1971).

[28] The Court is continuing, however, to examine sex classifications in certain contexts. It recently granted review in cases which raise issues of sex discrimination in connection with child custody, *In re* Stanley, 45 Ill. 2d 132, 256 N.E. 2d 814 (1970), *cert. granted sub nom.* Stanley v. Illinois, 400 U.S. 1020 (1971) (No. 5750); administration of estates, Reed v. Reed, 93 Idaho 511, 465 P. 2d 635 (1970), *prob. juris. noted*, 401 U.S. 9934 (1971) (No. 430); and exclusion of women from jury venire lists, State v. Alexander, 255 La. 941, 233 So. 2d 891 (1970), *cert. granted sub nom.* Alexander v. Louisiana, 401 U.S. 936 (1971). The Court has also agreed to review two cases involving the imposition on women of their husbands' debts in community property states. See Perez v. Campbell, 421 F. 2d 619 (9th Cir. 1970), *cert. granted*, 400 U.S. 818 (1970) (No. 5175) (challenging the suspension of an Arizona woman's driver's license and car registration for debts arising from an accident while her husband was driving the community car); Mitchell v. Commissioner, 430 F. 2d 1 (5th Cir. 1970), *cert. granted sub nom.* United States v. Mitchell, 400 U.S. 1008 (1971) (No. 798) (woman's liability for husband's federal income tax).

[29] Collections of judicial decisions on the validity of sex-based laws may be found in PRESIDENT'S COMMISSION ON THE STATUS OF WOMEN, REPORT OF THE COMMITTEE ON CIVIL AND POLITICAL RIGHTS, Appendix B, 47–77 (1963); KANOWITZ, *supra* note 2, at 149–92; Crozier, *Constitutionality of Discrimination Based on Sex*, 15 BOSTON U.L. REV. 723 (1935); Note, *Sex, Discrimination, and the Constitution*, 2 STAN. L. REV. 691 (1950); Note, *Classification on the Basis of Sex and the 1964 Civil Rights Act*, 50 IOWA L. REV. 778 (1965). The cases referred to in the text as striking down discriminatory laws include: United States *ex rel.* Robinson v. York, 281 F. Supp. 8 (D. Conn. 1968), and Commonwealth v. Daniel, 430 Pa. 642, 243 A. 2d 400 (1968) (criminal penalties); White v. Crook, 251 F. Supp. 401 (M.D. Ala. 1966) (jury service); Kirstein v. Rector and Visitors of the University of Virginia, 309 F. Supp. 184 (E.D. Va. 1970) (admission to university); Sail'er Inn, Inc. v. Kirby, — Cal. 3d —, 485 P. 2d 529, 95 Cal. Rptr. 329 (1971) (exclusion from bartending), discussed in note 21 *supra*; Seidenberg v. McSorley's Old Ale House, Inc., 308 F. Supp. 1253 (S.D.N.Y. 1969) and 317 F. Supp. 593 (S.D.N.Y. 1970) (service at bar); Karczewski v. Baltimore & Ohio R.R., 274 F. Supp. 169 (N.D. Ill. 1967) (loss of consortium). *Cf.* Mengelkoch v. Industrial Welfare Comm'n, 437 F. 2d 563 (9th Cir. 1971), discussed in note 11 *supra*.

[30] The cases referred to in the text as upholding discriminatory laws include: Gruenwald v. Gardner, 390 F. 2d 591 (2d Cir. 1968), *cert. denied*, 393 U.S. 982 (1968) (social security benefits); State v. Hall, 187 So. 2d 861 (Miss. 1966), *appeal dismissed*, 385 U.S. 98 (1966) (jury service); United States v. St. Clair, 291 F. Supp. 122 (S.D.N.Y. 1968) and United States v. Dorris, 319 F. Supp. 1306 (W.D. Pa. 1970) (Selective Service); Jacobson v. Lenhart, 30 Ill. 2d 225, 195 N.E. 2d 638 (1964) (age of majority); Miskunas v. Union Carbide Corp., 399 F. 2d 847 (7th Cir. 1968), *cert. denied*, 393 U.S. 1066 (1969) (consortium).

[31] For a discussion of the limits of Congressional power to prohibit sex discrimination in areas traditionally reserved to the states, such as inheritance, domestic relations, and criminal law, see Note *supra* note 3, 83. HARV. L. REV. at 1516–18.

[32] This section deals with a few central theoretical issues which have persisted throughout the debates on the Amendment; it is not a detailed account of the formal legislative history of the Amendment. References to the resolutions, hearings, reports, and debates on the Amendment are given in a table in an Appendix to this article.

[33] 92 CONG. REC. 9313 (1946).

[34] 9 CONG. REC. 738 (1950).

[35] In 1950, Senator Kefauver proposed that equal rights be attained through legislation rather than amendment. He offered a bill which would have created a commission to survey the laws and report to Congress, which would then take action. The standard which he had in mind for the formulation of laws would have permitted protective legislation and other special laws for women to stand. The bill was defeated, 18–65. 96 CONG. REC. 724, 758–61, 872 (1950).

[36] 116 CONG. REC. 7948, 7953 (daily ed. Aug. 10, 1970); 116 CONG. REC. 17631–36, 17639–51 (daily ed. Oct. 9, 1970).

[37] 116 CONG. REC. 7953–54 (daily ed. Aug. 10, 1970).

[38] 116 CONG. REC. 17341 (daily ed. Oct. 7, 1970); 116 CONG. REC. 17792 (daily ed. Oct. 12, 1970).

[39] 116 CONG. REC. 17780–81 (daily ed. Oct. 12, 1970).

[40] It is interesting to note that this issue, which proved so decisive and destructive of the Amendment in 1970, had been discussed and considered settled among the proponents in the 1950 debate. Senator Cain, a supporter, had said that the Amendment would mean that women would be drafted and assigned jobs based on their individual capacities and the needs of the country. 90 CONG. REC. 760–61 (1950). With a war just behind them and the specter of an atomic one facing them, Congress could foresee a need for women in the armed forces. Now the idea of compulsory military service for women seems outrageous to some senators.

[41] Discussions of the legal foundations of equal rights for women which we have found particularly helpful, and upon which we have attempted to build in this article, include Murray & Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 GEO. WASH. L. REV. 232 (1965); CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN, THE PROPOSED EQUAL RIGHTS AMENDMENT TO THE UNITED STATES CONSTITUTION (1970); and the testimony of several witnesses in *Hearings on S.J. Res. 61 and S.J. Res. 231 Before the Senate Comm. on the Judiciary*, 91st Cong., 2d Sess. (1970).

[42] *But see* Note, *Too Old To Work: The Constitutionality of Mandatory Retirement Plans*, 44 S. CAL. L. REV. 150 (1970).

[43] It seems lightly probable that, as to most characteristics which the law takes into account, the differences within each sex are greater than the differences in average between the sexes. The justification for the Equal Rights Amendment, however, stands without regard to this factual assumption.

[44] Executive Order 11478, 3 C.F.R. 133 (1969 Comp.), 42 U.S.C. § 2000e (Supp. V, 1969); Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e–15 (1964).

[45] For discussion of the problem as it arises in the determination of insurance rates based on statistical differences between men and women, see *Developments in the Law—Employment Discrimination and Title VII of the Civil Rights Act of 1964*, 84 HARV. L. REV. 1109, 1172–76 (1971) [hereinafter cited as *Developments—Title VII*].

[46] 368 U.S. 57 (1961). This case is discussed at p. 879 *supra*.

[47] The possibility that a woman who became a mother might leave the workforce altogether for child*rearing* is not based on a unique physical characteristic of women, and therefore would not even be considered in relation to the unique physical characteristics tests.

[48] One commentator has suggested that at least in the First Amendment area, the doctrine of "less drastic means" has little viability beyond traditional legal assumptions about the impact of vague criminal statutes. *See* Note, *Less Drastic Means and the First Amendment*, 78 YALE L.J. 464, 472–74 (1969). On the other hand, the U.S. Court of Appeals for the District of Columbia Circuit has used the concept of less drastic means in reviewing the problems of confinement in mental institutions; *see* Covington v. Harris, 419 F.2d 617 (D.C. Cir. 1969), and Lake v. Cameron, 364 F.2d 657 (D.C. Cir. 1966). See also the development of judicial concepts of "job validation" of tests under Title VII in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and cases discussed in *Developments—Title VII*, *supra* note 45, at 1120–1140.

[49] Murray & Eastwood, *supra* note 3, at 241.

[50] Penn v. Stumpf, 308 F. Supp. 1238, 1244 (N.D. Cal. 1970).

[51] Gaston County v. United States, 395 U.S. 285, 296–97 (1969). Other cases invalidating ostensibly neutral classifications which operated to discriminate against the right of blacks to vote include Lane v. Wilson, 307 U.S. 268 (1939); Gomillion v. Lightfoot, 364 U.S. 339 (1960). Pupil assignment laws, under which assignment of students to schools is ostensibly based upon non-racial factors, have not been allowed to operate so as to maintain segregation of races in the school system. See Green v. County School Board, 391 U.S. 430 (1968); United States v. Jefferson County Board of Education, 372 F. 2d 836 (5th Cir. 1966), *cert. denied*, 389 U.S. 840 (1967). For rejection of an ostensibly neutral classification which abridged freedom of religion, see Sherbert v. Verner, 374 U.S. 398 (1963). On "neutral" classifications which operate to discriminate against blacks in employment, see Griggs v. Duke Power Co., 401 U.S. 424 (1971). Generally on the problem see Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 YALE L.J. 1205 (1970).

[52] 381 U.S. 479 (1965).

[53] The balancing test for the right of privacy is used by Mr. Justice Goldberg in his concurring opinion, Griswold v. Connecticut, 381 U.S. 479, 486 (1965). For discussion of the full protection or absolute approach see T. EMERSON, THE SYSTEM OF FREEDOM OF EXPRESSION, 544–550 (1970).

[54] The constitutional right of privacy in the search situation was recognized in York v. Story, 324 F. 2d 450 (9th Cir. 1963), *cert. denied*, 376 U.S. 939 (1964).

[55] Plessy v. Ferguson, 163 U.S. 537 (1896); Brown v. Board of Education, 347 U.S. 483 (1954). The suggestion concerning dormitories and toilet facilities is made in Murray & Eastwood, *supra* note 3, at 240. On the application of the separate-but-equal doctrine to universities, see Kirstein v. Rector and Visitors of the University of Virginia, 309 F. Supp. 184, 187–88 (E.D. Va. 1970).

[56] Drawing the line between the public and private sectors involves the concept of "state action," discussed at pp. 905–07 *infra*.

[57] Generally on the validity of benign classifications to secure greater equality in race relations, see Fiss, *Racial Imbalance in the Public Schools: The Constitutional Concepts*, 78 HARV. L. REV. 564 (1965); Kaplan, *Equal Justice in An Unequal World: Equality for the Negro—The Problem of Equal Treatment*, 61 NW. U.L. REV. 363 (1966); *Developments—Equal Protection*, *supra* note 15, at 1105–20.

[58] With respect to the power to afford affirmative relief in framing judicial remedies, see Swann v. Charlotte-Mecklenburg Board of Education, 91 S. Ct. 1267 (1971).

[59] On the analogous power of Congressional implementation conferred by the enforcement clause of the Fourteenth Amendment, see Katzenbach v. Morgan, 384 U.S. 641 (1966). See also South Carolina v. Katzenbach, 383 U.S. 301 (1966); United States v. Guest, 383 U.S. 745 (1966); Oregon v. Mitchell, 400 U.S. 112 (1971).

[60] *Cf.* Black, *Foreword: "State Action," Equal Protection, and California's Proposition 14*, 81 HARV. L. REV. 69 (1967).

[61] Williams v. McNair, 401 U.S. 951 (1971); see discussion at p. 881 *supra*.

[62] *See* Guillory v. Administrators of Tulane University, 203 F. Supp. 855 (E.D. La.), *vacated*, 207 F. Supp. 554, *aff'd* 306 F. 2d 489 (5th Cir. 1962); Greene v. Howard University, 271 F. Supp. 609 (D.D.C. 1967), *remanded*, 412 F. 2d 1129 (D.C. Cir. 1969); Grossner v. Trustees of Columbia University, 287 F. Supp. 535 (S.D.N.Y. 1968); Powe v. Miles, 294 F. Supp. 1269 (W.D.N.Y.), *modified*, 407 F. 2d 73 (2d Cir. 1968).

[63] 397 U.S. 664 (1970).

[64] Of course, significant government aid, financial or otherwise, would involve state action. See, e.g., Simkins v. Moses H. Cone Memorial Hospital, 323 F.2d 959 (4th Cir. 1963), *cert. denied*, 376 U.S. 938 (1964). See also Green v. Kennedy, 309 F. Supp. 1127 (D.D.C. 1970).

[65] S. REP. No. 267, 78th Cong., 1st Sess. at 1 (1943).

[66] H.R.J. Res. 208, 92d Cong., 1st Sess. (1971). Many resolutions embodying the Equal Rights Amendment have been introduced in the House of Representatives in the 92d Congress. They vary in their provisions on ratification, effective date, and enforcement. However, the version proposed by Representative Griffiths is the one which has received the endorsement of most of the proponents of the Amendment.

[67] H.R.J. Res. 208, 92d Cong., 1st Sess. § 2 (1971).

[68] Ch. 531, 49 Stat. 620 (codified in scattered sections of 42 U.S.C.).

[69] CONN. GEN. STAT. ANN. PENAL CODE, 1969 Public Act No. 828 (effective Oct. 1, 1971), Criminal Code of 1961, ANN. STAT. ch. 38, §§ 1–99 (Smith- Hurd 1964).

[70] This list of groups and organizations is of course only suggestive. As the women's movement continues to burgeon, more and more organizations are gaining experience for the task of law reform through lobbying and litigating for women's rights under present laws.

[71] Exec. Order No. 11126, 3 C.F.R. 791 (1963 Comp.).

[72] For more detailed discussion of problems of statutory construction when constitutional questions are involved, *see* J. SUTHERLAND, STATUTORY CONSTRUCTION (3d ed. F. Horack ed. 1943) [hereinafter cited as SUTHERLAND]; Sedler, *Standing to Assert Constitutional Jus Tertii in the Supreme Court*, 71 YALE L.J. 599 (1962); Stern, *Separability and Separability Clauses in the Supreme Court*, 51 HARV. L. REV. 76 (1937) [hereinafter cited as Stern]; Note, *Supreme Court Interpretation of Statutes to Avoid Constitutional Decisions*, 53 COLUM. L. REV. 633 (1953); Note, *The Effect of an Unconstitutional Exception Clause on the Remainder of a Statute*, 55 HARV. L. REV. 1030 (1942).

[73] For reasons why vagueness and chilling effect problems are unlikely to arise, *see* notes 78 & 85 *infra*.

[74] For the maxim that, assuming any legal effect can be given to the remaining provisions of the statute, legislative intent is determinative, *see* Dorchy v. Kansas, 264 U.S. 286, 289–90 (1924). *See also* Note, *supra* note 72, 53 COLUM. L. REV. at 642. For the proposition that the amending legislature's intent may be relevant, *see* Note, *supra* note 72, 55 HARV. L. REV. at 1033.

[75] *See* Note, *supra* note 72, 55 HARV. L. REV. at 1032 n.20, 1033 nn.21 & 22, citing cases concerning tax statutes from which exceptions were removed, *e.g.*, State *ex rel.* Bolens v. Frear, 148 Wis. 456, 134 N.W. 673 (1912), *appeal dismissed*, 231 U.S. 616 (1914); State *ex. rel.* v. Baker, 55 Ohio St. 1, 44 N.E. 516 (1896), demonstrating the importance of when the legislature will be able to meet and enact a new statute; State *ex. rel.* Wilmot v. Buckley, 60 Ohio St. 273, 54 N.E. 272 (1899); Anderson v. Wood, 152 S.W.2d 1085 (Tex. 1941), indicating the significance of an existing law of similar substance. McLaughlin v. Florida, 379 U.S. 184, 195–96 (1965), also deals with this latter issue.

[76] *See* Note, *supra* note 72, 55 HARV. L. REV. at 1030 n. 3, citing 22 CALIF. L. REV. 228 (1934), and 1030 n.6, 1031 n.7 and cases cited herein. State statutes which exclude noncitizens from benefits are usually interpreted to extend benefits to them, while statutes which impose burdens on them are almost invariably struck down, to avoid unconstitutionality under the Privileges and Immunities Clause of Article IV § 2. The fact that the number of non-citizens burdened by a statute or excluded from a benefit-conferring act is usually small in proportion to the number of citizens may account for these results, although this is not stated explicitly in the cases. *See* Note, *supra* note 72, 55 HARV. L. REV. at 1034 n.40, 1035 nn.41–44; Quong Ham Wah Co. v. Industrial Accident Commission, 184 Cal. 26, 192 Pac. 1021 (1920), *appeal dismissed* 225 U.S. 445 (1921) (workman's compensation benefit privilege extended to nonresidents).

[77] *See* for discussion and authorities, 3 SUTHERLAND, Ch. 56, esp. §§ 5604–5606, at 44–67; 2 SUTHERLAND § 2418, at 196–97; *cf.* Stern, *supra* note 72, at 88 nn.56–58, 89 nn.59–61; Note, *supra* 72, 55 HARV. L. REV. 1030, 1031, n.11; Yu Cong Eng. v. Trinidad, 271 U.S. 500, 515–23 (1926) (citing cases). *Contrar*, McCreary v. State. 72 Ala. 480 (1883); *cf.* Skinner v. Oklahoma *ex rel.* Williamson, 316 U.S. 535, 543 (1942) (dictum). See discussion at p. 919 *infra*.

[78] State v. Gantz, 124 La. 535, 543, 50 So. 524, 526 (1909). Judicial revision of criminal statutes often raises a problem in addition to the one discussed. If a court, to avoid unconstitutional overbreadth, must read specific words of exception into a statute, the statute may be unconstitutionally vague as well. As the Supreme Court stated in Smith v. Cahoon, 284 U.S. 553, 564 (1931):

> Either the statute imposed upon the appellant obligations to which the State had no constitutional authority to subject him, or it failed to define such obligations as the State had the right to impose with the fair degree of certainty which is required of criminal statutes.

This problem is acute where the saving construction of the court, in "discovering" an implicit exception, raises the possibility that there may be other exceptions of a similar nature as yet hidden. Since the

Equal Rights Amendment deals with the inclusion or exclusion of either of two well-defined groups, this problem is unlikely to arise.

[79] *See* Note, *supra* note 72, 55 HARV. L. REV. at 1031–32, 1034–35, and cases cited at 1035 nn.42–44.

[80] *See, e.g.,* Burrow v. Kapfhammer, 284 Ky. 753, 145 S.W.2d 1067 (1940), noted at 54 HARV. L. REV. 1078 (1941). *But cf.* Butte Miners' Union No. 1 v. Anaconda Copper Mining Co., 112 Mont. 418, 118 P.2d 148 (1941), noted at 55 HARV. L. REV. 1052 (1942).

[81] 92 U.S. 214 (1875).

[82] *See, e.g.,* Stern, *supra* note 72, at 94–97.

[83] *See* the discussion in *id.*, at 102. Cases reflecting hostility on the part of the Court to the substantive policy involved in the statute include Carter v. Carter Coal co., 298 U.S. 238 (1936) and United States v. Reese, 92 U.S. 214 (1875), discussed in Stern, *supra* note 72, at 99. An example of a different "alternative basis" is Illinois Cent. R.R. v. McKendree, 203 U.S. 514 (1906), where the Court cast its decision in methodological terms perhaps to avoid reaching another constitutional issue on which it was divided. See Stern, *supra* note 72, at 102 n. 116.

[84] One indication of the accuracy of this analysis is the frequency with which the same courts follow the rule against addition of words on some occasions and violate it on others, avoiding open conflict with the *Reese* line of cases by neglecting to discuss the methodology implicit in their result. *See, e.g.,* Holy Trinity Church v. United States, 143 U.S. 457 (1892), and Stern, *supra* note 72, at 80–82, 96.

[85] In this survey we do not discuss statutes challenged on First Amendment grounds. Where statutory language has been found to be overinclusive on First Amendment grounds, a court will ordinarily refuse to limit the enactment to its constitutional applications in order to preserve the statute. The explanation is that a limiting construction will not eliminate the vice of the statute, which is that the over-broad language on its face will chill the exercise of protected First Amendment freedoms. Analogous Equal Rights Amendment cases are unlikely to arise, for it is the direct rather than the chilling effect of statutes which will be called into question. Similarly, we will not discuss challenges on grounds of vagueness, since the extension required in Equal Rights cases is likely to involve well-defined groups.

[86] Neal v. Delaware, 103 U.S. 370 (1880); *Ex parte* Yarborough, 110 U.S. 651 (1884); Guinn v. United States, 238 U.S. 347 (1915); Myers v. Anderson, 238 U.S. 368 (1915).

[87] *See* Leser v. Garnett, 258 U.S. 130, 136 (1922); Breedlove v. Suttles, 302 U.S. 277, 283 (1937); Graves v. Eubank, 205 Ala. 174, 87 So. 587 (1921); Foster v. Mayor & Council of College Park, 155 Geo. 174, 117 S.E. 84 (1923); Matter of Cavellier, 159 Misc. 212, 215, 287 N.Y.S. 739, 742 (1936).

[88] 339 U.S. 629 (1950).

[89] 339 U.S. 637 (1950).

[90] 391 U.S. (1968).

[91] 394 U.S. 618 (1969).

[92] 251 F. Supp. 401 (M.D. Ala. 1966).

[93] *See* authorities cited in note 77 *supra*.

[94] 379 U.S. 184 (1964).

[95] U.S. *ex rel.* Robinson v. York, 281 F. Supp. 8 (D. Conn. 1968); Commonwealth v. Daniel, 430 Pa. 642, A.2d 400 (1968).

[96] Skinner v. Oklahoma *ex rel.* Williamson, 316 U.S. 535, 543 (1942) (citations omitted).

[97] *See* the materials cited in note 2, *supra*. *See also* B. BOWMAN ET AL., WOMEN AND THE LAW: A COLLECTION OF READING LISTS (April 1, 1971) (available from Box 89, Yale Law School, New Haven, Conn. 06520); L. CISLER, WOMEN: A BIBLIOGRAPHY, (6th ed. 1970) (available from the author, 102 West 80 St., New York, N.Y. 10024), an excellent guide to the fast increasing body of literature on women's political and economic status; and FEMALE STUDIES I (S. Tobias ed. 1970) and FEMALE STUDIES II (F. Howe ed. 1970) (collections of college reading lists available from KNOW, Inc., P.O. Box 10197, Pittsburgh, Pa. 15232).

[98] §§ 701–716, 42 U.S.C. §§2000e to 2000e–15 (1964), *as amended,* (Supp. V. 1970)

[99] Table I is adapted from S. Ross, Sex Discrimination and "Protective" Labor Legislation, printed in *Hearings on Section 805 of H.R. 16098 Before the Special Subcomm. on Education of the House Comm. on Education and Labor* 91st Cong., 2d Sess., pt. 1, at 592, 595-96 (1970). The table is based on data from WOMEN'S BUREAU, U.S. DEPT. OF LABOR, SUMMARY OF STATE LABOR LAWS FOR WOMEN (1969). Table II is adapted from a memorandum prepared by Catherine East, Executive Secretary of the Citizens' Advisory Council on the Status of Women, April 16, 1971.

[100] *See generally, Developments—Title VII, supra* note 45, at 1186–95.

[101] *See* S. Ross, *supra* note 99, *passim,* and cases cited in notes 106, 109, 126, 127, and 132 *infra*. *See also* the position of the Equal Employment Opportunity Commission (EEOC) on state protective legislation for women embodied in its regulations, 29 C.F.R. § 1604.1(b)(2) (1970), set out at p. 933 *infra*. A contrary analysis appears in Jordan, *Working Women and the Equal Rights Amendment,* TRANS-ACTION, Nov. 1970, at 16.

[102] § 703(a)(1), 42 U.S.C. § 2000e-2(a)(1) (1964).

[103] *See* § 703(b), 42 U.S.C. § 200e-2(b) (employment agencies): § 703(c), 42 U.S.C. § 2000e-2(c) (labor organizations); § 705(a), 42 U.S.C. § 2000e-4(a) (creation of the EEOC); §§ 706(a)–(k), 42 U.S.C. 2000e-5(a)–(k) (procedures for preventing and remedying violations).

[104] § 703(e), 42 U.S.C. § 2000e-2(e) (1964).

[105] 29 C.F.R. § 1604.1(a)(2) (1970).

[106] *See, e.g.,* Weeks v. Southern Bell Tel. & Tel. Co., 408 F.2d 228 (5th Cir. 1969), *reversing in pertinent part* 277 F. Supp. 117 (S.D. Ga. 1967), in which the Fifth Circuit ruled that a company regulation imposing a weightlifting limit of 30 pounds only on women was not a bfoq under Title VII. The court defined the standard for allowing sex-based regulations under the bfoq exception as: "an employer has the burden of proving that he had reasonable cause to believe, that is, a factual basis for believing, that all or substantially all women would be unable to perform safely and efficiently the duties of the job involved." 408 F.2d at 235. *But see also* Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971), *rev'g* 411 F.2d 1 (5th Cir. 1968), in which the Supreme Court implied, without deciding, that the bfoq exception might be considerably broader.

[107] Both Title VII and the Equal Rights Amendment operate to invalidate discriminatory state laws. However, when extension rather than invalidation is involved, they operate in somewhat different ways. Title VII affects state laws only indirectly, as a consequence of its regulation of discrimination in private employment. Therefore, when a court attempts to reconcile Title VII with state law by extending the regulation in question to cover the improperly excepted group, the state law is not actually revised; instead, an additional federal duty is imposed on covered employers. The Equal Rights Amendment, in contrast, would operate directly on state law, and changes, whether invalidation or extension, would apply to all subsequent cases. However, the Equal Rights Amendment will not otherwise affect discrimination in private employment, unless Congress chooses to enact affirmative legislation under the Amendment's enforcement clause.

[108] *See* S. Ross, *supra* note 99, at 595; Richards v. Griffith Rubber Mills, 300 F. Supp. 338 (D. Ore. 1969), where one of the grounds relied on by the employer to deny a particular job to women was a union contract requiring two ten-minute rest periods for women.

[109] *See, e.g.,* Potlatch Forests Inc. v. Hays, 318 F. Supp. 1368 (E.D. Ark. 1970) (state overtime wage requirement extended to men). *But cf.* Ridinger v. General Motors Corp., 325 F. Supp. 1089 (S.D. Ohio 1971).

[110] *See Developments—Title VII, supra* note 45, at 1189. The heaviest economic burden to employers might arguably be caused by the extension of state minimum wage and overtime premium pay coverage to men. However, even the economic cost of this extension is likely to be small. First, it is unusual for men to be paid less than women within a particular establishment or occupation, both because men tend to have higher status or more skilled jobs, and because men are often paid more for the same work. *See, e.g.,* WOMEN'S BUREAU, U.S. DEP'T OF LABOR, 1969 HANDBOOK ON WOMEN WORKERS, Tables 66, 74, at 150–61 [hereinafter cited as 1969 HANDBOOK]. The extent of wage discrimination against women is indicated by the enforcement and litigation experience under the Equal Pay Act of 1963, 29 U.S.C. § 206(d) (1964), which prohibits wage differentials between workers of opposite sexes holding jobs of equal skill, effort, and responsibility under similar conditions. Since the Equal Pay Act went into effect in 1964, approximately 50,000 employees, mainly women, have recovered $17 million in back wages. *See* 1 BNA MANPOWER INF. SERV. CURRENT REPORTS, no. 18, May 20, 1970, at 7; *cf.* THE PRESIDENT'S TASK FORCE ON WOMEN'S RIGHTS AND RESPONSIBILITIES, REPORT: A MATTER OF SIMPLE JUSTICE 10 (1970). Second, by 1969, nearly four out of every five non-supervisory workers in private employment were covered by the federal Fair Labor Standards Act, which, under the relevant 1966 amendments, requires a minimum hourly wage of $1.60 and time and a half for all hours in excess of forty hours a week in most covered occupations. 1969 HANDBOOK at 254; see 29 U.S.C. §§ 203, 206–07 (Supp. V, 1970), *amending* 29 U.S.C. §§ 203, 206–07 (1964). Third, only ten states of forty-one with minimum wage laws limited coverage to women or to women and minors, and only five of the eighteen jurisdictions which provide premium pay rates for overtime limit their coverage to women or to women and minors. 1969 HANDBOOK at 266–67.

[111] The only cases thus far reported have concerned laws excluding women from bartending jobs, sometimes with exceptions for female liquor licensees or close female relatives of the licensee. *See, e.g.,* McCrimmon v. Daley, 2 FEP CASES 971 (N.D. Ill. Mar. 31, 1970), *on remand from* 418 F.2d 366 (7th Cir. 1969) (invalidating a Chicago municipal ordinance under Title VII and the Fourteenth Amendment Due Process Clause); Paterson Tavern & Grill Owners Ass'n v. Borough of Hawthorne, 57 N.J. 180, 270 A.2d 628 (1970) (invalidating a municipal ordinance as an unnecessary and unreasonable exercise of police power, and criticizing, *inter alia,* Goesaert v. Cleary, 335 U.S. 464 (1948)); Sail'er Inn, Inc. v. Kirby,—Cal. 3d—485 P.2d 529, 95 Cal. Rptr. 329 (1971) (invalidating a state law on the grounds that sex is a suspect classification under the Fourteenth Amendment Equal Protection Clause); *contra,* Krauss v. Sacramento Inn, 2 FEP CASES 733 (E.D. Cal. June 15, 1970) (upholding California statute as reasonable under the Twenty-First Amendment, despite passage of Title VII, and citing, *inter alia,* Goesaert v. Cleary, *supra*).

[112] *See* 1969 HANDBOOK 276–77. The jurisdictions are Connecticut, Massachusetts, Missouri, New York, Vermont, Washington, and Puerto Rico. The statutory prohibition on employment lasts until three to six weeks after childbirth. *Id.* The standard in the state of Washington is established by minimum wage orders, some of which provide that special permission may be granted for continued employment upon employer's request and with a doctor's certificate. In addition, the Oregon Mercantile and Sanitation and Phys-

ical Welfare Orders recommended that an employer should not employ a female at any work during the six weeks preceding and the four weeks following the birth of her child, unless recommended by a licensed medical authority. *Id.*

[113] In addition, thirty-seven states and the District of Columbia disqualify women from collecting unemployment insurance during a specified period before and/or after childbirth, whether or not pregnancy is the reason for their unemployment. 1969 HANDBOOK 52–54. Cf. REPORT OF THE TASK FORCE ON SOCIAL INSURANCE AND TAXES, supra note 2, at 25–30, 44–46. On the other hand, Rhode Island's general temporary disability program provides cash benefits for unemployment due to maternity leave for a fourteen-week period around childbirth, and New Jersey's program provides cash payments for disabilities existing during the four weeks before and the four weeks following childbirth. However, New York and California, the only other states with state temporary disability programs, do not include disabilities based on pregnancy except in special circumstances. *Id.* at 44–46.

[114] *See,* for statistics on women's employment as teachers, 1969 HANDBOOK 90. A survey conducted by the National Education Association showed that in 1965–1966, a large number of school systems required maternity leave to begin between the fourth and sixth month of pregnancy, and extend until three or more months after childbirth. RESEARCH DIV'N, NATIONAL EDUCATION ASSOC., LEAVES OF ABSENCE FOR CLASSROOM TEACHERS 1965–66 20–26 (1967). See also speech by Jacqueline G. Gutwillig, Chairman, Citizens' Advisory Council on the Status of Women, to Conference of Interstate Association of Commissions on Status of Women, St. Louis, Mo., June 19, 1971.

[115] *See* the discussion at p. 895 *supra.*

[116] The legislative purpose of compulsory maternity leave legislation is not entirely clear; the central obscurity is the failure to specify what and who is being "protected," and why the legislature thinks the protection is necessary. Assuming that the primary purpose of such laws is to protect women's health, they can only be rationalized if one accepts as true the proposition that pregnant women, in contradistinction to all other workers, are unable or unwilling to seek or to heed medical advice about the safety and desirability of their continued performance of their jobs in light of the temporary change in their physical condition. Alternative explanations are available, however, and we are not in a position to say which of the possibilities is the actual legislative justification. One can suppose, for example, that the legislature was trying to design genuinely protective legislation and failed to think through fully the operative effect of lengthy compulsory leave without job security either in terms of women's rights as workers or in terms of the relationship between physical health and income and employment rights. Another possibility is that the legislators were willing to sacrifice women's roles as workers, which they considered relatively unimportant, to the supposed demands of pregnancy and motherhood, without much investigation either of medical evidence or alternative legislation with less impact on women's rights as independent adults. Or perhaps male legislators were acting on the basis of Victorian beliefs about the impropriety of women who are "in the family way" appearing in public at all. Since denying pregnant women the right to work when they are medically able and willing to work means that they cannot support themselves, this type of legislation, whatever its ostensible purpose, embodies an unrealistic assumption that all pregnant women have men to support them during their forced confinement.

[117] 3 FEP CASES 311 (W.D. Tex. Mar. 4, 1971), 3 FEP CASES 468 (W.D. Tex. April 16, 1971).

[118] *See* the discussion in note 106, *supra.*

[119] The definition of the "problem," whether by explicit legislative history or by judicial interpretation, is central to setting the standards by which is to be judged. The more narrowly defined problem is, the easier it is for the party defending the legislation to prove that the measures the law imposes solve a significant proportion of the problem. On the other hand, a narrow definition might cast doubt on the legislation under other tests, such as the importance of the problem to be solved or the adequacy of measures to select those contributing to the problem from the larger group with the unique physical characteristic. Although the focus of judicial scrutiny would thus shift from one factor to another depending on the definition of the "problem," the burden of proof on those defending the law would remain nearly the same.

[120] 39 U.S.L.W. 2686 (E.D. Va. May 17, 1971). *Contra,* La Fleur v Cleveland Board of Education, 39 U.S.L.W. 2686 (N.D. Ohio May 12, 1971).

[121] 39 U.S.L.W. at 2686.

[122] *Id.*

[123] *Id.* at 2687 (citations omitted).

[124] S. Ross, *supra* note 99, at 597.

[125] 29 C.F.R. § 1604. 1(b)(2) (1970) (issued Aug. 19, 1969).

[126] *See, e.g.,* Bowe v. Colgate-Palmolive Co., 416 F.2d 711 (7th Cir.1969), *reversing in pertinent part* 272 F. Supp. 332 (S.D. Ind. 1967).

[127] *See, e.g.,* Rosenfeld v. Southern Pacific Co., 293 F. Supp. 1219 (C.D. Cal. 1968), *aff'd*—F.2d—(9th Cir. 1971); Richards v. Griffith Rubber Mills, 300 F. Supp. 338 (D. Ore. 1969); Local 246, Utility Workers Union v. Southern Cal. Edison Co., 320 F. Supp. 1242 (C.D. Cal. 1970); Ridinger v. General Motors Corp., 39 U.S.L.W. 2548 (S.D. Ohio Mar. 24, 1971) (overturning state laws); Cheatwood v. South Cent. Bell Tel. & Tel. Co., 303 F. Supp. 754 (M.D. Ala. 1969) (overturning a company regulation). *Contra,* Godbrandson v. Genuine Parts Co., 297 F. Supp. 134 (D. Minn. 1968) (upholding a company-imposed limit of 40 pounds).

[128] See the general discussion of judicial review under the Equal Rights Amendment of laws based on unique physical characteristics at p. 895 *supra,* and the specific discussion of the *Schattman and Cohen* cases at pp. 930–32 *supra.*

[129] Weeks v. Southern Bell Tel. & Tel. Co., 408 F.2d 228, 235 (5th Cir. 1969).

[130] Dr. Rudolph Bono, team physician and surgeon for the New York Giants, was recently quoted as saying,

> Muscle mass for muscle mass, there is *no* physiological difference between males and females. Pound for pound, their muscles can be developed to the same degree of proficiency. Men grow bigger because male hormones increase the size of the body, but the tissues for both sexes are still the same. So if a man and a woman were equal in size, she could develop as well as he could. Most women, of course, don't try for muscular physiques because they don't want to become freaks, so the boys start lifting weights early in life while the girls keep femininity in mind.
>
> In other words, it's a social and emotional limitation that women face in sports, not a physical one. . . . In Russia the athletes don't care about femininity and you should see the muscles on some of those girls.

Schoenstein, *Can You Really Go Play With The Boys?,* SEVENTEEN, June 1971, at 28.

[131] Night work prohibitions, which exist in eighteen states and Puerto Rico, 1969 HANDBOOK 275, have an effect parallel in some respects to maximum hour limitations and in other respects to exclusionary laws. They are like the former when they prevent women from being assigned to certain shifts or jobs during the course of employment and like the latter when they exclude women from certain nighttime occupations altogether. Although it is difficult to see what difference the occupation makes to any supposed legislative justification for these laws, the coverage of only a few occupations is common, e.g. N.Y. LABOR LAW § 173 (McKinney 1965). No cases have yet reached the courts under Title VII. It would be expected, however, that night work laws would be invalidated under either Title VII or the Equal Rights Amendment.

[132] *See* Kober v. Westinghouse Electric Co., 3 FEP CASES 326 (W. D. Pa. Mar. 29, 1971); Ridinger v. General Motors Corp., 39 U.S.L.W. 2548 (S.D. Ohio Mar. 24, 1971); Garneau v. Raytheon Co., 323 F. Supp. 391 (D. Mass. 1971); Vogel v. Trans World Airlines, C.A. 1706–3 (W.D. Mo. Sept. 25, 1970, as amended by order of Jan. 19, 1971); Caterpillar Tractor Co. v. Grabiec, 317 F. Supp. 1304 (S.D. Ill. 1970); Rosenfeld v. Southern Pacific Co., 293 F. Supp. 1219 (C.D. Cal. 1968), *aff'd*—F.2d—(9th Cir. 1971). *Cf.* Mengelkoch v. Industrial Welfare Comm'n., 437 F.2d 563 (9th Cir. 1971). All of these cases were brought by factory workers and clerical workers against state laws with the exception of *Grabiec,* which was a request for declaratory judgment by two companies caught between the state hour law and the demands of women employees (backed by the EEOC and court decisions) for overtime and promotions.

[133] Blackstone said, "By marriage, the husband and wife are one person in law: . . . [T]he very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband, under whose wing, protection, and *cover* she performs everything; and is therefore called, in our law-French a *feme-covert; foemina viro co-operta;* is said to be *covert baron,* or under the protection and influence of her husband, her *baron,* or lord; and her condition during her marriage is called her *coverture.* Upon this principle, of a union of person in husband and wife, depend almost all the legal rights, duties, and disabilities, that either of them acquire the marriage." 1 W. BLACKSTONE, COMMENTARIES *442.

[134] *See, e.g.,* UNIFORM MARRIAGE AND DIVORCE ACT (Final Draft, 1970).

[135] Examples of such studies include W. Gellhorn, *A Study on the Administration of Laws Relating to The Family in The City of New York,* in SPECIAL COMMITTEE OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, CHILDREN AND FAMILIES IN THE COURTS OF NEW YORK (1954); R. LEVY, UNIFORM MARRIAGE AND DIVORCE LEGISLATION: A PRELIMINARY ANALYSIS (1969) [hereinafter cited as LEVY].

[136] In general the requirements for physical examination before marriage apply equally to men and women. In Washington, however, only men are required to answer questions about contagious venereal disease. WASH. REV. CODE § 26.04.210 (Supp. 1970). Such a distinction is based on the Victorian fiction that only men will engage in premarital intercourse. The underlying health reasons for requiring men to be examined apply equally to women. Although physical examination is presumably for protection of the new spouse, the requirement of examination for venereal disease is a useful public health measure. It obviously should not be struck down where it applies unequally to men and women, but rather extended to women, as it already has been in most states.

[137] *See* CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN, REPORT OF THE TASK FORCE ON FAMILY LAW AND POLICY, APPENDIX B at 62 (1968) [hereinafter cited as REPORT ON FAMILY LAW]. The states which set the same age of consent are: Connecticut, Florida, Georgia, Hawaii, Kentucky, Louisiana, Michigan, Mississippi, Nebraska, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia and Wyoming. *See, e.g.,* KY. REV. STAT.

§ 402.210 (1969); PA. STAT. ANN. tit. 48 § 1–5 (c) (1965).

[138] The original basis for this differential was the presumption that women reached puberty earlier than men. The common law ages of consent—14 for males, 12 for females—represented estimates of the ages when children became physically capable of producing children. KANOWITZ, *supra* note 2, at 10.

[139] For a decision sustaining legislative judgment about age of majority differentials under current constitutional doctrines, see Jacobsen v. Lenhart, 30 Ill. 2d 225, 195 N.E. 2d 638 (1964).

[140] The considerations which should shape a legislature's judgment in setting a minimum marriage age are outlined in LEVY, *supra* note 135, at 24–25. The drafters of the Uniform Marriage and Divorce Act chose the lower "women's" ages of 18 for marriage without parental consent and 16 for marriage with consent. UNIFORM MARRIAGE AND DIVORCE ACT § 203(1).

[141] KANOWITZ, *supra* note 2, at 42.

[142] *See, e.g.*, IOWA CODE ANN. § 674.1 (1950), permitting a court to change the name of "any person, under no civil disabilities, who has attained his or her majority and is unmarried, if a female . . ."

[143] The West German federal government has recently proposed legislation along these lines. Part of a large-scale reform of family and divorce legislation, "the bill breaks an ancient tradition of male priority in family names. It will permit marriage partners to adopt the wife's maiden name if they choose or to use it in combination with the husband's surname." Binder, *Bill in Bonn Encourages German Penchant for Double Names*, N.Y. Times, May 20, 1971, at 2, col. 3.

[144] J. MADDEN, HANDBOOK OF THE LAW OF PERSONS AND DOMESTIC RELATIONS 146 (1931).

[145] ALASKA STAT. ANN. § 25.15.110 (1962); ARK. STAT. ANN. §§ 34–1307 to –1309 (1962); WIS. STAT. ANN. § 246.15 (Supp. 1970).

[146] *See also* Clerk v. Redeker, 259 F. Supp. 117 (S.D. Iowa 1966), in which a man wanted to adopt his wife's domicile to get the benefit of lower tuition at the state university.

[147] *See* Annot., 29 A.L.R.2d 474 (1953), citing cases from 29 states which held that a wife's refusal to follow her husband to a new domicile is desertion by her and grounds for divorce proceedings.

[148] KANOWITZ, *supra* note 2, at 52. *See also* H. CLARK, DOMESTIC RELATIONS 151 (1968), who concludes.

Therefore, the correct principle is that the wife is able to acquire a separate domicile of choice whenever she lives apart from her husband, regardless of the circumstances.

[149] MADDEN, *supra* note 144, at 453. Illegitimate children follow the domicile of their mothers.

[150] The law on children's domicile is confused because the states have failed to integrate the statutes removing women's civil disabilities with those which determine children's domicile. Thus the provisions of Arkansas law defining a woman's domicile as independent from that of her husband, ARK. STAT. ANN. §§ 34–1307 to –1309 (1962), enacted in 1941, did not affect Arkansas' adherence to the common law rule "that the last domicile of the deceased father of an infant constitutes his legal domicile. . . ." Bell. v. Silas, 223 Ark. 694, 268 S.W. 2d 624 (1954). The impact of Wisconsin's 1965 law titled "Women to have equal rights," WIS. STAT. ANN. § 246.15 (Supp. 1970) on the law of children's domicile has not yet been judicially determined. The most recent Wisconsin case on the subject, Town of Carlton v. State Dept. of Public Welfare, 271 Wis. 465, 74 N.W. 2d 340 (1956), followed the traditional rule, embodied in Wisconsin's public assistance statute, that "the domicile of a minor child . . . is that of its father." 271 Wis. at 469. *Cf.* ALASKA STAT. ANN. § 25.15.110 (1962) (removing women's civil disabilities) as compared with ALASKA STAT. ANN. § 25.05.040 (1962) (giving fathers preference in child custody).

[151] This reluctance received a constitutional foundation in Griswold v. Connecticut, 381 U.S. 479 (1965).

[152] This background is reviewed in Karczewski v. Baltimore & Ohio RR., 274 F. Supp. 169, 171 (N.D. Ill. 1967).

[153] *See* cases collected in Karczewski v. Baltimore & Ohio R.R., 274 F. Supp. 169, 172 n.2 (N.D. Ill. 1967), and Gates v. Foley, 247 So. 2d 40, 42 n.1 (Fla. 1971). The first case to extend the right to sue for loss of consortium to women was Hitaffer v. Argonne Co., 183 F.2d 811 (D.C. Cir. 1950). Cases striking down the traditional discrimination against women on the grounds that it denied equal protection of the laws include Owen v. Illinois Baking Corp., 260 F. Supp. 820 (W.D. Mich. 1966) and Karczewski v. Baltimore & Ohio R.R., *supra*. *Contra*, Miskunas v. Union Carbide Corp., 399 F.2d 847 (7th Cir. 1968).

[154] The support laws also favor male children in seven states, since the right to support is terminated when the child reaches the age of majority, 39 AM. JUR. *Parent and Child* §§ 35, 40 (1942), and this age is set higher for males than for females. The following statutes set age of majority at 18 for females and 21 for males: ARK. STAT. ANN. § 57–103 (1947); IDAHO CODE ANN. § 32–101 (1963); NEV. REV. STAT. § 129.010 (1963); N.D. CENT. CODE § 14–10–01 (1960); OKLA. STAT. ANN. tit. 15 § 13 (1966); S.D. COMP. LAWS ANN. § 26–1–1 (1967); UTAH CODE ANN. § 15–2–1 (1953). The implicit premise of these laws—that girls will be or should be married by the time they are 18 and no longer dependent on parents' support—is obviously improper under the Equal Rights Amendment. The considerations involved in equalizing the ages would be the same as for the minimum marriage age, discussed at pp. 938–39 *supra*.

[155] R. PERKINS, CRIMINAL LAW 604 (1969).

[156] *See, e.g.*, MODEL PENAL CODE § 207.14, Comment 2 at 189 (Tent. Draft No. 9, 1959).

[157] *E.g.*, UNIFORM DESERTION AND NONSUPPORT ACT, 10 Uniform Laws Annotated 1 (1922).

[158] "A person commits a misdemeanor if he persistently fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child, or other dependent." MODEL PENAL CODE § 230.5 (Proposed Official Draft, 1962).

[159] Picht v. Henry, 252 Iowa 559, 107 N.W. 2d 441 (1961).

[160] CLARK, *supra* note 148, at 185–86.

[161] See the discussion at p. 899 *supra*.

[162] Property acquired by gift, bequest, devise, or descent is generally excepted and becomes the separate property of the spouse by whom it was acquired, as is property owned by either spouse at the time of marriage. MADDEN, *supra* note 144, at 131–32.

[163] But for an attack by a women's rights organization on one aspect of the community property system, see brief amicus curiae submitted in Perez v. Campbell, 421 F. 2d 619 (9th Cir. 1970), *cert. granted*, 400 U.S. 818 (1970), *leave to file brief amicus curiae granted*, 400 U.S. 989 (1971) (challenging the suspension of an Arizona woman's driver's license and car registration for debts arising from an accident while her husband was driving the community car). See also Mitchell v. Commissioner, 430 F. 2d 1 (5th Cir. 1970); *cert. granted sub nom.* United States v. Mitchell, 400 U.S. 1008 (1971) (woman's liability for husband's federal income tax).

[164] MADDEN, *supra* note 144, at 135.

[165] Washington and Texas give the wife control over her earnings. WASH. REV. CODE ANN. 26.16.140 (1961); TEXAS REV. CODES ANN., Family Code, tit. 1, § 5.22 (Pamphlet, 1969), California has modified the rule to allow the wife to spend her earnings "for valuable consideration" without the husband's consent. CAL. CIV. CODE § 171c (West 1954), reenacted as CAL. CIV. CODE § 5124 (West 1970). In four states, the wife's earnings are separate only if she is living separately. ARIZ. REV. STAT. ANN. § 25–213(c) (1956); IDAHO CODE ANN. § 32–909 (1963); NEV. REV. STAT. § 123.180 (1963); N.M. STAT. ANN. 57–3–7 (1962). *See also* LA. CIV. CODE ANN. Art. 2399 (West 1952).

[166] Similarly, laws which give the husband greater testamentary power over the community property would also fail. For example, in New Mexico, if the wife dies first the husband gets all the community property, but if the husband dies first, the wife has a legal right to bequeath only half the community property, the rest to be distributed as the husband decrees in his will. N.M. STAT. ANN. §§ 29–1–8 (1953), 29–1–9 (Supp. 1969). This law would clearly violate the Equal Rights Amendment. The inequality could be resolved either by giving the wife all the community property if the husband dies first, or by limiting the surviving husband's share to one half the community property as the wife's share is now limited. The latter is more consistent with the practice in the common law states.

[167] TEXAS REV. CODES ANN., Family Code, tit. 1, § 5.22 (Pamphlet, 1969).

[168] See the discussion in Part III (C), at p. 899 *supra*. The Texas law creates a situation similar to the rule in common law jurisdictions concerning control of property, and would be upheld if the common law system were upheld.

[169] In a few states a married woman must still get her husband's permission to convey her own land. 1 POWELL, REAL PROPERTY ¶ 118 (1949). An occasional court grants the husband control of the family home, even if the wife owns the property, by virtue of his position as head of the household. KANOWITZ, *supra* note 2, at 59. The uncompensated value of a housewife's labor is not considered property under these statutes.

[170] *See* W. MACDONALD, FRAUD ON THE WIDOW'S SHARE 21–24 (1960).

[171] The Uniform Probate Code, approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association, gives a "surviving spouse" an elective share of one-third in the decedent's estate. UNIFORM PROBATE CODE § 2–201.

[172] KANOWITZ, *supra* note 2, at 95.

[173] UNIFORM MARRIAGE AND DIVORCE ACT § 302.

[174] CAL. CIV. CODE § 4506(1) (West 1970).

[175] N. C. GEN. STAT. § 50–6 (1966); OHIO REV. CODE § 3105.01(B) (Baldwin 1960) D. C. CODE ANN. § 16–904(a) (1967). *See also* the Citizens' Advisory Council's recommendation that lapse of time be the only substantial requirement for divorce. REPORT ON FAMILY LAW 36–37.

[176] LEVY, *supra* note 135, at 79.

[177] See the discussion of differential age of consent at pp. 938–39 *supra*.

[178] A ground for divorce in at least thirteen states: Alabama, Arizona, Georgia, Iowa, Kentucky, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, Tennessee, Virginia, and Wyoming. *See e.g.*, N.C. GEN. STAT. § 50–5(3) (1966); VA. CODE ANN. § 20–91(7) (Cum. Supp. 1970).

[179] A ground for divorce in thirty states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Hawaii, Idaho, Indiana, Kansas, Maine, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Ohio, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, Wisconsin, and Wyoming. REPORT ON FAMILY LAW 66. *See, e.g.* CAL. CIV. CODE ANN. § 105 (West 1954); MASS. GEN. LAWS ANN. ch 208, § 1 (1969).

[180] Kentucky only. KY REV STAT. § 403.020 (3)(a) (1960). The husband can get a divorce from his wife's alcoholism without any qualifications.

[181] Kentucky only, KY. REV. STAT. § 403.020 (4)(c) (1960).

[182] Missouri and Wyoming. MO. ANN. STAT. § 452.010 (1949); WYO. STAT. ANN. § 20–38, *Ninth* (1957).

[183] New Hampshire only. N.H. REV. STAT. ANN. § 458–7, XII (1955).

[184] Tennessee only. Wife must remain wilfully absent for two years. TENN. CODE ANN. § 36–801(8) (1955).

[185] Virginia only. VA. CODE ANN. § 20–91(8) (Cum. Supp. 1970).

[186] Alabama only. ALA. CODE tit. 34 § 20(6) (1959).

[187] Tennessee only. TENN. CODE ANN. § 36–802 (1955).

[188] Montana only. MONT. REV. CODES ANN. § 21–115 (1967).

[189] ARK. STAT. ANN. § 34–1202, *Ninth* (Cum. Supp. 1969); N.D. CENT. CODE § 14–05–07 (1960).

[190] See the discussion at p. 945 *supra*.

[191] The functions and purposes of alimony are summarized in CLARK, *supra* note 148, at 441–42.

[192] *See* REPORT ON FAMILY LAW 7.

[193] LEVY, *supra* note 135, at 147.

[194] See for an example of this assumption, Family Law Committee, Connecticut Bar Association, *Proposal for Revision of the Connecticut Statutes Relative to Divorce*, 44 CONN. BAR J. 411 (1970). Section 18 provides that when assessing alimony, "in the case of a *mother* to whom the custody of minor children has been awarded, the desirability of the *mother* securing employment" should be a consideration. *Id.* at 429 (emphasis added).

[195] UNIFORM MARRIAGE AND DIVORCE ACT, §§ 308(a)–(b).

[196] *See* MADDEN, *supra* note 144, at 456–57; CLARK, *supra* note 148, at 584. The father could be deprived of custody only when he was shown to be corrupt or to be endangering the child.

[197] CAL. CIV. CODE ANN. § 4600(a) (West 1970); UTAH CODE ANN. § 30–3–10 (1953).

[198] MO. STAT. ANN. § 452.120 (1952); FLA. STAT. ANN. § 61.13 (West 1969); MINN. STAT. ANN. § 518.17 (1969); N.Y. DOM. REL. LAW § 70 (McKinney 1964); COLO. REV. STAT. 46–1–5(7) (1967).

[199] *See* CLARK, *supra* note 148, at 585. In ninety per cent of custody cases the mother is awarded the custody. Drinan, *The Rights of Children in Modern American Family Law*, 2 J. FAM. L. 101, 102 (1962).

[200] The Equal Rights Amendment would forbid sex discriminatory enforcement just as the Fourteenth Amendment forbids enforcement which discriminates on the basis of race. Yick Wo v. Hopkins, 118 U.S. 356 (1886). However, such attacks involve very difficult problems of proof and are not discussed here. See, for a discussion of the recent rapid rise in the crime rate of women, and of changing law enforcement attitudes toward women offenders, Roberts, *Crime Rate of Women Up Sharply Over Men's*, N.Y. Times, June 13, 1971, at 1, col. 1.

[201] The proportion of all women arrested who are arrested for sex offenses, including forcible rape and prostitution, is nearly four times the proportion of all arrested men. F.B.I., U.S. DEPT. OF JUSTICE, UNIFORM CRIME REPORTS FOR THE UNITED STATES 124 (1967).

[202] See the discussion in Part IV(B), at p. 915 *supra*.

[203] *See, e.g.*, MODEL PENAL CODE § 213.1 (Proposed Official Draft, 1962).

[204] The language of some rape statutes suggests that either a man or a woman may be guilty of rape. Even these statutes, however, generally preclude the possibility of charging a woman with rape by defining sexual intercourse as the penetration of a man's penis into a woman's vagina, or, in some cases, her mouth or anus. Furthermore, a Yale Law Journal study in 1952 found no reported case in which a woman had been convicted of rape as a principal. See Comment, *Forcible and Statutory Rape: An Exploration of the Operation and Objectives of the Consent Standard*, 62 YALE L.J. 55 n.2 (1952). For the general rule that rape can be committed by a male only, see 75 C.J.S. *Rape* § 6 (1952).

In all states, both by common law and statute, only women can be victims of forcible rape; see 75 C.J.S. *Rape* §§ 1, 2, 7 (1952). Forcible sexual assault on an adult male is not defined as rape. Many states have enacted additional laws penalizing nonconsensual sexual assaults on men, but none of these laws bears the extreme penalties of the standard rape laws. A few states severely penalize sexual relations with children of both sexes, but force is not an essential element of those statutes; they are discussed at p. 959 *infra*, in conjunction with statutory rape.

[205] Statutes which define rape as "penetration" mostly fail, with Victorian delicacy, to specify what instruments of penetration are included. The common law antecedents of the rape statutes, as well as contemporary case law, indicate that courts have limited the application of rape laws to penetration by a man's penis. However, penetration of a woman's vagina may be made by many instruments other than a man's penis, and with equally devastating consequences for the victim's psyche. Whether or not pregnancy has resulted from the rape is immaterial under current laws; similarly, sterility is not a defense for a man accused of rape. Thus a court might conclude there is no rational reason for differentiating such assaults, of which women are as capable as men, and hold the rape laws invalid unless they extend to women assailants as well as men.

[206] The MODEL PENAL CODE, § 213.1 (Proposed Official Draft, 1962) adopts this definition of rape.

[207] See the discussion in Part III(B), at p. 895 *supra*.

[208] A few states still have statutes which extend the concept of "sexual assault" to the use of obscene or insulting language in the presence of a woman. For instance, Alabama penalizes

> any person who in the presence or hearing of any girl or woman, uses abusive, insulting, or obscene language.

ALA. CODE, tit. 14, § 11 (1958). See also MICH. COMP. LAWS ANN. § 750.337 (1968); ARIZ. REV. STAT. § 13–377 (1956). A variation on the same theme is a Georgia libel law which forbids anyone to utter or circulate "any defamatory words or statements derogatory to the fair fame or reputation for virtue of any virtuous female," GA. CODE ANN. § 26–2104 (1953). Such laws, based on a stereotyped view that women are morally pure, yet morally fragile, rather than on any unique physical characteristic of women which actually distinguishes them from men, would be invalidated under the Equal Rights Amendment.

[209] The few statutes which declare young or helpless males incapable of consent are: COLO. REV. STAT. ANN. § 40–2–25(1)(k) (1963) (intercourse with male under 18 solicited by female); ILL. ANN. STAT. ch. 38, §§ 11–4 and 11–5 (Smith-Hurd 1964) (indecent liberties with a child and contributing to the delinquency of a child, regardless of sex); IND. ANN. STAT. § 10–4203 (1956) (intercourse with male over 14 knowing he is epileptic, imbecile, feeble minded or insane); KY. REV. STAT. § 435.100 (1970) (carnal knowledge of male child under 18); MICH. COMP. LAWS ANN. §§ 750.339–340 (1968) (debauching a male under 15); WASH. REV. CODE ANN. § 9–79.020 (1961) (sexual intercourse with male under 18).

[210] *See, e.g.*, 44 AM. JUR. *Rape* § 17 (1942). Some states make an exception for intercourse with women who are not virgins, *e.g.*, FLA. STAT. § 794.05 (1961).

[211] *See, e.g.*, MICH. COMP. LAWS ANN. §§ 750.–342, 750.341 (1968) (prohibiting intercourse with female wards and patients in mental institutions); D.C. CODE ENCYCL. ANN. § 22–3002 (1967) (penalizing male teachers who have sexual intercourse with any woman currently their student).

[212] Seduction laws penalize men for inducing unmarried women to engage in sexual conduct by a promise, usually of marriage, *See, e.g.*, N.J. STAT. ANN. §§ 2A: 142–1, 142–2 (1969). Michigan, like many other states, makes it a crime for a person to entice a woman under 16 away from her parents or guardian for purposes of prostitution, concubinage, sexual intercourse, or marriage. MICH. COMP. LAWS ANN. § 750.13 (1968).

[213] *See, e.g.*, the report of the Carroll County, Maryland, grand jury calling for legislation "to prevent mental and physical harm to unsuspecting, unprepared adolescents by forced, coerced or seduced sexual activity which may warp the development of such children as useful citizens to society." The report was prompted by evidence presented to the grand jury that two women elementary school teachers had seduced boys 11 and 12 years old. The grand jury concluded that the Maryland criminal code provided no statute under which the teachers could be indicted and called for state legislation "giving male juveniles equal protection under the laws." Washington Post, Jan. 2, 1971, at 3, col. 2. The Royal Commission on the Status of Women in Canada has reached a similar conclusion. Its recent Report recommended "that the Criminal Code be amended to extend protection from sexual abuse to all young people, male and female, and protection to everyone from sexual exploitation either by false representation, use of force, threat, or the abuse of authority" REPORT OF THE ROYAL COMMISSION ON THE STATUS OF WOMEN IN CANADA ch. 9, par. 42, at 374 (1970).

[214] It is true that statutory rape may involve breaking the hymen, but very few states consider the victim's chastity material to the question of guilt. Moreover, statistical reports show that few statutory rape complainants are virgins. See Schiff, *Statistical Features of Rape*, 14 I. FOR. SCI. 102 (1969).

[215] The law in most states presumes that a sixteen year old girl can consent to marriage (with her parents' approval), and, by implication, to sexual relations, while an unmarried girl of sixteen is legally presumed to be incapable of giving consent to a single act of sexual intercourse. However, there are no physical differences between the sexual acts involved. As discussed at pp. 938–39 *supra*, the minimum marriage age is not based on a unique physical characteristic of women. Therefore, the statutory rape law, which also deals with consensual sexual relations, cannot be justified as based on such a unique characteristic. There are, of course, social and psychological differences between marital and extramarital sexual relations, and the state may recognize them through sex-neutral legislation about extramarital sexual intercourse involving either young men or young women.

[216] Some states already have laws that protect all children, regardless of sex. For example, Illinois has merged its statutory rape law into laws prohibiting indecent liberties with any child or contributing to any child's sexual delinquency. ILL. ANN. STAT. ch. 38, § 11–4 (Smith-Hurd Supp. 1971) and ch. 38, § 11–5 (Smith-Hurd 1964).

[217] MICH. COMP. LAWS ANN. § 750.339 (1968).

[218] *Compare* MICH. COMP. LAWS ANN. § 750.339 *with* § 750.520 (1968).

[219] Where a state has mirror-image statutes which penalize men and women for the same conduct, by the same standards, and with the same penalties, the laws could be upheld under the Equal Rights Amendment. For example, Michigan's identical laws prohibiting acts of "gross indecency" between two men and between two women would not have to be invalidated; a court would not require the formality of rewriting a statute such as this, where, in effect, it already covers men and

women alike. *See* MICH. COMP. LAWS ANN. §§ 750.338, 750.338(a)(1968).

[220] The Fourth Circuit recently held that Maryland's death penalty for rape was so excessively disproportionate as to violate the Eighth Amendment's guarantee against cruel and unusual punishment, Ralph v. Warden, 438 F.2d 786 (4th Cir. 1970).

[221] Between 1960 and 1967 the number of forcible rapes known to law enforcement officials increased 61 per cent. In contrast, the proportion of forcible rapes solved by arrest of the offender decreased annually between 1965 and 1967. UNIFORM CRIME REPORTS, *supra* note 201, at 12–13.

In conjunction with the severe penalties for forcible rape, the defense of consent has developed. The existence of the consent defense (which is unique to rape) has the effect of putting the complainant on trial, for she will usually be subjected to a relentless defense examination, in an attempt to impugn her character and suggest that she actually consented to sexual attack. The consent defense and corresponding trial tactics thus have the effect of deterring women from making complaints about rape attacks; the Federal Bureau of Investigation estimates that forcible rape "is probably the most underreported crime by victims to police." UNIFORM CRIME REPORTS, *supra* note 201, at 13. As a result, some women's rights advocates have argued that women would actually be better protected if rape were prosecuted simply as aggravated assault.

[222] MODEL PENAL CODE §§ 213.0—.06 (Proposed Official Draft, 1962). For instance, the Model Penal Code's crime of "sexual assault" prohibits offensive "touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying sexual desire of either party." MODEL PENAL CODE § 213.4 (Proposed Official Draft, 1962).

[223] "Sodomy" is used here, as it is used in many statutes, to include both oral-genital contact and anal intercourse. In some states it also includes mutual masturbation, sexual relations with animals, and sexual contact with dead bodies.

[224] *See, e.g.*, 81 C.J.S. *Sodomy* § 1 (1953).

[225] M. PLOSCOWE, SEX AND THE LAW 146 (1951).

[226] In Indiana, adultery is defined as intercourse between a man and a married woman, while intercourse with an unmarried woman is defined as the lesser offense of fornication. Warner v. State, 202 Ind. 479, 175 N.E. 661 (1931). A similar discrepancy is apparent in the "unwritten law defense," which survives in some states for men. The unwritten law defense permits a man to argue in complete defense to a homicide prosecution that the man he killed was, at the time of the homicide, in the act of sexual intercourse with his wife; it is, in other words, a license to men to murder in the face of adultery. No state gives women who kill their husbands' lovers a corresponding defense. TEX. PENAL CODE, Art. 1220 (Vernon's 1961); N.M. STAT. ANN. § 40A–2–4 (1953); UTAH CODE ANN. § 76–30–9(4) (1953).

[227] Both married men and married women are liable for extramarital sexual intercourse. ORE. REV. STAT. § 167.010 (1969); MASS. GEN. LAWS, ch. 272 § 14 (1932).

[228] R. PERKINS, CRIMINAL LAW 377 (2d ed. 1969).

[229] *Cf.* Buchanan v. Batchelor, 308 F. Supp. 729 (N.D. Tex. 1970) in which a federal court invalidated Texas' entire sodomy law because of its overbreadth in extending to acts between husband and wife. The decision was vacated by the United States Supreme Court *sub nom.* Buchanan v. Wade, 91 S. Ct. 1222 (1971), and remanded for consideration in the light of Younger v. Harris, 401 U.S. 37 (1971), and Samuels v. Mackell, 401 U.S. 66 (1971).

[230] *See* Griswold v. Connecticut, 388 U.S. 479 (1965). At least two states have already repealed their laws against consensual homosexual relations. *See* ILL. ANN. STAT. ch. 38, §§ 11–2, 11–3 (Smith-Hurd 1964); CONN. GEN. STAT. REV. §§ 53a–65, –75 to –77 (Supp. 1969) (effective Oct. 1, 1971).

[231] *See* "Prostitution," BLACK'S LAW DICTIONARY 1386 (4th ed. 1951); 73 C.J.S. *Prostitution* § 1 (1951); Eisner v. Commonwealth, 375 S.W.2d 825, 827 (Ky. 1964). *But cf.* D.C. CODE ENCYCL. ANN. § 22–2701 (1967). At least one state still imposes special punishment on young women who are considered "in manifest danger of falling into habits of vice." No corresponding provisions are made for young men. *See* CONN. GEN. STAT. ANN. §§ 17–379, 18–65. Connecticut's statutes survived constitutional attack in State v. Mattiello, 4 Conn. Cir. 55, 225 A.2d 507 (1967), *appeal dismissed*, 395 U.S. 209 (1969).

[232] S. Harmon, Attitudes Toward Women in The Criminal Law Process 5 (1970) (unpublished paper on file at Yale Law School Library.)

[233] *Compare* A. FLEXNER, PROSTITUTION IN EUROPE (especially at 11–14) (1914), *with* REPORT OF THE COMMITTEE ON HOMOSEXUAL OFFENSES AND PROSTITUTION [The Wolfenden Report] (1957). If the newly articulated constitutional right to privacy receives expanded interpretation, *see* discussion in Part III(D) at p. 900 *supra*, all regulation of prostitution, other than public health measures, may be ruled unconstitutional.

[234] Men may be punished as entrepreneurs for trafficking in women or keeping a house of ill fame. They are seldom prosecuted for mere patronage of a prostitute. KANOWITZ, *supra* note 2, at 16–17.

[235] MODEL PENAL CODE § 251.2 (Proposed Official Draft, 1962).

[236] N.Y. PENAL LAW § 230.10 (McKinney 1967).

[237] The recidivism rate for prostitution is so high that prostitution has been called "life on the installment plan." Lukas, *City Revising its Prostitution Controls*, N.Y. Times, Aug. 14, 1967, at 1, col. 2. Compare the Soviet Union's success at deterring prostitution by posting publicly the names, addresses and places of employment of the customers of prostitutes. KANOWITZ, *supra* note 2, at 17.

[238] In its published statistics, the Federal Bureau of Investigation classifies "commercialized vice" together with prostitution. Even so, 30,866 women were arrested for prostitution or commercialized vice as compared with 8,878 men. This figure is particularly striking in light of the fact that the total number of men arrested in 1967 was seven times greater than the total number of women arrested. UNIFORM CRIME REPORTS, *supra* note 201, at 124.

[239] *See* N.Y. PENAL LAW § 230.05 (McKinney 1967); CONN. GEN. STAT. ANN. PENAL CODE § 84, 1969 Public Act No. 828 (effective Oct. 1, 1971). However, New York's law penalizing the patrons of prostitutes has only rarely been enforced. Speech by Elizabeth Schneider, Yale Law School, April 29, 1971.

[240] 18 U.S.C. § 2421 (1964).

[241] 18. U.S.C. §§ 2422–23 (1964).

[242] United States v. Holte, 236 U.S. 140 (1915); *but cf.* Gebardi v. United States, 287 U.S. 112 (1937).

[243] Wyatt v. United States, 362 U.S. 525, 530 (1960).

[244] 281 F. Supp. 8 (D. Conn. 1968).

[245] 430 Pa. 642, 243 A.2d 400 (1968).

[246] In *Robinson*, the court ordered the petitioner released because she had already served the statutory maximum sentence for breach of the peace and resisting arrest. The court stated that to hold her for the full three years permitted under the sentencing law for women offenders would have denied her the equal protection of the laws. In *Daniel*, appellants' cases were sent back for resentencing because the court held that Pennsylvania's law requiring judges to impose the statutory maximum on all women sentenced to the State Correctional Institution at Muncy violated the Equal Protection Clause.

[247] *E.g.*, ME. REV. STAT. ANN., tit. 34, § 802 (men); §§ 853–54 (women) (Supp. 1970). Disparities also exist in the juvenile laws of several states. For instance, in New York a court can order incorrigible, ungovernable, or habitually disobedient women to be held in custody until they are 20, if they are adjudged "persons in need of supervision" (PINS); whereas, boys can be held under the PINS statute only until age 18. Since most of the commitments under the PINS law stem from activity which could not result in criminal conviction, the law imposes on women two years of extra liability for noncriminal activity. N.Y. FAMILY COURT ACT, §§ 712, 756 (McKinney 1963).

[248] A few sections of the Model Penal Code are sex biased, and would be invalid under the Equal Rights Amendment; *see, e.g.*, MODEL PENAL CODE § 213.3(1)(d) (seduction).

[249] *See, e.g.* E. HEMINGWAY, A FAREWELL TO ARMS (1929); FOR WHOM THE BELL TOLLS (1940); N. MAILER, THE NAKED AND THE DEAD (1948); WHY ARE WE IN VIETNAM? (1967).

[250] For a history of the creation of the Women's Army Corps (WAC) and its activities in World War II, see M. TREADWELL, U.S. ARMY IN WORLD WAR II: SPECIAL STUDIES: THE WOMEN'S ARMY CORPS (1954).

[251] 10 U.S.C. § 3209, which limited the authorized strength of the WAC to 2% of the authorized strength of the Regular Army, was amended in November, 1967, to permit the Secretary of Defense to determine the limit. 10 U.S.C. § 3209(b) (Supp. IV, 1967). The 2% maximum is maintained by regulation, 32 C.F.R. § 580 (1971).

[252] On veterans' benefits generally, see 38 U.S.C. §§ 1 to end (1964) *as amended in part* (Supp. V, 1969); 50 U.S.C. App. § 459 (Supp. V, 1969); 38 C.F.R. (1970) 38 U.S.C. §§ 310–58, 410–23, and 501–62 deal with pensions; 38 U.S.C. §§ 601–44, with hospitalization and provision of medical services; 38 U.S.C. §§ 701–88, with insurance; and 38 U.S.C. §§ 1601–1791, with educational benefits for veterans and their families. Preference in federal governmental employment is governed by 5 U.S.C. §§ 2108, 3306, 3309–17, 3351, 3363, 7501, 7511–12 (Supp. V, 1969).

[253] *Hearings on S.J. Res. 61 and S.J. Res. 231 Before the Senate Comm. On the Judiciary*, 91st Cong., 2d Sess. 320 (1970).

[254] *See, e.g.*, the account of the protest marches of the Vietnam Veterans Against the War, N.Y. Times, April 25, 1971, § 4, at 1, col. 1; the discussions of anti-war organizing in the Armed Forces by Gabriel Kolko in The Liberated Guardian, April 15, 1971, at 10, col. 3; and in A. STAPP, UP AGAINST THE BRASS (1970).

[255] Although this is true of the Amendment under the theory and form proposed here, in Congress the resolution has often been amended to exempt the draft from its coverage. In 1950 and 1953, the Equal Rights Amendment was passed by the Senate only after it was altered to permit laws which made reasonable classifications to protect women. This phrase was intended to include the draft as one such law. In 1970, Senator Ervin proposed an amendment to the resolution, which was accepted by the Senate, specifically exempting women from the draft. See the discussion at pp. 886–88 *supra*. And in July, 1971, the House Judiciary Committee reported out the Equal Rights Amendment with a similar amendment.

[256] On the draft, *see* 50 U.S.C. App. §§ 453, 454(a) (Supp. V, 1969); on the service academies, *see Hearings on S.J. Res. 61 Before a Subcomm. of the Senate Comm. on the Judiciary* 574 (1970). Cases upholding the exclusion of women from state military schools include Allred v. Heaton, 336 S.W.2d 251 (Tex.), *cert denied*, 364 U.S. 517 (1960); Heaton v Bristol, 317 S.W.2d 86 (Tex. 1958), *cert denied*, 359 U.S. 230 (1959). 32 CFR §§888.4 (1970), 580 (1971) set out differential enlistment standards.

[257] For complaints about such treatment, see, for example, The Bond: The Voice of the American Servicemen's Union, April 19, 1971, at 8, col. 1.

[258] 50 U.S.C. App. §§ 451 *et seq.* (Supp. V, 1969).

[259] 50 U.S.C. App. §§ 453, 454 (Supp. V, 1969).

[260] *See, e.g.,* United States v. Cook, 311 F. Supp. 618 (W.D. Pa. 1970); United States v. Clinton, 310 F. Supp. 333 (E.D. La. 1970); United States v. St. Clair, 291 F. Supp. 122 (S.D.N.Y. 1968).

[261] 50 U.S.C. App. § 454(a) (1964).

[262] *Id.*

[263] *See* Medical Fitness Standards for Appointment, Enlistment, and Induction. C 15, AR 40-501 *et seq.*, reprinted in SSLR 2201.

[264] *See* the discussion at p. 899 *supra,* concerning criteria to be applied in reviewing functional classifications. Under Title VII of the 1964 Civil Rights Act, physical and mental tests with regard to employment have come under scrutiny as a possibly discriminatory device. The Equal Employment Opportunity Commission and the courts have held that such tests must be validated or proved to be closely job-related before they can be used, if they fall more heavily on a protected group of applicants or employees. See Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971). *See also* the discussion in *Developments—Title VII, supra* note 45, at 1120-40.

[265] Medical Fitness Standards, *supra* note 263, C 25, AR 40-501, 2-21, reprinted in SSLR 2209.

[266] *Cf.* New York State Division of Human Rights v. New York-Pennsylvania Professional Baseball League, 320 N.Y.S.2d 788 (Sup. Ct. App. Div. 1971), holding that high minimum height and weight requirements for professional baseball umpires unjustifiably excluded women in violation of state and federal law.

[267] Medical Fitness Standards, *supra* note 263, C, AR 40-501, 2-22 & App. III. Tables I & II, reprinted in part in SSLR 2209, 2222.

[268] 32 C.F.R. § 888.2(f) (1970).

[269] 50 U.S.C. App. § 456(h)(2) (Supp. V, 1969).

[270] United States v. Brunier, 293 F. Supp. 666 (D. Ore. 1968).

[271] 50 U.S.C. App. § 456(o) (1964). This provision exempts the sole surviving sons of families "where the father or one or more sons or daughters . . . were killed in action or died in the line of duty. . . ." Under the Equal Rights Amendment, the law will have to be extended to cover all female family members lost in military service.

[272] 50 U.S.C. App. § 455(b) (1964).

[273] 50 U.S.C. App. § 460(b)(3) (Supp. V, 1969).

[274] *Id.*

[275] *See, e.g.,* United States v. Brooks, 415 F. 2d 502 (6th Cir. 1969), *cert. denied,* 397 U.S. 969(1969); Simmons v. United States, 406 F. 2d 456 (5th Cir. 1969), *cert. denied,* 395 U.S. 982, *rehearing denied,* 396 U.S. 871 (1969); Clay v. United States, 397 F. 2d 901 (5th Cir. 1968), *vacated on other grounds,* 394 U.S. 310 (1968).

[276] 32 C.F.R. §§ 714.1(d)(3) (1968); 888.5 (1970).

[277] See the challenges reported in N.Y. Times, Aug. 26, 1970, at 44, col. 7; N.Y. Times, Oct. 18, 1970, at 39, col. 1; N.Y. Times, Nov. 29, 1970, at 26, col. 1; N.Y. Times, Dec. 31, 1970, at 8, col. 2; N.Y. Times, Jan. 3, 1971, at 24, col. 1.

[278] *See* N.Y. Times, Sept. 29, 1970, at 46, col. 1; N.Y. Times, Sept. 30, 1970, at 87, col. 4.

[279] *See* N.Y. Times, April 21, 1971, at 11, col. 1.

[280] M. TREADWELL, *supra* note 250, at 92-93.

[281] *See, e.g.,* Cheatwood v. South Central Bell Tel. & Tel. Co., 303 F. Supp. 754, 758-59 (M.D. Ala. 1969).

[282] Provisions on basic pay are at 37 U.S.C. §§ 201-09 (Supp. V, 1969). Housing and other allowances are dealt with by 37 U.S.C. §§ 401-427 (Supp. V, 1969).

[283] See the report in the N.Y. Times, Dec. 25, 1970, at 18, col. 6.

[Billions of dollars, seasonally adjusted annual rate]

Quarters	1971		1972				1973	
	III	IV	I	II	III	IV	I	II
Wages and salaries:								
Case I	580.7	587.0	597.6	608.3	622.0	635.2	648.6	662.1
Case II	580.7	592.3	609.5	625.4	643.5	659.5	673.9	687.5
Corporate profits and inventory valuation adjustment:								
Case I	77.0	82.7	87.5	91.6	94.4	97.4	100.4	103.4
Case II	77.0	84.3	90.0	95.1	98.6	101.1	103.8	106.3
Change in business inventories:								
Case I	1.1	5.2	8.5	10.2	11.4	11.7	11.7	11.4
Case II	1.1	7.5	11.8	13.6	14.4	13.9	13.1	12.1
Federal deficit:								
Case I	22.3	24.2	29.5	27.6	26.1	21.2	18.5	14.6
Case II	22.3	24.9	29.2	25.8	23.0	15.3	10.3	5.1

APPENDIX

LEGISLATIVE HISTORY OF THE EQUAL RIGHTS AMENDMENT

Year	Congress	Session	Joint resolutions	Hearings (Committees on the Judiciary)	Committee reports	Debate: Congressional Record	Debate: Page	Debate: Votes
1923	68th	1st	S.J. Res. 21			65	150	
1925	69th	1st	S.J. Res. 11			67	486	
1927	70th	1st	H.R.J. Res. 310; S.J. Res. 64			69	931	
1929	70th	2d		On S.J. Res. 64, Senate subcommittee.				
1929	71st	1st	S.J. Res. 52			71	2312	
1931	71st	3d		On S.J. Res. 52, Senate subcommittee.				
1931	72d	1st	H.R.J. Res. 197			75	1755	
1932	72d	1st		On H.J. Res. 197, House committee.				
1933	73d	1st	S.J. Res. 1	On S.J. Res. 1, Senate subcommittee.		77	49	
1935	74th	1st	H.R.J. Res. 238			79	5079	
1937	75th	1st	S.J. Res. 65			81	884	
1938	75th	2d and 3d		On S.J. Res. 65, Senate subcommittee.	S. Rep. No. 1641 (not printed).	83	5684, 6289	
1939	76th	1st	S.J. Res. 7			84	70	
1941	77th	1st	S.J. Res. 8			87	40	
1942	77th	2d			S. Rep. No. 1321 (not printed).	88	4033	
1943	78th	1st	S.J. Res. 25		S. Rep. No. 267	89	257, 271, 5017	
1945	79th	1st	H.R.J. Res. 42	On H.J. Res. 1, 42 etc., House committee.	H. Rep. No. 907	91	597, 505, 9254	
1946	79th	2d			S. Rep. No. 1013	92	1900, 2142, 9223-29, 9293-97, 9303-35, 9397-9405.	38/35 (Sen.).
1947	80th	1st	H.R.J. Res. 49; S.J. Res. 76			93	157, 1264	
1948	80th	2d	H.R.J. Res. 397	On H.J. Res. 49, H.R. 1972, etc., House subcommittee.	H. Rep. No. 2196; S. Rep. No. 1208.	94	218, 5555	
1949	81st	1st	S.J. Res. 25		S. Rep. No. 137	95	2887, 4246, 5810, 6599, 13297, 14722.	

APPENDIX

LEGISLATIVE HISTORY OF THE EQUAL RIGHTS AMENDMENT—Continued

Year	Congress	Session	Joint resolutions	Hearings (Committees on the Judiciary)	Committee reports	Debate: Congressional Record	Debate: Page	Votes
1950	81st	2d				96	626, 704, 738-44, 758-62, 809-13, 826, 828-34, 861-73, 1008.	51/31 (Sen.) (Hayden amendment); 18/65 (Senate) (Kefauver amendment); 63/19 (Senate) (ERA, as amended).
1951	82d	1st	S.J. Res. 3		S. Rep. No. 356	97	901, 5663	
1953	83d	1st	S.J. Res. 49		S. Rept. 221	99	1386, 4313, 8884-85, 8951-74, 9118	58/25 (Senate) (Hayden amendment); 73/11 (Senate) (ERA, as amended).
1954	83d	2d	H.J. Res. 339			100	84	
1955	84th	1st	H.J. Res. 1			101	49, 1339, 11088	
1956	84th	2d	S.J. Res. 39	On S.J. Res. 39, Senate subcommittee.	S. Rept. 1991	102	8018, 8339, 8537	
1957	85th	1st	S.J. Res. 80		S. Rept. 1150	103	5073, 9593, 15999, 16681	
1959	86th	1st	S.J. Res. 69		S. Rept. 303	105	3529, 5729, 8555, 10603, 19099, 19634	
1963	88th	1st	S.J. Res. 45			109	2390, 2405-06, 2712, 5386-87, 8263	
1964	88th	2d			S. Rept. 1558			
1965	89th	1st	S.J. Res. 85			111	11336, 12682, 14007, 14687, 16621, 17367-68, 23788	
1967	90th	1st	S.J. Res. 54			113	9796, 20919, 23012, 33613	
1969	91st	1st	H.R., Res. 264; S.J. Res 61			115	393, 2082	
1970	91st	2d		On S.J. Res. 61, Senate subcommittee; On S.J. Res. 61 and 231, Senate Committee.	Discharge petition, House of Representatives.	116	7948-85 (Aug. 10); 17229-35 (Oct. 6); 17335-63 (Oct. 7); 17485-91 (Oct. 8); 17269-57 (Oct. 9); 17745-58, 17779-94 (Oct. 12); 17815-16, 17892-95, 17923-50 (Oct. 13); 18075-78 (Oct. 14).	350/15 (House); 36/33 (Senate (Ervin amendment); 50/20 (Senate) (Baker amendment).
1971	92d	1st	H.R.J. Res. 208; S.J. Res. 8.	On H.R.'. Res. 208, House subcommittee.		117	233 (Jan. 26); 17 (Jan. 25).	

COMMENTS ON NIKITA KHRUSHCHEV BY ROSWELL GARST

Mr. FULBRIGHT. Mr. President, in 1959, Chairman Khrushchev visited Roswell Garst in Coon Rapids, Iowa, after he had visited the Committee on Foreign Relations in Washington.

Mr. Garst is one of the most successful agriculturalists in this country, being especially successful in developing hybrid corn. He has recently written a short account of his experiences in Russia and Eastern Europe, including his visits with Khrushchev. He also had an exchange of letters with our Department of State which is revealing.

I ask unanimous consent that these items be printed in the RECORD.

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

GARST & THOMAS HYBRID CORN CO.
Coon Rapids, Iowa, September 13, 1971.

GENTLEMEN: Nikita Khrushchev died Saturday—and will be buried today. Because of the fact that it was most unusual for the head of a great nation and his wife to insist on visiting the Garst Farm in the fall of 1959, when President Eisenhower invited them to come to the United States, it seemed to me you would enjoy a review of the past 16 years.

In February of 1955, Chairman Khrushchev gave a speech before the Soviet parliament plainly stating that the Soviet Union was suffering from a shortage of meat, milk and cheese, eggs and poultry; short of high type of proteins for human consumption. He ended the speech by saying about as follows:

"What we need is an Iowa Corn Belt!" The speech was highly publicized. Lauren Soth of the Des Moines Register & Tribune, Iowa's largest paper, ran an editorial invitation for Khrushchev to send a delegation over to the United States to see how an "Iowa Corn Belt" operated.

Khrushchev accepted the invitation much to the surprise of everyone including the United States Department of State.

There had been almost no communications between the Soviet Union and the United States between the end of the war and 1955. Stalin had, as Winston Churchill said, "Pulled down an Iron Curtain" at the end of the war and there was almost no permission for exchanges of information between the two areas.

The U.S. State Department's reaction was: "We will not accept a delegation of Soviet agricultural visitors unless the Soviet Union will accept a delegation of American visitors."

Khrushchev said, "Fine—we will welcome them."

So the exchange of delegations was arranged. Fortunately, both delegations were led by very outstanding men. The American delegation was led by Dean of Agriculture Lambert of the University of Nebraska and the Soviet delegation was headed by V. V. Matskevich, who was deputy minister of agriculture before he came—and who was made Minister of Agriculture when he returned.

Mr. Matskevich and several others of the Soviet delegation visited the Garst Farm which had not been put on the itinerary of the delegation, and saw that we were doing a great many things that the Soviet Union would have to do if they were going to have "an Iowa Cornbelt".

We were producing hybrid seed corn. We were feeding corn cobs to cattle—we were using urea as the protein of our cattle. We were harvesting commercial corn at high moisture and drying it.

We were using generous fertilizer applications and insecticides and herbicides.

Garst & Thomas had the largest facilities for producing hybrid seed corn—and were using the most modern methods then—as we are now.

Mr. Jim Russell, Farm Editor of the Des Moines Register had brought several of the Soviet delegation away from their scheduled visit to the Garst Farm—I had shown them around for an hour or so—we stopped in our house to visit with Mrs. Garst when Mr. Matskevich invited Jim Russell and me to visit the Soviet Union to see their "permanent agricultural exposition" at Moscow.

Mrs. Garst immediately asked "Does the invitation include his wife?" Matskevich's reply was: "If you do not trust your husband, I will be forced to invite you." She refers to that as the best "brush off" she ever had.

My son, Stephen, was there—he said: "Does the invitation include his son?" His reply: "You are a young man. You will have

many years in which to visit the Soviet Union!"

I did not immediately accept the invitation. I told him I would come if I could find time. He had invited Jim Russell of the Des Moines Register—but Jim could not go. However, Jim did highly publicize the invitation because the delegation had been in the U.S.A. for a couple of weeks and I was the first person who had been invited.

I did go immediately to Washington, D.C. to talk to the State Department. In 1955, a passport had to be especially validated to let an American citizen visit any country "behind the Iron Curtain".

The State Department, of course, knew I had been invited. I told them about as follows: "I do not know whether it is in the best interest of the United States to teach the Russians how to farm or not. If you think it is, validate my passport and I'll do my best to be helpful. If you do not think it it—do not validate my passport.

"But—if you validate my passport, I want to be assured that I can get an export license for anything they want to buy that will help their agriculture. For instance, they are not using hybrid seed corn—they should be. I am going to tell them what they already know—that all corn is raised from hybrid seed in the U.S.A.—and I will try to sell them demonstration quantities.

"They need to see modern corn growing—and corn harvesting equipment—insecticides, herbicides, etc., etc. In short, I want to go as an educator and as a salesman or I do not want to go at all.

"You people of the State Department should make the decision."

Secretary of State Dulles was in Asia at the time. They said that when he returned, the matter would be discussed at the highest levels—and they would give me their decision.

In a couple of weeks, they invited me back and told me about as follows:

"We believe you have wasted a good deal of our time. We don't think anyone can teach them anything—nor sell them anything. But, we do think that to keep the lines of communications open between the two countries is all for the good. So we are validating your passport—and if conditions do not worsen in the meantime, we will issue export licenses for anything that will help their agriculture."

While they had been taking two weeks for discussion, I had been doing some research as well. I discovered that the Danube Valley of Romania, Hungary and Czechoslovakia were excellent corn growing areas. So I asked the U. S. State Department to validate my passport for those three countries as well.

The man in charge of the "Eastern European Desk" laughed and said that Romania, Hungary or Czechoslovakia had not permitted a single American to visit in 20 years—and would not let me come. He did not have to ask anyone! He validated my passport for all three countries.

Mrs. Garst and I have for many years been friends of Mr. and Mrs. Geza Schutz who lived at that time in Minnesota. Schutz had been born in Hungary—went to college in Switzerland, got a Ph. D. in Economics at the Sorbonne in France, speaks German, French, Spanish and has traveled widely. I invited him to go with me on the European trip—and Mrs. Garst invited Mrs. Schutz to visit the eastern part of the United States while we were in Europe.

Dr. Schutz and I left right after "Open House" in late September for Moscow. We spent the first day or two visiting the "permanent Soviet agricultural exposition" which is a very fabulous exhibit. They have a large display from every one of the Soviet republics—the Ukraine, Georgia, Russia, Uzbekistan, Siberia, etc., etc., etc. We were furnished with an interpreter—Mrs. Marina Rytova—who has always been my interpreter on subsequent trips—and who also came to the U.S. with a Soviet delegation in 1958. She is a very competent interpreter too.

After a couple of days at the exhibits, we had a series of meetings at the U.S.S.R. Department of Agriculture in Moscow. I told them about the hybridization, mechanization, fertilization of corn—about insecticides, herbicides, early harvest and drying—about the use of corn cobs and corn stover for beefbrood cows—about the use of urea-molasses as the protein of ruminants—about hybrid chickens for both egg laying and for broilers.

However, I made it a rule to start every talk I gave the same way and that was to point out that it was due to a difference in circumstances that let the United States be so far ahead of the Soviet Union in agricultural production.

Under the government of the Czars only a small proportion of the population had received educational opportunities. At the time of the revolution in 1917 a relatively high percent of the people were illiterate. I pointed out that it was 38 years from the time of the revolution until 1955.

It seemed reasonable that it would have taken a minimum of ten years to educate enough teachers and build enough school houses to educate all of the children—instead of a small part of the children. So they had not had 38 years of opportunity—only 28 years.

And then I pointed out that it must have taken ten years to fight a war of survival and to recover from the devastation of that war.

The city of "Stalingrad" is about as far from the German border as Denver is from New York—and Stalingrad was where the Russians finally stopped the Germans.

I pointed out that the last war fought on United States territory was the Civil War which was 90 years ago—while they had suffered two devastating wars in my lifetime.

Then I pointed out that most of our *improvements* in agriculture had happened in the last 25 years—between 1930 and 1955—and that the bulk of the progress had been in the last 15 years—between 1940 and 1955. And that in that 15-year period, they had been terribly handicapped—by fighting a war of survival—and recovering from the devastation of the war.

After I gave that introduction, I could tell them how far ahead American agriculture was when compared to Soviet agricultural without raising any resentment. I would point out that we were no smarter than they are—that we were more favored by circumstances.

Dr. Schutz and I spent about ten days in Moscow, then were taken to Kiev, to Kharovsk and to Odessa—to state farms, to collective farms, to agricultural experiment stations, agricultural colleges.

At Odessa I was told that Chairman peninsula and spent all afternoon and evening visiting with Mr. Khrushchev and quite would like to have me come for a visit. Dr. Schutz was not invited—I think because he talked about economics—and I only talked about agriculture.

So I was flown to Yalta on the Crimean peninsula and spent all afternoon and evening visiting with Mr. Khrushchev and quite a group of top agricultural leaders and with Mr. Mikoyen, Minister of Foreign Trade. It was a repeat performance of my talks.

In 1955, we had less than 10% of the people in the U.S.A. on farms—the Soviet Union had about 50% of their population on farms. And we were the best fed nation in history—and exporting food in a large way. They were short of protein—short of meat, milk, eggs and poultry.

Before I had made the trip, I had decided that I could sell them some hybrid seed corn! I also knew it would have to be only early varieties. And I knew it would have to be unpopular kernel sizes because a relatively small percent of the corn raised in the U.S.A. is early enough to be planted in Minnesota—and almost all of the corn raised in the Soviet Union had to be of that maturity.

So I not only asked our associates of the Pioneer organization but I asked Northrup-King—and DeKalb to save all the extra small kernels because I thought there might be a market in the Soviet Union. In 1955, most farmers in the U.S.A. hated to plant Small Flat or Small Round kernels.

But in the very bad production years of 1947 and 1951 all hybrid producers had saved even the extra small kernels. Farmers in the U.S.A. had no choice—they planted the smallest kernels in history in 1948 (from the poor seed crop raised in 1947). And American farmers raised new record yields in both 1948 and 1952 from the "poorest looking" seed they had ever planted.

So I had available about 5,000 tons of very early varieties in extra small kernel sizes. While I was visiting all the way down from Moscow to Odessa, I discovered that the U.S.S.R. Department of Agriculture had known all about hybrid seed corn—had some very decent inbreds—but had hesitated to cross the inbreds into more than small samples of hybrids.

So I suggested to Khrushchev and Matskevich that they should buy American hybrid seed corn for a demonstration of the virtues of hybrid corn. They wanted to know how much they could have—and I said about 5,000 tons which would be enough to plant about 3% of their acreage.

They thought that was fine. Because I was selling kernels that I declared were unpopular because of their small size, I insisted that they send a delegation over to inspect the seed before we bagged it and shipped it. Their scientists assured Khrushchev and Matskevich that the extra small kernels were just as good—and more economical. The delegation that came to inspect the seed was authorized to also buy all of the equipment for a plant to dry and size and bag hybrid corn—which they did so.

It was not surprising to find Khrushchev determined that the Soviet Union should never again be invaded. In both World War I and World War II, Russia had lost more men than all other combatants. They do not intend to ever risk another invasion.

Most Americans fail to realize how far north Russia is. Moscow is about the same latitude as the north half of Hudson's Bay. Odessa, on the Black Sea is farther north than Chicago. And it is rather short of rainfall. Most of the Ukraine is more like the Western Dakota's than it is like Kansas or Oklahoma.

The people were very hospitable and friendly. And anxious to learn about American agricultural methods.

From the Soviet Union, Dr. Schutz and I went to Romania. We had an equally fine reception in Romania, Hungary and Czechoslovakia. Romania and Hungary had suffered terribly under fascist governments between World War I and World War II—governments dominated by leaders of the same type as Hitler and Mussolini. The Russians chased the Germans out of both Romania and Hungary in 1944 and both countries adopted Communist Governments shortly thereafter.

Both the Romanian and Hungarian governments also bought hybrid seed corn—and American farm machinery—both countries sent delegations over to inspect the seed and see the farm machinery.

It is hard for American farmers to understand nor believe how backward the agriculture of Romania and Hungary were in 1955.

In Romania, they plowed three furrows—10" furrows—behind an ox. Then they planted corn in the furrow and plowed three more furrows. They planted about a bushel per acre. They cut down a tree, chained the brush together and brushed it in. When the corn came up, they cleaned up the middle with a

sweep 20" wide behind an ox—had the women thin the stand with a hoe—as they took the weeds out of the row. They cultivated with the sweep and hoed the corn three times.

Then, come fall, they picked the ear corn and threw it on the ground. Then picked it up by hand and loaded it into wicker wagons. The wagon boxes had been woven out of little willow branches about as big as my little finger. Then they cut the stalks off with a corn knife—tied the corn stalks into bundles with twisted slough grass—put the bundles on top of the ear corn and hauled it to the village where they lived behind an ox that traveled about a mile an hour. It probably took two hours of man or woman time to raise and harvest a bushel of corn in Romania in 1955. In 1955, it took only six minutes to raise and harvest a bushel of corn in the U.S.A.

Dr. Shutz and I spent about ten days in Romania. Then we met with their cabinet. I told them to appropriate $500,000—half of it for hybrid seed corn and half of it for farm machinery. I told them hybrid seed would increase their yields 35 to 40% but that modern farm machinery would lower their labor requirement by about 19/20ths—that they required about 20 times as many man hours as we used.

Neither Romania nor Hungary had water systems. They used what were called "Turkish Wells". They were about 50 feet deep—four feet across. They had a long pole balanced in a V with a bucket on the long end of the pole—and a big rock on the short end.

They would push the bucket down into the well—40 feet or so—and pull it out of the well and have about three gallons of water. Or if a creek was near, they would dip water out of the creek, dump it in a tank and haul it to the cattle, to the hogs and the chickens. It was that bad in 1955.

The Romanian government followed my advice and bought about $250,000 worth of what was in 1955 modern farm machinery. They bought tractors, plows, discs, harrows, planters, cultivators, corn pickers, dump wagons—everything we were using for corn growing.

Dave Garst and his wife went over to Romania in the spring of 1956 with a mechanic to show them how to assemble and run the machinery. He and Jo spent about 60 days in the spring of 1956 in Romania. Steve Garst and his wife went over in the fall of the year to show them how to harvest. Both couples spent some time also in Hungary.

We have had delegations from all three countries ever since. Of course, all three countries have made great agricultural progress ever since.

Mrs. Garst and I—Mr. and Mrs. John W. Mathys of the Northrup-King Seed Company and Dr. William L. Brown, Vice President of Pioneer Hi-Bred International, Inc., all went over in the fall of 1956. We were entertained by Secretary of Agriculture Matskevich and Mrs. Matskevich in Sochi, U.S.S.R. on the Black Sea and saw the American hybrid seed corn varieties in not only the U.S.S.R. but in Romania and Hungary as well.

* * * * *

In 1959, Mr. Mikoyan, Minister of Foreign Trade of the U.S.S.R., was in Washington, D.C. I had lunch with him. He told me Mr. Khrushchev had asked him to extend an invitation for Mrs. Garst and me to come for a visit with him at our earliest convenience. I told him we had planned to take a Mediterranean trip that winter in February and March and that we would accept the invitation at Mr. Khrushchev's convenience.

So in March, we flew to Moscow and Mr. Matskevich flew with us to Sochi. We stopped in the North Caucasian area for a day seeing a new nitrogen plant—some beautiful flocks of sheep—new farm machinery, etc.

Matskevich and Emelianov (the agricultural counselor of the U.S.S.R. in Washington who has since died) and I spent the morning discussing the agricultural opportunities not only in the U.S.A. and in the U.S.S.R. but in other parts of the world. Both Khrushchev and Matskevich were keen men. Both knew that world population was growing rapidly—and that most of the world population was poorly fed—that the whole world needed more of the meat, milk, cheese, poultry and egg type of protein. It was a delightful visit.

Mrs. Garst came for lunch and we discussed at length the fact that the world—especially the U.S.A. and the Soviet Union were spending far too much money on armaments—and far too little on agriculture.

I pointed out to Khrushchev that he was making a poor trade—that the U.S.A. was spending 10% of our gross national production for armaments, but that we had about twice as much G.N.P. as the Soviet Union had so he would have to spend 20% to keep up. And I pointed out that our 10% really came out of luxuries—that we still had more cars, televisions, radios than we needed—while his 20% came out of production of what we would consider to be necessities. He agreed in principle. We talked for several hours. Mrs. Garst had never met him before. She was afraid he would argue—and perhaps argue loudly. She was pleasantly surprised because he was like a "grandfather"—quiet, courteous, friendly, very easy to visit with.

Mrs. Khrushchev was not at home—she was in Moscow welcoming a new grandchild into the world.

When we had finished our visit, Mrs. Garst told Mr. Khrushchev that she had one regret—that he had been so cordial—such a fine host that she would like to reciprocate—and entertain him in our home as he had entertained us in his home!

He bowed and said, "Mrs. Garst, if I ever come to the U.S.A., I will visit you in your home!"

And in a few months, President Eisenhower did invite him—and he did visit us in our home. He invited us to visit the Soviet Union again in 1960 but I did not feel up to going so I sent our nephew, John Chrystal, in my place.

John had entertained Russian delegations in 1958 and Romanians and Hungarians as well. He spent most of the summer visiting the Soviet Union, Romania, Hungary and Bulgaria.

In late 1962, I discovered I had cancer of the larynx and had to have it removed. By the spring of 1963, I had recovered and John Chrystal and I again visited the Soviet Union, Romania, Hungary and Greece.

John and I were entertained at the Khrushchev "Datcha", their country home, on the outskirts of Moscow as well as at their city residence. Mrs. Khrushchev and Mr. Khrushchev and two of their daughters and one son were there. That was the last visit I made to Europe.

The story gets too long but I thought that inasmuch as it covers a period that reached from 1955 into September of 1971, that it deserved this long a history.

As you all know, I have spent my whole adult life encouraging people to learn how to produce "more and better food with less labor"!

My first big push was hybrid seed corn—then more generous and better balanced fertilizer—then insecticides and herbicides—then early harvest of grains to shrink harvest losses—then the use of urea as the purchased protein for ruminants.

It has given me pride to have made a contribution to the acceptance of new and improved agricultural practices earlier than they would have been accepted without my ethusiasm. They would all have come without my efforts, of course, but I think I have made a contribution to the speed with which the changes have been made.

It is my hope that I will again be invited to visit the countries of Eastern Europe. They have made very great progress in the last 16 years. But so has the U.S.A.

In 1960, the U.S.A. had 15.6 million people on farms. In 1970, we had only 9.7 million people on farms. We have 206 million people so less than 5% are farmers. We have doubled corn yields since 1955.

We have increased wheat yields and sorghum yields very substantially. With only 5% of our population on farms, we are exporting the production of nearly 25% of our cultivated acres.

Nikita Khrushchev made a major contribution to the world when he opened greater communications between the Communist Countries of Eastern Europe and the rest of the world. There had been almost no communication between Eastern Europe and the rest of the world for many years.

* * * * *

I shall never forget an incident that took place in the fall of 1956. Mr. and Mrs. John Mathys, Dr. William L. Brown and Mrs. Garst and I were being entertained at dinner by Mr. and Mrs. Matskevich in their home at Sochi on the Black Sea. Before dinner, the men visited in one room—the ladies in another.

Mrs. Matskevich questioned Mrs. Garst at length about what women did in the U.S.A. Mrs. Garst explained that while women had excellent house-hold equipment, they almost in every case did their own house work—in many cases raised a small garden, sewed, belonged to the P.T.A., a church, etc.

As both the ladies and the men came into the dining room, Mrs. Matskevich asked what was probably her final question which was, "But, Mrs. Garst, what is the ambition of the American women?"

Mrs. Garst's reply was about as follows: "Why, Mrs. Matskevich, I believe all the women in the world have about the same ambitions. They want to have a pleasant home, they want their children to have greater opportunities than they themselves have had. It seems to me all women everywhere have those ambitions."

Where upon, Mrs. Matskevich broke into tears and said that Mrs. Garst had the same ambitions as the Russian women.

So Mr. Matskevich proposed a toast "To the Ladies".

* * * * *

It seems to me the world is a less hazardous place to live than it was before Mr. Khrushchev destroyed the "Iron Curtain" in 1955.

Sincerely,

ROSWELL GARST.

JULY 27, 1971.

Mr. WILLIAM P. ROGERS,
Secretary of State,
Department of State,
Washington, D.C.

DEAR SECRETARY ROGERS: At the end of World War II, Stalin pulled down what Winston Churchill named "The Iron Curtain" and, until 1955, there was almost no communications between the U.S.S.R. and the U.S.A.

In February of 1955 Khrushchev, in a speech before the U.S.S.R. legislative assembly, complained that the Soviet Union was short of meat, milk and eggs—and said "what we need is an Iowa Corn Belt".

Mr. Lauren Soth, Editor of the Des Moines Register, wrote an editorial invitation for Mr. Khrushchev to send a delegation of Russians over to see how the farms of Iowa were operated. Mr. Khrushchev immediately accepted, very much to the surprise of most Americans.

The U.S. Department of State said roughly as follows:—We will not accept a delegation from the Soviet Union unless the Soviet Union will accept the same type of delegation from the U.S.A. The answer from Khrushchev was, "Fine, we will gladly wel-

come an agricultural delegation from the U.S.A."

So the exchange took place in the summer months of 1955.

Fortunately, both the delegation from the U.S.A. and the delegation from the U.S.S.R. had very fine leaders. The U.S. delegation was headed by Dean of Agriculture Lambert of the University of Nebraska. The U.S.S.R. delegation was headed by V. V. Matskevitch, then the Under Secretary of Agriculture of the Soviet Union, who was made Secretary of Agriculture as soon as the 1955 delegation returned to Moscow.

While the 1955 delegation was in Iowa, Mr. Matskevitch, Mr. Tulupnikov and one or two others visited the Garst Farm here at Coon Rapids. The Garst & Thomas Hybrid Corn Company, of which I am a partner, has a large plant for the preparation of hybrid seed corn for planting in which they were highly interested. Then they were interested in the genetics of hybrid seed, in the proper fertilization, proper mechanization of corn growing—in the feeding of cattle; in fact, in all the new knowledge of improved agriculture and in not only better production of grains but in our improved livestock practices as well.

So, Mr. Matskevitch invited Mr. Jim Russell, then the Farm Editor of the Des Moines Register, and me to come to the Soviet Union in the fall of 1955. Mr. Russell was not able to accept. I "stalled" about accepting—because I wanted to find out the attitude of the U.S. Department of State. I told Matskevitch I would "study the matter—and I would try to accept—that I would let him know before their visit in the U.S.A. was finished."

I immediately went to Washington and told the State Department that I would like to accept the invitation but would only accept it under two conditions:

First, because my whole active adulthood had been spent in agriculture, the only thing I could talk about intelligently was agriculture. If the Department of State thought it was in the best interest of the U.S.A. to teach the Soviet Union how to produce "more and better food with less labor", all they needed to do was validate my passport and I would do my very best. And—

Second, if I told them about the virtues of any agricultural tool of higher production such as hybrid seed corn, fertilizer, new and improved farm machinery, insecticides, herbicides, etc., I wanted to know that the Department of Commerce would issue an export license.

I pointed out that it would be insulting to tell them how little labor we use in corn production in the U.S.A.—and then refuse to sell them the tools of all kinds that we use.

Mr. Dulles was on the other side of the world when I was there. The State Department told me the matter would be considered as soon as he returned—and that they would let me know.

In about two weeks, they asked me to come in for further discussions. In the meantime, I had studied enough about Eastern Europe to think I should go to Romania, Hungary, and Czechoslovakia after the Soviet Union.

I shall never forget the answer the Department of State gave me. It was about as follows:

"We believe you have wasted a good deal of the State Department's time. We doubt if anyone can teach them anything—nor sell them anything! But, if you wish to try, we will validate your passport. We neither urge you to go—nor do we urge you not to go. We do feel it is worth-while to keep communications open."

I asked them if I could have the validation of my passport include Romania, Hungary and Czechoslovakia as well as the U.S.S.R. They assured me that none of those countries would let me come. I assured them I would not enter any of those countries without a visa so they said that was fine—and did validate my passport for those three countries.

Actually, I waited till I got to Moscow before I asked for a visa to visit Romania, Hungary and Czechoslovakia and I had all three visas within 24 hours.

I spent about three weeks in the Soviet Union—about one week in Moscow—and ten days on the way down to Odessa. They furnished me a young married woman, Marina Ritova, as an interpreter—and their agricultural attache to their U.S.A. Embassy, Mr. Emelianov, as my traveling guide.

Mr. Matskevitch had me lecture at the Ministry of Agriculture in Moscow on grain production, on cattle feeding, on swine production and on both egg laying chickens and broiler production. Then I went to Kiev, Kharkov, the Kuban area where corn is the principal crop and to Odessa.

At Odessa, they told me that Chairman Khrushchev would like me to come over to his vacation home on the Black Sea for a visit. I agreed. We flew from Odessa to Yalta—on the Crimean Peninsula and then drove out to his summer home.

He had Mikoyan (then Minister of Foreign Trade), Matskevitch, Minister of Agriculture; the Minister of Agriculture of the Ukraine, Mr. Emelianov and several corn geneticists. I spent the whole afternoon answering questions about American agriculture.

About 5:30 P.M. Khrushchev said that Mrs. Khrushchev would be serving dinner in an hour or so, so we should quit work and visit—not about agriculture—but about world affairs—and have some drinks before dinner.

He complained about the U.S.A. having the U.S.S.R. surrounded with military bases, and air fields, etc., etc. Not having expected such questions, I was ill prepared to answer—so I avoided questions of that type.

The Russians, the Romanians, the Hungarians and Czechoslovakians all bought substantial quantities of hybrid seed corn, and of American farm machinery and of equipment for the production of hybrid seed corn, etc., etc. They all sent purchasing delegations over in the fall of 1955—as soon as I returned—and had the seed and implements shipped so they could be used for their 1956 crops.

In the fall of 1956, Minister of Agriculture Matskevitch invited Mrs. Garst and me and Mr. and Mrs. John W. Mathys of the Northrup-King seed company of Minneapolis and Dr. William L. Brown, head of the research department of the Pioneer Hi-Bred International, Inc. of Des Moines to visit the Soviet Union—and we all also visited Romania and Hungary. We were very warmly received in the Soviet Union and Romania. We arrived in Hungary only one day before the 1956 "uprising" and spent a week or ten days on Margarita Island between Buda and Pest before we could get out.

We did not see Chairman Khrushchev in 1956—but we were entertained by Minister of Agriculture Matskevitch and his wife at Sochi on the Black Sea.

* * * * *

In January of 1959, Mr. Mikoyan, the Minister of Foreign Trade, came to the U.S.A. I had met him at the time I met Khrushchev on the Crimean Peninsula in 1955. I flew to Washington and had lunch with him at the Soviet Embassy.

He told me that Chairman Khrushchev had told him that he, Khrushchev, was anxious to have Mrs. Garst and me to come to the Soviet Union for a visit at our early convenience.

I explained that we had planned to visit Spain, Portugal, Italy, Egypt, Lebanon, Turkey and Greece—all by air—in February and March—and that we could interupt our trip at whatever point would be most convenient for Mr. Khrushchev.

I told Mikoyan we would contact the U.S.S.R. Embassy in Rome for our visa and the time for the visit which we did. Khrushchev said "mid-March would be fine" so we flew from Lebanon to Moscow.

Matskevitch took charge at Moscow and we flew down to the North Caucasus area and spent a day looking over agriculture and then flew to Sochi on the Black Sea.

Matskevitch and I went over to Khrushchev's residence about 9:30 A.M. with Emelianov, the agricultural attache of the U.S.S.R. in Washington, D.C. We spent from 9:30 till 12:30 talking about agriculture.

Mrs. Garst came about 12:30—and during and after lunch—with both Matskevitch and Emelianov present—we talked about world affairs—especially about the growing burden of armaments.

Khrushchev again brought up the fact that the U.S.S.R. was surrounded by U.S. military bases—and air fields. I surprised him with my answer—which was that they ought not worry him—he should be amused and laugh at our stupidity. He wanted the reason I thought he should be amused.

I told him that they were never going to be used—that they were a wasteful expenditure of American resources. I pointed out that no one in the U.S.A. wanted to start a war—that certainly no one in the Soviet Union—after two terribly devastating wars in a 50-year period wanted a war.

I told him that he was a poor "horse trader"—poorer than a Russian peasant should be—and pointed out that we in the U.S.A. were spending about 10% of our Gross National Production on "defense"—that we had about twice as much industrial capacity as the U.S.S.R. So it was costing them 20% of their G.N.P. etc., etc.

Matskevitch nodded his head in agreement just as well as Khrushchev. This, far too lengthy letter I believe, is justified only because of the suggestion I now wish to make.

* * * * *

It seems to me that President Nixon's effort to get China to lessen its isolation is a grand step in the right direction. But—

I fear that unless we continue to cultivate our relations with Russia, we may be making a mistake.

* * * * *

It is in agriculture that the Soviet Union has perhaps its greatest opportunity for rather rapid progress.

Matskevitch is a very keen and influential person. Why would it not be an excellent idea to have Secretary of Agriculture Hardin invite Minister of Agriculture Matskevitch to the U.S.A. to see the progress in American agriculture since his visit here in 1955 with the first delegation?

It seems to me that it would show our interest in the U.S.S.R.—and in the whole world food situation. The United Nations recently forecast a doubling of world population between now and the year 2,000. So better agriculture will be necessary everywhere.

It may be that inviting Matskevitch over this fall might show that our interest in China has not lessened our interest in the Soviet Union.

Like "Ping-Pong" which was used by the Chinese as a method of opening up signs of friendliness, "Agriculture" was an excellent way in 1955—and can be an excellent tool in 1971.

If you think well of the idea, feel free to tell Secretary Hardin that I will be happy to be helpful to him in suggesting things I feel sure Minister Matskevitch would be interested in seeing.

The Soviet Union is already well advanced and very good at chickens—both broilers and egg layers. And at large scale swine production.

They need to see irrigation as we use it in the U.S.A. They need to see large scale

cattle feeding operations as we do it in the high plains areas.

And most of all, they need a transportation system. They need—and must have—a much improved farm to market road system to transport tractor fuel and fertilizer to their farms—and grain and livestock and poultry products to their population centers.

It might be well to invite not only Matskevich, Minister of Agriculture, but invite the man who heads up their Highway Department.

Matskevich is an extremely competent individual. He would be an influential person in the cabinet of any country.

I enclose a picture taken in March of 1959 with identification of the individuals on the back because I thought you might like a picture of him.

Very respectfully yours,

ROSWELL GARST.

DEPARTMENT OF STATE,
Washington, D.C., August 11, 1971.

DEAR MR. GARST: The Secretary has asked me to reply to your letter of July 27, 1971, in which you propose that an invitation be issued by the Secretary of Agriculture to Minister Matskevich to visit the United States.

We appreciated receiving your suggestion and have discussed it with the Department of Agriculture. We understand that Matskevich has already been invited to make a private trip to the United States this month. In the event that he comes, the possibility remains open, of course, that he might meet with Secretary Hardin while here.

Sincerely,

R. T. DAVIES,
Deputy Assistant Secretary for European Affairs.

AUGUST 13, 1971.

Mr. R. T. DAVIES,
Deputy Assistant Secretary for European Affairs, Department of State, Washington, D.C.

DEAR MR. DAVIES: Thanks for your letter saying that you understood Minister of Agriculture Matskevich has been invited to make a private trip to the United States this month.

I know about that invitation—but I doubt seriously if he will come without an official invitation from Secretary Hardin, in spite of the fact that he has been invited to speak before a group of economists.

And from the State Department's own interest, it seems to me an invitation to Matskevich to come would be highly desirable. Hardly anything could be more innocent than inviting him back for another look at American agriculture after 15 years.

In 1950, we were eating 64.4 pounds of beef per person. By 1960, it was up to 85.1 pounds per person. By 1970, it was up to 113.8 pounds per person. In 1950, we had about 150 million people—in 1970, above 200 million.

It seems highly probable that the U.S.S.R. has failed to keep pace—and is anxious to learn how we have done so well.

So I urge you to reconsider your decision and invite him.

Sincerely yours,

ROSWELL GARST.

SENATOR PROXMIRE'S POLL OF WISCONSIN RESIDENTS

Mr. PROXMIRE. Mr. President, a poll I have taken of Wisconsin residents shows an overwhelming support for the President's wage-price freeze and with even more support expressed for continuation of some wage-price controls after the freeze is ended.

Among the other interesting results of the poll, which was answered by some 18,000 Wisconsin residents, was the continuing desire of the voters to reduce Federal spending in the area of defense, foreign aid, and space.

The questions and the results are detailed in my October newsletter to my constituents. I asked unanimous consent that it be printed in the RECORD.

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

WHAT YOU THINK ABOUT INFLATION, SCHOOL BUSING, RED CHINA, AND FEDERAL SPENDING

Wisconsin voters continue a remarkably consistent and emphatic opposition to increased federal spending!

You call for cuts in spending for defense, foreign aid, and space.

Most of you support admission of Mainland China to the United Nations.

You overwhelmingly oppose busing to desegregated schools.

The Administration's new wage-price control program has your support . . . so far.

BUDGET CUTTING ALMOST AS POPULAR AS LAST YEAR

How do your preferences compare with your attitude last year?

In August of 1970, in response to a similar questionnaire, more of you favored budget cuts but a majority continue to support a reduction in defense, foreign aid and space expenditures. In fact, there is more support for reduced foreign aid than there was last year—a whopping 81.6 percent of you favor such a reduction.

The welfare program is also less popular. Almost 50 percent of you favor a cutback in welfare spending.

On the other hand, a majority of you favor an increase in spending for health as well as a boost in social security benefits. Last year there was no majority support for spending increases of any kind.

OUR CHINA POLICY

Where do you stand on China?

More than four out of every five of you support admitting Mainland China to the United Nations but not at the cost of expelling Nationalist China.

Only 20 percent of you would admit Red China if it meant barring Nationalist China from U.N. membership.

You also overwhelmingly support the President's proposed trip to Peking as well as more trade with Communist China.

THE WAGE-PRICE FREEZE

And the freeze in your wages and prices?

More than four out of every five of you support the 90-day freeze on wages and prices. You are willing, by and large, to pass up a wage increase as long as prices and rents remain stable and you want some continued controls after the freeze expires. A great many of you (85.9 percent) feel the price freeze should be extended to cover interest charges. However, few of you are buying more goods because of the freeze.

SCHOOL BUSING

Segregation and school busing?

Although almost all of you are against busing to end segregation no matter where it exists, one out of every four who answered the questionnaire would approve of busing to end school segregation created by acts of a state government.

It is very clear, however, that most of you strongly oppose busing under any circumstances.

Here's how you and your fellow Wisconsin citizens answered my September questionnaire:

INFLATION

Do you support the current 90-day freeze on wages, prices, rents?

	Percent
Yes	84.7
No	15.3

Are you willing to forego an increase in your wages as long as prices and rents are held down also?

	Percent
Yes	86.2
No	13.8

Do you expect to buy more clothing, furniture, appliances, or other products now that prices are frozen?

	Percent
Yes	22.4
No	77.6

Should the freeze be extended to cover interest charges?

	Percent
Yes	85.9
No	14.1

Should some kind of wage-price controls be continued after November 12, 1971?

	Percent
Yes	89.2
No	10.8

Do you favor the President's plan to postpone the Family Assistance Plan (welfare reform)?

	Percent
Yes	51.7
No	48.3

Do you favor postponement of revenue sharing with state and local governments?

	Percent
Yes	27.2
No	72.8

CHINA

Do you support the President's decision to go to Peking before next May?

	Percent
Yes	71.5
No	28.5

Would you favor opening up trade with Mainland China provided strategic goods were not traded?

	Percent
Yes	75.9
No	24.1

Would you favor admitting Mainland China to the United Nations:

If Nationalist China also kept its membership?

	Percent
Yes	83.8
No	16.2

If Mainland China admission is conditioned on expelling Nationalist China?

	Percent
Yes	20
No	80

BUSING

Do you think busing should be used to desegregate schools that were segregated by actions of a state government?

	Percent
Yes	24.6
No	75.4

Do you think busing should be used to eliminate segregation wherever it exists and whatever its causes?

	Percent
Yes	12.9
No	87.1

SPENDING: INCREASE OR CUT?

The President's budget called for $249 billion for the current fiscal year. How, as a U.S. Senator, would you vote on the following proposed (or already approved) major spending levels?

	Percent
Yes	51.7
No	48.3

Program	Fiscal 1972 spending (billions)	Cut below level (percent)	Hold at level (percent)	Increase level (percent)
1. National defense	76.0	57.0	36.0	7.0
2. Foreign aid	4.1	81.6	16.4	2.0
3. Space	3.3	57.4	34.6	8.0
4. Farm	9.6	39.0	47.8	13.2
5. Public works	2.3	14.2	54.7	31.1
6. Housing and urban development	3.7	16.7	38.1	45.2
7. Education	5.2	13.2	46.4	40.4
8. Health	3.1	5.0	40.1	54.9
9. Social security	4.3	5.0	43.0	52.0
10. Welfare	11.4	48.4	35.2	16.4
11. Veterans	10.7	9.0	59.4	31.6

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. The time fixed for the transaction of routine morning business has expired.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed a bill (H.R. 10880) to amend title 38 of the United States Code to provide improved medical care to veterans; to provide hospital and medical care to certain dependents and survivors of veterans; to improve recruitment and retention of career personnel in the Department of Medicine and Surgery, in which it requested the concurrence of the Senate.

MILITARY PROCUREMENT AUTHORIZATIONS, 1972

The PRESIDENT pro tempore. Under the previous order, the Chair lays before the Senate the unfinished business, which the clerk will state.

The second assistant legislative clerk read as follows:

A bill (H.R. 8687) to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

AMENDMENT NO. 433

The PRESIDENT pro tempore. The pending question is on the amendment of the Senator from Alaska (Mr. GRAVEL). There is a time limitation of 2 hours on the amendment.

Without objection, the text of the pending amendment will be printed in the RECORD.

The amendment (No. 433) is as follows:

TITLE VI—CESSATION OF BOMBING IN INDOCHINA

SEC. 601. (a) No funds authorized or appropriated under this or any other law may be expended after the date of enactment of this Act to bomb, rocket, napalm, or otherwise attack by air, any target whatsoever within the Kingdom of Cambodia, the Kingdom of Thailand, the Democratic Republic of Vietnam, and the Kingdom of Laos.

(b) No funds authorized or appropriated under this or any other law may be expended after the date of enactment of this Act to bomb, rocket, napalm, or otherwise attack by air, any target whatsoever within the Republic of Vietnam unless the President determines any such air operation to be necessary to provide for the safety of United States Armed Forces during their withdrawal from Indochina.

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

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

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

Who yields time?

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

The PRESIDENT pro tempore. The Senator from Alaska.

Mr. GRAVEL. Mr. President, while we deliberate today in this Chamber American planes will ease into the sky over Southeast Asia. They will drop tons of explosives, guided to the flesh of human beings by the most elaborate and impersonal technology.

Hovering over Laotian rice fields, the A–119 Stinger gunship can put a piece of shrapnel into every square foot of an area the size of a football field.

On the ground are 3 million Laotians, the heaviest bombed people in the history of warfare. They will huddle in their caves and field trenches, and some will die. Many will not see the sun for months, fear keeping them in their covered bunkers during daylight hours.

In the name of America the planes come.

Over the past 10 years 700,000 Laotians have been made refugees, tens of thousands have been killed or wounded, and hundreds of thousands forced to live much of the time in caves and trenches.

The bombing raids also come in the name of the U.S. Senate, until we legislate otherwise.

The war is not winding down for the peoples of Indochina. Since the much heralded bombing halt over North Vietnam, the planes have not come home. They have simply shifted their targets into Laos and Cambodia.

The bombing has continued at 100 tons an hour, 2,400 tons a day. The rate of civilian casualties and refugee generation, indicative of the overall level of violence, has if anything increased during the last 2 years.

Recent hearings before the Senate Subcommittee on Refugees reveal that since the invasion of Cambodia nearly one quarter of that country's population—1,500,000 people—have become refugees. In the last few months in South Vietnam more refugees have been created than at any time since the 1968 Tet offensive.

The bombing of North Vietnam has been resumed. As recently as September 21 an armada of 250 U.S. planes attacked targets in the North, and this raid was followed on successive days by two more so-called protective reaction strikes. At present the bombing of North Vietnam has reached an average rate of once every 4 days, and according to North Vietnamese reports 106 villages in addition to missile sites have been struck. The Meatgrinder in Vietnam, which has taken 325,000 civilian lives and wounded more than a million since 1965, is still whirling. As the South Vietnamese Minister of Information commented in 1968, South Vietnam has been devastated by an alien air force that seems at war with the very land of Vietnam.

The amendment I offer is quite straightforward. Let us stop the bombing, not just partially over North Vietnam but in all Indochina—except for those strikes inside South Vietnam demonstrably related to the security of our withdrawing troops. Is it really the desire of the Senate to continue to send out those planes?

An Orwellian transformation is taking place in our military policy in Indochina. Due to public pressure American boys are slowly coming home, but they are leaving an automated war behind. There is every danger, as Noam Chomsky has warned, that we intend to turn the land of Vietnam into an automated murder machine. Computer technology and a small number of troops manning aircraft and artillery are creating a U.S. destructive presence that may literally hover over Southeast Asia for years to come. In the midst of this the public is confused, pacified by the diminishing troop levels, yet vaguely troubled by continuing reports of devastation.

Eluding recognition, hidden in the techno-euphemisms of military speech, is the reality of our policy. "Selective ordnance"—a rather dull and technical sounding term until one realizes it masks the use of napalm against human beings. "Harassment and interdiction"—a rather light-hearted term until one understands that it represents the random hurling of destruction into jungle areas.

These antiseptic words obfuscate horror-filled realities, and thereby circumvent public judgment. "Surgical air strike"—one pictures a diseased cancer benevolently removed from the countryside. But the cancer is the peasantry. In World War II the cancer was the Jews, and the operation was the "final solution." In the name of America, how many executions are taking place from the air in Indochina?

It is the enormity of our mistake that clouds it. If we were wrong, how wrong we were. Nothing will bring back those who have died, or the lost arms and legs, eyes and ears. But let us commit ourselves at least to stop the bombing of those who remain.

How the people of this country, a good people, industrious people and generous people, could have come to visit such destruction on another nation is difficult to comprehend. Orwell in his masterpiece "1984" depicts such carnage as the result of technology gone mad, removed from common experience, giving reality to surrealistic nightmares. We may have intervened in Indochina for commendable reasons—even that is questionable—but at some time the machine got out of control and we could not turn it off.

Picture the battlefield in Laos. Light spotter planes at 2,000 feet; A–1E, A–26 and T–28 prop bombers, AC–47 and AC–130 gunships, flare ships and rescue helicopters at 5,000 feet, F–4, F–105 and B–57 jet fighters and jet reconnaissance aircraft at 10,000 feet; KG–135 supertankers at 20,000 feet; C–130's filled with electronic gear designed to coordinate the bombing at 25,000 feet; B–52 bombers at 30,000 feet; C–130's of Hillsboro control overseeing the entire operation at 35,000 feet and SR–71 reconnaissance aircraft at 70,000 feet.

And on the ground is the Laotian peasantry. Listen to their reactions and thoughts as recorded in refugee interviews.

The planes came like birds and the bombs fell like rain.

Another—

There wasn't any night when we thought we'd live until morning . . . never a morning we thought we'd survive until night.

And another—

I just stayed in my cave. I didn't see the sunlight for two years. What did I think about? Oh, I used to repeat, please don't let the planes come, please don't let the planes come, please . . .

And another—

Before the village was beautiful and filled with happiness and there was a large field of fruit trees. But when I left my village all I saw were the holes of the bombs and the burning houses and the people who had died so pitifully.

And another—

Our lives became like one of the animals who search to escape the butcher.

And this continues every hour—200,000 pounds of bombs, every 9 days the equivalent of one Hiroshima. From 1965 to 1969, 70 tons of bombs for every square mile of North and South Vietnam were dropped, 500 pounds for every man, woman and child. In just the first 5 months of 1971 there were 780 million pounds of bombs dropped over Southeast Asia.

PART II

The airwar is not even militarily effective. Secretary of Defense McNamara revealed in 1968 that it could at best reduce the flow of supplies along the Ho Chi Minh trail by only 10 percent to 15 percent. At a cost of over $100,000 per truck destroyed. Former Under Secretary of Defense Townsend Hoopes has pointed out that in the history of bombing campaigns, only when the sources of production are attacked can the logistical flow of supplies be effectively impaired. In this case that would involve strikes against China and the Soviet Union. A study of the hamlet evaluation reports reveals that the number of villages under government control in South Vietnam varied independently of the level of the air campaign over the North.

On the ground the bombing raises enemy morale and alienates civilians. Pathet Lao defectors indicate that before the heavy bombing in Laos they managed only a 30-percent rate of voluntarism among their forces. However, after the massive attacks of late 1968 the figure jumped to almost 100 percent. "Better to die fighting than in a trench" was the feeling of one Pathet Lao recruit.

As I have indicated, the air war is not isolated in any one country in Indochina. The Vietnam war has indeed become the Indochina war. But information concerning the extent of U.S. bombing in Laos has been limited and concealed by the executive branch, so I would like to discuss in more detail the situation in those skies.

Since 1964 the United States has been engaged in an aerial campaign over Laos. The bombing was seriously escalated in late 1968 and early 1969 when restrictions against civilian targeting were significantly relaxed. The air war has involved in Laos alone an estimated cost of $5 to $7 billion, innumerable Laotian casualties, and over 400 pilots either dead, missing in action, or captured.

Even traces of these facts were officially kept from the public until March 1970. The same pattern of duplicity and deception which the Pentagon papers have shown to characterize our entry into Vietnam has been repeated in Laos.

Currently a strict grayout is imposed on U.S. operations there, with little information besides official reports available to the press. Reporters are not permitted to accompany attack and spotter planes on their missions as they are in Vietnam. Most pilots are apparently under instructions not to talk with newsmen. The air attaché in Vientienne is similarly inaccessible. Recent requests by Congressman McCLOSKEY for photographs of previously existing Lao villages to confirm their continued well-being have gone unmet by the Pentagon. Military officials have failed as well to provide Congressman McCLOSKEY with a listing of all bombed civilian targets in Laos.

But there are some unofficial sources of information. These nearly unanimously tell one story—that of massive bombardment of civilians under Pathet Lao control. Congressmen McCLOSKEY and WALDIE found, in a U.S. information survey initially concealed from them by the Embassy, that 75 percent of the 190 respondents from 96 villages had had their homes bombed. In addition 97 percent had seen a bombing attack and 61 percent had seen a person killed. Congressmen McCLOSKEY and WALDIE also conducted their own interviews, and all 16 refugees queried, from seven different villages, testified to the aerial destruction of every single dwelling in their hamlets.

A report by U.N. expert Georges Chapelier in December 1970 stated that in the Plaine des Jarres—

By 1969 the intensity of the bombings was such that no organized life was possible in the villages. . . . Jet planes came daily and destroyed all stationary structures. Nothing was left standing. The villagers lived in trenches and holes or in caves. They only farmed at night. All of the interlocutors without exception had their villages completely destroyed. In the last phase, bombings were aimed at the systematic destruction of the materials bases of the civilian society.

At one time there were more than 50,000 people living in the Plaine des Jarres. There is virtually no life there now.

One village chief indicated that in 21 hamlets not one home was left standing. In his own village, 45 percent of the 2,600 inhabitants never left their trenches.

A sample of 25 villages from the Plaine des Jarres revealed casualty rates of 5 to 10 percent from the bombing. It is estimated that 50 civilians are killed for every Pathet-Lao casualty.

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

Mr. GRAVEL. I yield myself 3 additional minutes.

In 1968, Jacques Decornoy, the Southeast Asian desk editor for Le Monde, traveled through Pathet Lao controlled areas. According to his interviews, 65 villages in the Sam Neua district alone had been destroyed by U.S. air power. Traveling through the devastated areas, he depicts it as "a world without noise for the surrounding villages have disappeared. The inhabitants themselves living in the mountains."

Such testimony is, of course, contrary to our Government's official position that "never before has such care been taken to spare civilians in bombing raids."

The picture burnt into one's imagination is that of hundreds of thousands of Laotians desperately huddling in caves and trenches as U.S. planes roar overhead. Again, it is the enormity of the suffering endured by these poor people which blinds us to our own policy. I will rerun the picture, because we must break through the psychic numbness we have developed.

There are hundreds of thousands of poor peasants, noncombatants, living underground in fear of U.S. air power in Asia. There are entire areas of former civilization reduced to near caveman standards by the most advanced Nation in the history of the earth. For what? No matter for what; it is indefensible.

At Nuremberg, Teleford Taylor, chief U.S. prosecutor, argued that where the military profits of any policy are dwarfed by the civilian casualties, such a policy is indefensible. The massive air war by the United States against the peoples of Indochina is indefensible. Every B–52 raid, every A–119 K stinger drop, is criminal.

The situation in Laos is not appreciably different from what is currently occurring in Cambodia. As the Senate Subcommittee on Refugees noted, the same pattern of destruction is being repeated relentlessly throughout Indochina. It is up to Congress to terminate it. The President has made it clear that he intends to continue the bombing, stating in February this year, "I will not place any limitations on the use of air power."

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

Mr. GRAVEL. I yield myself 2 additional minutes.

Secretary of Defense Laird has indicated that we intend to maintain a naval and air presence in Southeast Asia indefinitely after the last ground troops are withdrawn. The Pentagon, which seems to have statistics available for all categories and contingencies, lacks even an estimate of the likely civilian casualties this presence will cause. Such considerations do not seem to have a high priority in current American decisionmaking. The

so-called gook rule which haunted the Calley trial has far more profound implications for the air war.

On the afternoon that the U.S. helicopters and attack planes accompanied the South Vietnamese into Laos, the President issued a statement on our environmental crisis. Within it, he quoted from T. S. Eliot's "Murder in the Cathedral":

Clean the air, clean the sky, wash the wind . . .

It would have been revealing for the President to have quoted further:

The land is foul, the water is foul, our beasts and ourselves are defiled with blood. A rain of blood has blinded my eyes . . . Can I look again at the day and its common things and see them all smeared with blood, through a curtain of falling blood? We did not wish anything to happen.

Let us stop the bombing, withdraw our troops and begin to "take stone from stone and wash them."

Mr. President, I yield the floor.

The PRESIDENT pro tempore. Who yields time?

Mr. STENNIS. Mr. President, what is the pending order of business before the Senate?

The PRESIDENT pro tempore. The amendment of the Senator from Alaska (Mr. GRAVEL).

Mr. STENNIS. Mr. President, how much time do I have in opposition to the amendment?

The PRESIDENT pro tempore. Fifty-seven minutes.

Mr. STENNIS. I yield myself 10 minutes.

Mr. President, I have read with the utmost interest and concern the amendment offered by the Senator from Alaska. I admire his fine interest in the subject and his compassion. It is consistent with his desire to end this war. However, I think that the immediate realities of the situation would compel Senators, however much they might be in sympathy with these objectives, to reject the amendment.

An analysis of this amendment shows that the military aid we supply to the small nations mentioned in the amendment would be cut off. We could not supply them with money or military aid if any of it was going to be used in this bombing. In other words, Cambodia would be affected to some degree in using our military aid in doing some bombing. They would be cut off from doing any bombing in defense of their own country, so far as our military aid was concerned.

The same is true with respect to Laos. We are giving them military aid, and have been, and they, too, have some capacity in the air. So under this amendment, that would be precluded.

The amendment reads:

SEC. 601. (a) No funds authorized or appropriated under this or any other law may be expended after the date of enactment of this Act to bomb, rocket, napalm, or otherwise attack by air, any target whatsoever within the Kingdom of Cambodia, the Kingdom of Thailand, the Democratic Republic of Vietnam, and the Kingdom of Laos.

So, whether intended or not, it gets right into the heart of their military programs which, under the conditions, need to be augmented and thus relieve us.

Another point is that the very atmosphere of this amendment runs contrary to what we did here yesterday.

We had a very good debate of 5 hours and most of that time was used discussing aid to Laos, the activities there, the bombing of the Ho Chi Minh Trail, and bombing in North Vietnam. After the debate, all that money provided for the purpose of the bombing was excluded from the operation of the amendment. The original form of the amendment excluded bombing of the Ho Chi Minh Trail, but the last version adopted expressly excluded from its limitations the bombing in North Vietnam. We do not like to have to do those things but the situation over there demands it or they will march right on through Laos and absorb those people there.

By the way, in debate yesterday, I meant to point out that the Kingdom of Laos is over 1,000 miles from its northern to its southern borders. That is just about the distance from Chicago to New Orleans—1,000 miles long. The population of Laos is only 2.8 million. Yet they have all that borderline, all that terrain, all that area to be protected. Of course, they cannot protect themselves.

But anyway, back to the subject here, we had this whole matter of the bombing generally by our own forces under review yesterday, and then military aid to the Laotian Government, and all of that was approved by an overwhelming vote here yesterday afternoon, the full budget amount requested for all those activities and our military aid in that whole nation of Laos, and also no limit of any kind to be put upon the amount that could be spent of our money on bombing the Ho Chi Minh Trail, and also in northern Laos.

So I think, Mr. President, that that is the deciding factor, that if we come along now and put on this limitation through this amendment, it would be totally inconsistent with what we did yesterday. We would have two programs going, one for bombing and one for not bombing. We will be cutting off the one here that is entirely in control of these people that live in these countries and one that they are carrying out with their manpower. In other words, we would be cutting off those who are doing something for themselves and putting the burden, so far as the bombing is concerned on the shoulders of our own pilots. I do not believe the Senate wants to do that.

Let me conclude my remarks by saying that I note here the Senator's amendment was prepared prior to September 23, 1971, and it was introduced on that day. Not knowing when it would come up, or when the other amendments would come up, the Senator did not have the picture before him that we are faced with today. So, very respectfully, I urge the Senate not to adopt on 2 successive days two contradictory programs and expect the conferees to be able to bring back both of those from the conference.

Mr. GRAVEL. Mr. President, I yield myself such time as I may need. I do not believe we will use all the time.

I should like to ask a simple, fundamental question: Why do we have to bomb at all?

Mr. STENNIS. It is part of the war, Senator. It was brought out in debate yesterday that most of the fighting in northern Laos is what we call bombing. A great deal of it in northern Laos is air cover for the men fighting on the ground. It is really not bombing in the ordinary sense.

Mr. GRAVEL. Let me say that my amendment would permit that.

Mr. STENNIS. It is strafing. Some is bombing. It is mixed in together. The bombing of the Ho Chi Minh Trail—it is obvious what that is for. Then we have the soldiers trying to hold that trail within its limits. North Vietnam wants another trail further to the west, one they can travel on better; so that they are trying to push us back toward the borders of Thailand. Thus, we have to go in there with our bombs, not only to destroy the trail but also to protect our fighting men there.

Mr. GRAVEL. If I could clarify my amendment, it is made abundantly clear that if it is to protect the fighting men, we would permit the bombing. I make that exclusion. But I do not understand it, in the face of statements by General Shoup, Mr. McNamara, and the intelligence accounts reported in the Pentagon papers, that the bombing is totally ineffective militarily and has no effect at all. If we are really trying to get out of this war, as the President tells us and the Senator from Mississippi indicates to this body, why do we have to bomb a thousand miles away from where our troops are? I just do not understand that. I do not understand why we want to bomb over there if we are really getting out.

Mr. STENNIS. The best answer, I think, is that this is part of the war, even though it is in the process of being wound down. If we withdraw the bombing from all of this area now—we have mentioned the Ho Chi Minh Trail—and just say that we are not going to bomb, but will stop it by law, then North Vietnam—with all our men still there in South Vietnam—would be able to make our cause much worse. It could be devastating, if we are going to say that we are going to withdraw our punches now, and say "Now you can hit us but we are not going to hit back any more in this way." I think that would be partial surrender. I want us to get out of there the best way we can, but we have to protect our rear while we are leaving.

Mr. GRAVEL. If I could restate it again. I have a provision in my amendment to protect our rear as we leave and to protect our troops. That is the qualification—the only exception in that amendment. But the only message I can get from the Senator from Mississippi is simply that because the President of the United States has a policy to bomb, we must go ahead and bomb, we in the Senate must have no independent judgment or no independent morality. I say this in the form of a question to the Senator from Mississippi. I liken this situation to that which existed in Nazi Germany where they had the chancellor who came into power through the election process, as our President did, but the chancellor went on to commit the most heinous crimes in history, including the "final

solution." I see no difference in the type of bombing we have going on today. That this Senate could stand here and call for the water to wash our hands, means in this very instance that we are party to the killing of human beings. I just cannot buy that argument, because if we have a criminal who is President of the United States, we should at least have the moral quality to recognize it, point to it, and ask for its correction.

Perhaps the Senator from Mississippi could give me some other technical reason why we are doing this. However, I cannot see it at this point in time. The Senator has no argument for the bombing other than that they want to bomb. That is not moral when human life is at stake.

Mr. STENNIS. Mr. President, we start with the fact that we are at war and have been at war there for years. We are now in the process of withdrawing as rapidly as we can within reason and commonsense.

I am assuming that will continue. It has been successful so far. There are many problems that go with it. That is obvious. Right on top of that policy, if this amendment is agreed to, we would be saying in the hard, cold letter of the law that no funds authorized or appropriated under this or any other law may be expended after the date of enactment of this act to bomb, rocket, napalm, or otherwise attack by air, any target whatsoever within the Republic of Vietnam unless the President determines any such air operation to be necessary to provide for the safety of U.S. Armed Forces during their withdrawal from Indochina.

That would be an abandonment of our policy of trying to hold down the transportation of supplies over the Ho Chi Minh Trail. It would be an abandonment of all of these policies that go to protect our forces.

With all due deference to the Senator, I think it would be contradictory. If we are going to do this, I would then say that we should throw in the towel and get out before nightfall if possible.

Mr. GRAVEL. Mr. President, we are not supposed to have any troops in Cambodia. We are not supposed to have any troops in Laos. We are not supposed to have any troops in North Vietnam. The only place we are supposed to have troops is in South Vietnam. And that is the place where I make the provision that if the President thinks it is necessary he can bomb.

Would the Senator tell me why we are bombing these poor people in Laos and Cambodia off the face of the earth? What reason do we have for doing it?

Mr. STENNIS. Mr. President, I was alluding in my remarks to South Vietnam, of course. I have already pointed out the reasons that it is done in these other areas. It is because of supplies. I think that perhaps they have an occasional raid in North Vietnam. As long as we are over there, already engaged in battle, it is pretty obvious that it is likely to happen. We have told them all the time that we were not promising not to bomb under any circumstances. There was a question about the understanding of our right of surveillance, and so forth, going back to 1966.

It is correct, I think, that there were those conditions. There was an understanding that we would have the right of surveillance.

I would not want the Chief Executive to say that as long as we are engaged over there we will never bomb North Vietnam under any circumstances. Certainly we ought not to tie his hand.

Mr. GRAVEL. Mr. President, I hope that the Senator from Mississippi does not mean to leave the impression that we are only bombing there slightly.

Mr. STENNIS. The Senator means North Vietnam?

Mr. GRAVEL. Yes. I think the record shows that every 4 days we have been striking North Vietnam. And the record shows that under this administration we have doubled the amount of bombing in the little country of Laos. As we are withdrawing troops, we are turning up the rheostat of this immoral bombing.

Mr. STENNIS. Mr. President, I do not apologize for any new raids. There are facts that they are based upon. However, if the Senator will get the North Vietnamese troops out of there and no longer let them be a menace to our boys and our departure, if he can get them out of there in some way, I would be willing to join him in his amendment.

However, they are there, and they are going to stay there. I do not remember whether it is classified as to how many are there. Two divisions are there as a minimum. That much is not classified.

Mr. GRAVEL. Does the Senator mean two American divisions?

Mr. STENNIS. No. I mean two North Vietnamese divisions. What are we going to do, just pat them on the heads and say it is all right? We have to do something to keep them on the defensive as much as we can. We are paying the bill to keep them on the defensive, to keep them tied up. And they are keeping our allies tied up. That is why we have to have the potential there that I have been referring to.

Mr. GRAVEL. Mr. President, perhaps if the Senator from Mississippi will not join me on the basis of moral commitment, he might join me on the basis of logic and intelligent action. We have been bombing in Laos for 7 years. The greater part of Laos is now controlled by the Pathet Lao. The more we bomb them, the less successful we are. Perhaps we should change our tactics. Perhaps if we change our tactics, we might be more successful.

Mr. STENNIS. Mr. President, the Senator is proposing that we get out and stop all activity there. I think they would double their forces there within a few weeks if we just stated, "We will leave you alone."

That is the situation. If we stop fighting them, they will be heading for Thailand and all of that area within 15 minutes after the Senator's amendment becomes law.

Mr. GRAVEL. Mr. President, I think the Senator from Mississippi is in disagreement with the CIA findings in 1964. Under President Johnson the CIA studied the domino theory and came forward with the statement that they doubted that the remainder of Southeast Asia would go Communist.

The Senator now has changed that theory and says that we have to bomb them. With that kind of logic, why do we not bomb Chile? Why do we not bomb Cuba?

Mr. STENNIS. Mr. President, the Senator does not put me in a position of believing in the domino theory. I have not only not believed in it, but I have also said that I would not subscribe to it. If that theory were correct, we would all be lost and not know it.

I think our situation over there now is that with all of these North Vietnamese troops in there, if we withdraw the only effective way of opposing them, they would double up their forces and they would get all of the key areas of Laos. They are already there. They already have part of it. Part of Laos is already in their hands.

We would not have to have any domino theory for them to get the rest of Laos. I think it is rather obvious that the pattern is to get Thailand, too.

That is just the situation that exists. I am not saying that we should augment the forces there and protect Thailand and every other country. I understand the Senator's amendment here increases in a lot of ways the things that our boys would have to do if we were to stop all the bombing.

Mr. GRAVEL. Mr. President, I would like to find out what the increase would be. The only task that I know that our boys have is to wind down and get out. Under the present administration, it has taken 3 years so far. Perhaps the Senator from Mississippi could elaborate on what increased tasks the American boys would have if we were to stop the bombing of Laos and Cambodia. I do not see where there would be an increase in the tasks.

I would like to also put forth a question, and the logic is very simple. My friend, the Senator from Mississippi, says that troops are stationed in Laos. Our studies indicate that for every military casualty we get, we cause 50 civilian casualties. If we pursue the same logic which was followed at the Nuremberg trial by our chief prosecutor, any act that has extreme civilian consequences, regardless of the amount of military benefit, is reprehensible. This is something that we fly directly in the face of.

I would like to address another point to the Senator from Mississippi, and that is, very simply, that any analysis of the bombing, the effectiveness of the bombing, is tied to the destruction of the productive capacity of a country to wage war; otherwise, bombing as we are prosecuting it in Southeast Asia is a policy to annihilate the entire population. It could be done in this way with a hydrogen bomb. The President may yet advocate that. But if we want to go to the source of the productive capacity, the fighting strength these people have with guns and arms, we would have to bomb China and the Soviet Union because that is where their supplies come from. Why waste all the money there, at a cost of $33 billion thus far, when we are doing something very ineffective militarily?

I pose that as a question to my colleague.

Mr. STENNIS. That is a question of

judgment. Let us make clear we are not dealing with nuclear weapons. We are dealing with conventional weapons.

Mr. GRAVEL. What is the difference in these millions of tons of bombs and using a few hydrogen bombs?

Mr. STENNIS. I think the Senator has a military question there. We are in this war, and we are trying to get out. If we withdraw our weapons they can continue with their actions unless we are going to have an abject surrender and desert these people over there that we have been helping. With great deference to the Senator, that is the best answer I can give.

Would the Senator yield to me for a minute?

Mr. GRAVEL. I yield.

Mr. STENNIS. I am compelled to leave the Chamber briefly. I ask unanimous consent that when the Senator concludes I may yield to the Senator from Illinois, or yield to him now, who will speak in opposition to the amendment.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, I have listened with great interest to the debate this morning. I intend to vote against the amendment of my distinguished colleague from Alaska. I would not presume to be a military expert in this war. I did serve as a gunnery officer in the Naval Air Corps in World War II. I have been in Vietnam several times and in Vientiane.

I have accepted highly classified briefings on this war, and none of those briefings has convinced me at all that we should ever have gone into this war in the first place. I think it is a tragic mistake that we did so. But we are there and this is what this administration faced. They could not reverse the decision which involved over a half million of our men being there when the President took office.

The President is Commander in Chief of our Army, Navy, and Air Force. He announced his avowed policy to remove our forces, and he is staying exactly on schedule. Every single commitment the President made to withdraw our forces he has kept or exceeded. It is my sincere hope and my prayer that when the President announces late in October or November the next schedule of withdrawal, we can step up the rate considerably. But as long as we have American forces in Vietnam, and we have over 200,000 men there, I would not want to tie the hands of the Commander in Chief and I would not want to tie the hands of the man who has the avowed policy of taking our men out of Vietnam at the soonest possible time consistent with their safety.

I feel that the bombing provides an element of safety to those men and continues to insure the highest rate of withdrawal. Without it I do not see how we could stem the flow of forces coming in from the North, and I do not see how we could stem the flow of their supplies. I do not see how we could keep the initiative and not relinquish the initiative to them.

Therefore, despite the fact that I dislike this war as intensely as any Member of the Senate and have consistently opposed any escalation of the war, and have supported every possible deescalation, I back and support the President's overall program of getting out. I commend him for what he has done. I am not going to tie his hands in any way and take away any support he can provide for the safety of those forces as they withdraw because I want to give him the possibility of withdrawing at a faster rate than we are.

For those reasons I intend to vote against the amendment of my colleague from Alaska.

I yield the floor.

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

The PRESIDING OFFICER (Mr. ALLEN). The Senator has 26 minutes remaining.

Mr. GRAVEL. Mr. President, I yield myself as much time as I may require.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. GRAVEL. Mr. President, I can only disagree with the Senator. First, I do not think the President is doing the best he can. Second, I think our presence there continues to be immoral. If it takes 3 years or 4 years to wind down this war I just cannot buy it. I cannot abdicate my responsibility as a human being and wash my hands of it like Pilate, and say the President is leading us and I have to agree with him. I do not agree with him.

Since the President took office and initiated his plan of winding down the war we have suffered one-third of our casualties. So I cannot quite buy that theory that we are doing the best possible.

I do not see how stopping the bombing will increase the flow of troops. In fact, the truth, as evidenced by the Pentagon papers and independent studies, shows that the more bombing of the people, the more increase there is in troops that they send down to fight us. Why would it not be more intelligent for them to volunteer in Laos to fight Americans rather than to stay where they are, to be bombed. If we want to stop the flow of troops, the best way would be to stop the bombing. They do not want to get their heads shot off.

Why should they get pressed into service if they could live in safety in Laos and Vietnam? So the theory that this will decrease the flow of troops is bankrupt, it always has been bankrupt, and always will be bankrupt, as was proven in the Battle of Britain. The more the people are bombed, the more they are forced to fight. This is a wrong course of action, but we should realize also when we do it that we condemn millions of people, millions of innocent peasants, who offer no threat to us, either as a nation because of their large numbers, or as a fighting force.

The tools of war do not come from Laos, Cambodia, North Vietnam; they come from China and the Soviet Union. So if we really wanted to follow an intelligent approach to fighting this war, we should at least save the money and attack the source. But that is not the case. This is an intricately woven situation in which we find ourselves. First, we find umbrage for our immorality in the intricacies of the situation.

I say immorality, because there is not a person on this floor who can give me proof, who can give me an argument, why we should bomb these people. If it is to protect our troops, this amendment provides the ability to protect our troops. The President can bomb if our troops are immediately involved in Southeast Asia. Since we have no American troops in Cambodia and Laos, obviously there are no American troops to protect. But if we are involved in the task of loading our troops on planes and ships to get them out, obviously we do not have to bomb these other places.

Obviously we do not have to go for 3 or 4 years bombing these other places. But that is not what is going on in Vietnam today. Eventually, the American people will appreciate what is going on. We take some troops out so we can minimize the casualties of American boys and so we can escalate the amount of casualties of Asians. That is what has happened in the bombing of Laos in the last 2 years by the 100-percent increase in bombing activity.

I cannot find any reason, any rationale, why anybody in this body would abdicate his moral responsibility to somebody else when it comes to life, and that is what we are talking about in Southeast Asia and Indochina today. The military experts, the Secretary of Defense, the chief of the Marine Corps, psychological studies of the people who have been bombed, prove, by all possible indications, that bombing is ineffective as a military tool, totally ineffective as a military tool, and that it really does nothing but annihilate the broad civilian population. That this would be the case, and that in the face of this logic we would put aside this proof and put aside this logical argumentation and say, "Well, the Chief Executive of this country feels that he needs the bombing and that this is a good policy, and he stated publicly that, regardless of what the troop levels are going to be, he has the right to bomb," is difficult to understand, and yet we go along with that.

It is interesting that on inquiry by the Senator from Missouri (Mr. SYMINGTON) and his subcommittee, we have an American Ambassador, Mr. Sullivan, who, when asked under what circumstances the United States could bomb these countries, answered that it was under the President's authority to make foreign policy. What an interesting reflection upon a democracy—a democracy in which the President or the Chief Executive, on a whim, can order the killing of thousands and thousands of people. And the Congress can condone it by saying, "He is the Chief Executive, and this is a part of his way to conduct that foreign policy."

What a total cop-out. What a total moral cop-out on the part of this body and on the part of the Congress to sit back and find umbrage under the simple fact that he can do it. In ordering the bombing we rub salve over our minds and say, "Well, he says he needs it for military reasons." But, of course, we have proof readily available to us that it has no military purpose. We go along simply

because he says he needs it. We just go along on that basis.

I do not understand what insanity besets this body if we can do that so readily, because this body is made up of good people, kind people, generous people, great Americans; but, by some quirk of fate, because of some psychological aberration, we sit here party to a bombing process that is annihilating thousands and thousands upon thousands, even millions of Asians far away from our shores. I do not understand this. I think we can only leave it to the study of sociologists in future decades to elicit what happened to our moral sensibilities, what happened to our humaneness, what happened to our ability to even see and discern right from wrong—something that apparently this body is unable to do.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. STENNIS. Mr. President, I yield 10 minutes to the Senator from South Carolina.

Mr. THURMOND. Mr. President, the pending amendment, No. 433, offered by the distinguished Senator from Alaska (Mr. GRAVEL), would deny funding under the pending bill or any other law to conduct aerial warfare in Cambodia, Laos, Thailand, North or South Vietnam, except in South Vietnam to insure the safe withdrawal of American troops.

This amendment, if passed, would seriously damage U.S. efforts to impede communism in Indochina until our allies there are able to handle the job alone.

At present, military forces of North Vietnam have invaded and are trying to overthrow the governments of South Vietnam, Laos, and Cambodia. Local forces in each of those countries are trying to defeat the North Vietnamese.

U.S. air operations are essential in Laos if the flow of Communist soldiers down the Ho Chi Minh Trail is to be held in check. U.S. air operations are essential in Cambodia if the Cambodians are to be given sufficient time to build up military forces to repel the North Vietnamese invaders. U.S. air operations are essential along the borders of North Vietnam if intelligence indicates military moves are developing which would endanger the safe withdrawal of U.S. troops.

Mr. President, besides these obvious military reasons for defeating this amendment, there is the constitutional question. Does the Congress have the right to tie the hands of the Commander in Chief so that one arm of our military forces, the ground element, is denied the aid of another arm, the air element? I think not.

This amendment should be soundly defeated, so that the coordinated use of our forces may be applied in a zone where American soldiers are still deployed.

The Senate should also consider that with the present U.S. withdrawal of U.S. forces nearly two-thirds complete the advantage in Indochina is shifting toward the aggressor.

As this Nation continues to bring U.S. troops down to minimum levels in 1972, the dangers to our remaining forces increase. Even with a planned timetable of withdrawal, the President is assuming greater risks each day. He, therefore, needs the maximum flexibility in transferring the entire combat responsibility to our allies in Indochina.

Mr. President, this amendment could insure the eventual victory of North Vietnam over South Vietnam, Cambodia, and Laos. I urge every Senator to weigh carefully the effects of the amendment. In my judgment, it is one of the most dangerous amendments yet offered in the Senate concerning the war in Indochina.

As we step out of the war in Indochina, we must not turn our backs on our own men or the soldiers of our allies. I urge the Senate to reject this amendment.

There is no question but that the Defense Department strongly opposes this amendment. I ask unanimous consent that the DOD position on the Gravel amendment be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. THURMOND. Mr. President, I just want to say in closing that I cannot understand why anyone, any Member of this body, would offer this type of amendment. If we have any confidence at all in President Nixon, if we have confidence in his sincerity, his patriotism, and his judgment, which is based on the advice of military experts; if we have confidence in Mr. Laird and the Secretaries of the services; why would anyone offer this type of amendment to say "You cannot bomb," if President Nixon, Mr. Laird, and the Chiefs of Staff of the armed services say "we need to bomb at this time and at this place to save American lives?"

To me, the amendment is ridiculous. I hope the Senate will kill it promptly.

EXHIBIT I

(Adding Section 601 to HR 8687, an Act to authorize appropriations during FY 72 for procurement, etc., for the Armed Forces.)

EFFECT OF THE AMENDMENT

The proposed amendment would deny funding "under this or any other law" to conduct aerial warfare in Cambodia, Laos, Thailand, the Democratic People's Republic of Vietnam, or the Republic of Vietnam except that such warfare may continue in RVN if the President determines it necessary to safe withdrawal of U.S. troops from Indochina.

DOD POSITION

DOD strongly opposes the amendment, the objective of which is to legislate the end of U.S. participation in the resistance of North Vietnamese aggression in Indochina by the elimination of crucial air support for U.S. and friendly forces there.

U.S. support for the legitimate government of Laos, Cambodia and the Republic of Vietnam has been expressed in part by the provision of operational military support in order to counter the aggression from North Vietnam. The direct military support has been accompanied by public pronouncements of our objective of frustrating the takeover of its neighbors by North Vietnam. Precipitate termination of our air efforts would raise doubts about our adherence not only to this objective but to others which might test our determination, even touching our more formal commitments as well.

An action by the Senate such as this would impact severely on the governments concerned. While the Government of Thailand would not be endangered, nor for that matter are we bombing there, it would be compelled to consider a new and less friendly diplomatic alignment. The will of the Royal Lao Government to defend itself, already undermined by years of strife against the more numerous and well-equipped North Vietnamese invaders, would be gravely affected. Cambodia's brave and determined resistance to this same North Vietnamese invader would be less effective with the weakened and uncertain U.S. support implied in this amendment. Finally in South Vietnam, where the President has long since made clear the *"essential* U.S. objective in South Vietnamese people to determine their own political future without outside interference," the ability to achieve our objective would be damaged. The objective has been incorporated in various policy statements directed toward achieving a peaceful solution in Vietnam and Indochina, a peace in which the peoples of the region can devote themselves to development of their own societies. While the proposed amendment does not attack this objective, rather simply imposing obstacles to its achievement, one result of the amendment would surely be to weaken Vietnamese determination.

We must consider then the outcome, surely adverse, for our Southeast Asian friends and allies. Our long sought objective of restoring the arrangements envisioned in the 1962 Geneva Agreements for Laos would not be attainable if we were abruptly to cease aerial warfare. North Vietnam would have a greatly reduced incentive to settle along these lines and the Royal Lao Government would be without leverage. The meager Lao forces cannot alone defend against the North Vietnamese invasion, and must depend on the U.S. for the direct effects of the assistance and the diplomatic advantage as well.

The proscription against US bombing support for the Cambodians exposes the developing Cambodian Army to a risk of major losses by opposing superior forces without adequate supporting weapons. The Cambodians have no heavy bombing capability of their own—only 16 T-28 aircraft used for close air support, and a limited number of artillery pieces. Our military support is essential to the GKR's resistance of the North Vietnamese and the preservation of their neutrality. In Vietnam it is the Defense view that Vietnamization is progressing satisfactorily. It should be noted that the RVNAF has made great strides in assuming increasing responsibility for conducting combat operations even while the US has deployed approximately one-third million (332,800) military personnel. As the RVNAF steadily achieve a greater capability and self-reliance, it is considered extremely disadvantageous to submit the Administration's Vietnamization programs to an arbitrary curtailment of air support. In the wider context, disengagement of US forces together with the winding down of war-related violence in South Vietnam is being steadily achieved. The furtherance of these objectives is dependent on a rational policy which places US national interests involving realistic solutions ahead of chimerical panaceas. Vietnamization is a rational policy leading to the successful achievement of essential US objectives.

The overwhelming proportion of US bombing and certainly all directed against the

Ho Chi Minh Trail, is not susceptible to quantifiable subdivision between that which is necessary to the safety of US troops (withdrawing or not) and that which might serve some other immediate purpose. The enemy supplies and men moving southward on the Ho Chi Minh Trail are all threats to the safety of US troops in South Vietnam. Hence, it is unreasonable to authorize bombing for the protection of US forces in South Vietnam but not elsewhere.

US air operations in Cambodia are intended primarily to interdict the flow of supplies to be used against US and allied troops in South Vietnam. These operations are strongly encouraged by the Cambodian government which receives a secondary benefit from the air strikes. Since the closure of Sihanoukville, the North Vietnamese have been forced to rely on the supply routes in Northeastern Cambodia to support their aggression in southern South Vietnam and Cambodia. While these routes are not directly threatened by allied ground forces, they are open to air attacks which significantly impede the flow of munitions and weapons. If this proposed amendment were to become law, the South Vietnamese and our withdrawing forces would again be affectively faced with a large communist sanctuary in Cambodia.

The proposed amendment would intrude into matters properly within the constitutional authority of the President, as Commander-in-Chief, to direct US military operations in Southeast Asia. Certainly the coordinated use of our forces is a well established principle of the Commander-in-Chief powers. The proposal to proscribe one arm of the military from functioning, leaving the others to operate as cripples, is a direct attack on the President's authority.

This proposed legislation would severely limit our ability to implement effectively the Nixon Doctrine that calls for sufficient flexibility to meet changes in the local military situation with an adequate response. As he indicated about Indochina in his 25 February 1971 foreign policy report: "A negotiated settlement for all Indochina remains our highest priority. But if the other sides leaves us no choice, we will follow the alternative route to peace—phasing out our involvement while giving the region's friendly countries the time and means to defend themselves."

The PRESIDING OFFICER. Who yields time?

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

Mr. THURMOND. I am pleased to yield.

Mr. GRAVEL. May I ask the Senator where the President gets the authority to bomb, as Chief Executive, if he chooses to bomb?

Mr. THURMOND. I cannot hear the distinguished Senator.

Mr. GRAVEL. Where does the President of the United States get the power to go bomb? We had no troops in Laos, and all of a sudden he decided to go bomb. Where does the President of the United States get that kind of power?

Mr. THURMOND. The Communists were in Laos, in Cambodia, and in Thailand. They carried the war to these countries. As has been stated, this is not a war just confined to South Vietnam and North Vietnam.

The Communists took this war to Vietnam. The Communists took this war to Laos. The Communists have been penetrating Thailand. Therefore, when they see fit to carry this war to other countries, we have to go where the fighting is, in order to protect our own men and to protect our national interest.

Mr. GRAVEL. By that logic, would it not be logical that we at least bomb the areas where the factories are that produce the guns that are used to kill American boys? Should we not do that?

Mr. THURMOND. Mr. President, it is my judgment that this war could have been brought to an end long, long ago. I think we should have bombed the factories in North Vietnam that are producing arms to kill American men. I think we should have closed the sanctuaries long, long ago. I think we should have closed the ports long, long ago. I think we should have closed the Ho Chi Minh Trail long, long ago.

I will say now that I have not approved the manner in which this war has been fought. I have not approved of fighting with one hand tied behind our backs. I have been one who takes the position that America should not go into a war until we have to; but once America gets into a war, we should have the backing of every patriotic American. Furthermore, we should use our full force—Army, Navy, Air Force; all the power we have—to win the war quickly, to crush the enemy, and bring the American boys home.

I realize that this has not been done. I realize that is the reason why many young people have become disheartened about this war and have turned their backs, so to speak, on this war. I think the way this war has been fought has been a great mistake. But Mr. Nixon inherited this war. When did the war start? It started back under President Kennedy. It was carried on under President Johnson, who at one time had between 500,000 and 600,000 fighting men over there.

President Nixon has been trying to bring the war to a close. I am not trying to defend him. I would condemn him just as much as anyone else if I felt it were justified, because our country must come first, regardless of party and partisan reasons. It is my firm belief that this war should have been ended years and years ago, and we would not have lost all these lives over there. We have lost more than 45,000 men in ground fighting. We have lost approximately 1,400 in the Navy. We have lost approximately 1,000 in the Air Force. If this war had been fought the way we fought World War II, there is no question in my mind that most of these lives could have been saved.

I repeat: we should not go into a war until we go into it to win and to put into it the power we have, and we have not done that in Vietnam. Mr. Nixon is trying to wind it down. He is winding it down. He has brought more than 300,000 fighting men home, and he is bringing them home on schedule.

But why would the Senator from Alaska handicap him, if the President feels the need and Mr. Laird feels the need and the Chiefs of Staff of the Army, Navy, Air Force, and Marine Corps feel the need to bomb in a certain place to save American lives? Why would the Senator want a law passed by Congress saying that he cannot do it? He is the commander in chief, and he must be given the flexibility.

In the first place, I do not think you have the constitutional authority to do it. Second, if you did have the constitutional authority, I do not think you ought to handicap the President, the Commander in Chief, and handicap the military men in taking the steps necessary to protect our men as we are withdrawing from South Vietnam.

Mr. GRAVEL. I should like to pursue the logic of the Senator with respect to the constitutional power and authority to bomb. I could buy that logic, that we have to protect our boys and therefore we have to bomb. The Senator went on to say that we should just as well bomb the factories. The arms for the Pathet Lao and for the North Vietnamese do not come from Cambodia or Laos or, for that matter, from North Vietnam. They come from the Soviet Union and China.

The PRESIDING OFFICER. The time of the Senator from South Carolina has expired.

Mr. STENNIS. I yield 2 additional minutes to the Senator.

Mr. GRAVEL. So if the President has the power to go into a neutral country such as Laos and bomb in the interest of saving the lives of our boys, why can he not bomb the Soviet Union because they are manufacturing the guns that are killing our boys? Why can he not do that, or should he do it?

Mr. THURMOND. That is an entirely different question. The Senator from Alaska knows that is an entirely different matter. Here is a war in Indochina. It is not just confined to Vietnam. The Communists themselves have gone into Cambodia and Laos with this war. We did not do it. They did it. They had sanctuaries there, and they would fight and run back and hide behind the sanctuaries. They had guerrilla troops.

If the governments of those countries are going to permit the Communists to corral their forces there and allow them to attack our forces in South Vietnam, then we have the right to protect our troops and to take such steps as necessary. If the government of Laos and the government of Cambodia had the power to protect themselves against the Communist troops coming in, they probably would have done that. But they evidently did not do it. If they did it, they would open themselves to the responsibility of allowing this fighting to go on there. The Communist troops in those countries, who are stationed there and are fighting our men and doing all they can to kill our soldiers, have no right to protection and no right to claim they are in a neutral country. They went there as trespassers. They went there, I am sure, against the will of those countries. If they had the permission of the countries, that makes it even worse.

With respect to bombing the factories, there are gun factories and war plants in North Vietnam, and they should have been bombed. I agree with the Senator on that, if he favors that position. They should have been bombed long ago. The concrete plants and the powerplants should have been bombed continuously. The gun plants should have been bombed continuously. Every warmaking industry in North Vietnam should have been destroyed.

I was in World War II, and I saw

Aachen destroyed 85 percent. Dresden, Germany, was destroyed 98 percent with air power. The German people were warned ahead of time and innocent citizens left these cities prior to the saturation bombing. I know what air power can do. We could have laid North Vietnam bare, if necessary. Instead of that, we have been fighting with one hand behind our back while American soldiers are being killed. 45,000 ground troops have been killed.

Mr. GRAVEL. We have dropped more bombs in Indochina than we dropped in the Second World War. The Senator is right—in destroying Aachen, they destroyed the factories that made the guns. If we want to destroy the factories, we have to go to the Soviet Union and China. That is where they are being made.

Mr. THURMOND. We could have stopped those guns from coming in by bombing the ports or by placing an embargo there, or we could have stopped those guns by controlling the importation from the Soviet Union. We did not have to go to the Soviet Union.

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

Mr. THURMOND. Furthermore, many of the bombs dropped in Vietnam were dropped in forests and on other insignificant targets.

The PRESIDING OFFICER The time of the Senator has expired.

GRAVEL AMENDMENT

Mr. JAVITS. Mr. President, I wish to state my position on the amendment proposed by the Senator from Alaska (Mr. GRAVEL). I have decided to vote against the amendment, because, on balance, I think it would be a mistake to single out this one aspect of U.S. military activity in Indochina. For some years now I have been working as hard as I can to bring an end to all U.S. combat involvement in Indochina. So far, those of us of this persuasion have not been able to make our view prevail in law, or in the councils of the executive branch. Until we can succeed in stopping this whole war—this tragic, misconceived, wasting war which is eating at the vitals of our Nation—I cannot in good conscience tell the President and our military commanders that one particular aspect of the war is what is bothering us and must cease first. I think this bombing program probably falls in the category of the kind of military decision which the Commander in Chief and his professional commanders have a claim to deciding from their own perspective. It is their responsibility to make the tactical and strategic decision about the actual fighting of the war. It is the Congress' duty and prerogative to make the broader, overriding policy decision of whether or not to authorize war.

For this reason, Mr. President, I want to make it clear that my decision to vote against the Gravel amendment in no way lessens my deep, anguished concern over the continuing ravage being rained on civilians throughout Indochina through the massive U.S. bombing program. I want this war to end right now. I want the bombing to end with it because the toll of human suffering, which is an inevitable byproduct of any bombing program of this scale, is very great indeed.

Moreover, I want to make it very clear that my vote against the Gravel amendment should in no way be interpreted to mean that I will support a continuation of a U.S. bombing program once U.S. ground forces have been withdrawn, as I hope they will be entirely out by mid-1972. I will not support a continuing role for the U.S. Air Force in support of President Thieu's forces after U.S. ground forces have left. There have been suggestions that just such a situation is being contemplated; that the U.S. should continue to help the ARVN fight the war through continued use of U.S. air power for several more years. I am against this and believe that the Senate will be against it.

Mr. STENNIS. Is the Senator from Alaska ready to yield back the remainder of his time?

Mr. GRAVEL. I should like to make a closing statement.

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

The PRESIDING OFFICER. Seventeen minutes.

Mr. GRAVEL. Mr. President, we are prepared to vote on this issue. I do not think the issue will prevail. I think that is a shame on the Senate; not something of which I am proud. It is a matter of great frustration.

The Senator from South Carolina made the point that we have to have confidence in the President. I have no confidence in the President of the United States on this issue. I think what is being done here is immoral to a magnitude not yet approached in the history of man. It will go down in history as an act comparable to the "final solution" in Germany. I think this is something that we will hang our heads in shame about for a long time.

I could understand the false patriotism associated with ground troops, or patriotism associated with the immediacy of our boys' lives. But when we talk about a war, a surgical kind of war at a distance, where we can hold ourselves not responsible for the annihilation and eradication of human beings and the destruction of great countries, then I think we have fallen to a low ebb.

I have no confidence in the President because he comes forward with the fallacious and weak argument that they need it militarily, when any literate person who reads the facts in the Pentagon papers, the facts in the studies, knows that there is no logical, intelligent base for military action of this sort. It has no military benefit. So, if it has no military benefit, one should at least have the brains not to do it—at least save the money.

The cost of destroying a truck on the Ho Chi Minh Trail is $100,000. That is the cost of destroying a single vehicle that probably, in reality, cost only $3,000. I submit that is a "great" situation to be in, to let the enemy produce a truck which costs $3,000 and then we place a burden on our gross national product to the tune of $100,000 matched against it.

Any fool can see that over a period of time we would lose that war.

We talk about bombing being needed to crush the enemy. How ridiculous. Interviews, not by myself, but interviews by the military on the scene, demonstrate that prior to the bombing of Laos, voluntarism there was 30 percent, but after the bombing, voluntarism was 100 percent. Obviously, any fool can realize that if he is going to get killed sitting at home, or is going to get killed fighting the enemy, he might as well fight the enemy.

Why sit there and let yourself get shot. So, of course they all volunteer. That is something which has been conclusively proved in the Pentagon Papers; that is, the more we escalate the bombing, the more we develop the resolve of these people to fight on against us. That is not something psychologically unusual. It was made abundantly clear to us in the Second World War when the British, at the time of the Battle of Britain were being annihilated by the Nazis. Did the British capitulate? Of course not. The bombing of England brought the British people to their finest hour. It is doing the same thing to the people in Indochina today, and history will record this as their finest hour. It will also record this as our bleakest hour.

Then we find ourselves in Nuremberg where we pontificated and said that civilian destruction with very little military value was immoral and wrong and should be condemned.

But that is exactly what we are doing today in Laos. The words of Telford Taylor, the American chief prosecutor in Nuremberg, are long ago and far away. It is not convenient morally to apply the same standard we did to Herman Goering, Albert Speer, and Rudolf Hess. That was the standard for them, but we have a different standard for ourselves.

That, I submit, is human—part of human nature.

How interesting, how ridiculous, how stupid to think that the $162 million asked for in this budget to be appropriated to bomb Laos is greater than the gross national product of the country of Laos.

That tells the story about the size of this Nation of ours, the power of this Nation with respect to a small nation, that we can, out of hand, without even thinking about it, appropriate enough money for bombs greater than the total productive capacity of all the human beings in Laos.

Now, Mr. President, let me address myself to one area in which many Members in this Chamber take shelter: Supporting the President because it is patriotic and we have to do it to end the war, because the war is being wound down.

He is not doing that one bit. What he is doing is changing the character of the war. What he is doing is changing it from a ground war, where we are involved with our bloody hands, and taking it and making it an air war where we do not see the blood, where we can pontificate about our ideology. Of course, it does not strike anyone as intelligent or proper—what is the difference in fighting communism in Southeast Asia or fighting it in Moscow or fighting it in Chile or in Cuba? We are caught in our our dichotomous idiocy. Containing communism today is bankrupt. We have no choice but to coexist. To think that intelligent people really believe that we are winding down this war when, since the administration has taken office, it has

sustained one-third of all the casualties in this war—one-third.

That is winding down the war?

I can only think of the statement made—and I salute my colleague from Vermont for underscoring the crassness of it—that if the President does end the war he has still promised to pull the rug out from under the doves after July 1, because that will be a political ploy associated with his reelection.

How terrible to make a statement—if Members want to defend this person making the statement, they can—but how terrible it must be to realize the full import of a statement that says, in April 1971, "I will pull the rug out, some time in 1972, from under the doves."

What happens is that, in the meantime, we are maiming and crippling so many human beings, until it is convenient or advantageous to pull out that rug.

To my mind, that is the greatest immorality that can be perpetrated. I think we would have greater honesty and greater justice if, as the Senator from South Carolina alluded, we took an H-bomb—one could not do it because we have already dropped more bombs on Southeast Asia than three, four, or five H-bombs—but if we took an H-bomb and laid Indochina waste completely, then we are sure that we would win, sure that we would be giving those people freedom and democracy although there would not be anyone there to enjoy it. That is, of course, exactly what we are doing now.

The reason why we cannot use H-bombs to annihilate these people is that it would be morally incomprehensible to us. It would find no moral approbation anywhere in the world. In fact, it would place upon us a blot of unbelievable proportions.

So what do we do? We do not use H-bombs, because that would be doing it too quickly, too efficiently, and too intelligently. So over a period of time we drop conventional bombs—bombs of a sort that when we realize the quantity of them, we can appreciate it.

During the Second World War we dropped over 2 million tons of bombs. During the Korean war, 600,000 tons. We have already amply surpassed that in Indochina. We have amply surpassed our bombing record of World War II and the Korean war.

Upon this little country we have dropped several equivalent hydrogen bombs in terms of destructive energy. Yet no one stands up and rails about it. Why? Because the bombing of Laos was concealed from the American people; 350,000 sorties were concealed from the American people and basically from Congress until March of 1970. In the past 12 years we have doubled our efforts at bombing Laos.

People have the gall to stand on the floor and say that we are winding down the war. The only reason we do not use our intelligence to do this efficiently is because we cannot find the moral approbation. I submit that moral approbation is not there either when we do it on a piecemeal, surgical basis. That moral approbation will not be there, 5, 10, 50 or 1,000 years from now, because this part of American history will stand out as our darkest hour.

Mr. President, I yield the floor and yield back the remainder of my time.

Mr. STENNIS. Mr. President, I yield back the remainder of my time.

Mr. President, have the yeas and nays been ordered?

Mr. GRAVEL. Mr. President, I request the yeas and nays.

The PRESIDING OFFICER (Mr. HUGHES). Is there a sufficient second? There is not a sufficient second.

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

The PRESIDING OFFICER. All time has been yielded back. 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. Without objection, it is so ordered.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays are ordered.

The question is on agreeing to the amendment (No. 433) of the Senator from Alaska. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New Mexico (Mr. MONTOYA), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey (Mr. WILLIAMS) and the Senator from South Dakota (Mr. MCGOVERN) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Delaware (Mr. BOGGS), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. FANNIN), and the Senator from Texas (Mr. TOWER) are necessarily absent.

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

The Senator from Maryland (Mr. BEALL) and the Senator from Arizona (Mr. GOLDWATER) are detained on official business.

If present and voting, the Senator from Maryland (Mr. BEALL), the Senator from Delaware (Mr. BOGGS), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. FANNIN), and the Senator from Texas (Mr. TOWER) would each vote "nay."

The result was announced—yeas 19, nays 64, as follows:

[No. 250 Leg.]

YEAS—19

Bayh	Hatfield	Moss
Brooke	Hughes	Nelson
Cranston	Inouye	Pell
Eagleton	Kennedy	Proxmire
Fulbright	Mansfield	Schweiker
Gravel	Mathias	
Hartke	Metcalf	

NAYS—64

Aiken	Ervin	Percy
Allen	Fong	Randolph
Allott	Gambrell	Ribicoff
Anderson	Griffin	Roth
Baker	Gurney	Saxbe
Bennett	Hansen	Scott
Bentsen	Hart	Smith
Bible	Hruska	Sparkman
Brock	Humphrey	Spong
Buckley	Jackson	Stafford
Burdick	Javits	Stennis
Byrd, W. Va.	Jordan, N.C.	Stevens
Case	Jordan, Idaho	Stevenson
Chiles	Magnuson	Symington
Church	McClellan	Taft
Cook	McGee	Talmadge
Cooper	Miller	Thurmond
Cotton	Mondale	Tunney
Dole	Muskie	Weicker
Dominick	Packwood	Young
Eastland	Pastore	
Ellender	Pearson	

NOT VOTING—17

Beall	Fannin	McIntyre
Bellmon	Goldwater	Montoya
Boggs	Harris	Mundt
Byrd, Va.	Hollings	Tower
Cannon	Long	Williams
Curtis	McGovern	

So Mr. GRAVEL's amendment (No. 433) was rejected.

Mr. STENNIS. Mr. President, I move to reconsider the vote whereby the amendment was not agreed to.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REFERRAL OF A BILL TO COMMITTEE ON THE JUDICIARY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that a bill introduced today by the Senator from West Virginia (Mr. RANDOLPH) permitting commercial banks to underwrite water and sewer revenue bonds be referred to the Committee on the Judiciary. I think I have cleared this matter all around, and I make that request.

The PRESIDING OFFICER (Mr. HUGHES). Is there objection? The Chair hears none, and it is so ordered.

MILITARY PROCUREMENT AUTHORIZATIONS, 1972

The Senate continued with the consideration of the bill (H.R. 8687) to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

The PRESIDING OFFICER. According to the previous order, the Senate will now proceed to consider amendments Nos. 447, 448, and 449 by the Senator from New York (Mr. BUCKLEY).

What is the pleasure of the Senator from New York?

Mr. BUCKLEY. Mr. President, I yield to the Senator from Montana.

AMENDMENT NO. 447

The PRESIDING OFFICER. The clerk will read the amendment.

Mr. STENNIS. Mr. President, may we

have quiet? Will the Chair ask the Senate to suspend until there is quiet? This is a rather involved matter and the membership should at least hear what is said.

The PRESIDING OFFICER. The Chair will ask Senators to maintain order so the Senator from New York can be heard. If Senators will do so, it will be appreciated by the Chair.

The Senator from New York.

Mr. BUCKLEY. Mr. President, may the clerk read the amendment?

The PRESIDING OFFICER. The amendment will be read.

The legislative clerk read the amendment, as follows:

On page 9, line 11, strike out "$2,910,744,000" and insert in lieu thereof "$2,915,744,000, of which amount not less than $5,000,000 shall be available only for conducting preliminary studies on a long-range advanced Minuteman missile program for the complete modernization of the Minuteman missile force".

Mr. BUCKLEY. Mr. President, before speaking directly to amendment No. 447——

The PRESIDING OFFICER. Who yields time?

Mr. BUCKLEY. I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from New York.

Mr. BUCKLEY. Mr. President, before speaking to the specifics of amendment No. 447, I would like to point out that I am really proposing three amendments to the defense procurement authorization bill, each of which is a complementary part of a package of research and development authorizations which are designed to significantly broaden our strategic options at a minimum of cost, in a minimum period of time, and with certainty as to positive results.

Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BUCKLEY. I recognize that the Armed Services Committee has made a thorough review of all military needs presented to it during the earlier part of the year, and that its recommendations represent the sober judgment of the distinguished members of the committee as to our minimum defense requirements. I, therefore, do not offer my amendments lightly. I feel, however, that the programs of research and development they provide have had to be moved to the front burner because of recent developments.

The first of these developments has to do with the dramatic expansion in the numbers and lifting capacities of the Soviet Union's intercontinental ballistic missiles, the full implications of which we are only now beginning to fully understand. When taken together with the equally dramatic expansion of the Soviet's nuclear submarine forces and their missile-launching capacities, it has become clear that she has not only succeeded in establishing strategic parity with the United States, but that in another short while she will have achieved the ability—according to the editors of the most recent edition of "Jane's Fighting Ships" and other authorities—to destroy virtually all of our land-based strategic weapons in a preemptive first strike and still have sufficient weapons remaining to hold our civilian population hostage to her demands.

The second development to which I refer is the seemingly authoritataive report that the strategic arms limitation talks now in progress will seek to limit the quantity, but not the quality, of our land-based nuclear missiles. This means that the Soviet Union's present superiority in numbers and lifting capacity of this category of missiles will be perpetuated, as will be the numerical superiority of her antiballistic defenses. Thus if we are to assure ourselves of what the Senate Armed Services Committee report describes as the necessity to "plan for more defense than that which is barely enough," we must initiate without delay certain research and development projects, the cost and timing of which are easily ascertainable; projects which will assure us of the ability to make those qualitative improvements in existing weapons systems which will to a significant degree offset the Soviet Union's quantitative advantage.

Each of the amendments which I am introducing is designed to accomplish three things:

First. To expand the capability of existing systems through improvements which are now known to be achievable through existing technology;

Second. To select those improvements which can be developed at relatively little cost;

Third. To time the development of these improvements so as to coincide with existing timetables of weapon deployment; and,

Fourth. To improve the guidance systems of our principal strategic missiles, the Minuteman III and Poseidon, to the point that in an emergency the President of the United States will have the option of utilizing them to destroy the enemy's strategic forces as an alternative to unleashing a nuclear holocaust aimed against the enemy's civilian population.

This latter objective would meet the urgent need which President Nixon expressed when in his state of the world message earlier this year, he asked rhetorically, "Should the President have as his only option in a nuclear war attacking an opponent's cities?"

AMENDMENT NO. 447

MINUTEMAN MISSILE MODIFICATION RESEARCH AND DEVELOPMENT PROGRAM

Mr. President, the first of the amendments to the defense procurement authorization bill which I am calling up today is amendment No. 447. Its effect is to add $5 million to the $2,910,744,000 now provided for in the committee bill for the modernization of our Minuteman missile force. This is a very small addition to the total being authorized, but it would buy us an enormously valuable option, and give us that option at a time when it can be utilized. Quite simply, if the research and development to be financed by the $5 million in question is initiated during the current fiscal year of 1972, we will in fiscal year 1974 be in a position to expand the projected deliverability of Minuteman warheads from 2,100 to 3,000 without any increase in the number of missiles deployed.

This would be accomplished by utilizing the $5 million in a research and development program designed to modify the Minuteman III to increase its range sufficiently to allow all of our presently sited Minuteman I's and II's to be replaced by a new family of missiles, the Minuteman III, having a sufficient range to reach potential targets anywhere in the Soviet Union.

At the present time, our Minuteman force is composed of 500 Minuteman I's and 500 Minuteman II's—both types having only single warheads. Since June of 1970 we have been replacing the older Minuteman I missiles with the more modern Minuteman III multiple-warhead missile. By the time the current modernization program is completed, the force will consist of 550 Minuteman III's, each having the capacity to launch three warheads, and 450 Minuteman II's, each with a single warhead. The aggregate number will remain unchanged at 1,000—the same number deployed in 1966—but the warhead capacity of this force will have been increased from 1,000 to 2,100.

If amendment No. 447 is adopted, we will have the option to replace the remaining 450 Minuteman II's, which are located in the central United States farthest away from potential targets, with modified Minuteman III's having the additional range required to reach any Soviet target. By initiating the required R. & D. program now, we will have developed the technology for deploying an additional 450 Minuteman III's in fiscal 1974, by the time the deployment of the first 550 Minuteman III's has been completed. Under these circumstances, the United States will have the option of proceeding with the modernization of the remaining Minuteman force at minimum cost, because the production line will still be working. If we fail to initiate this R. & D. program in fiscal 1972, the technology will not be ready when the first 550 Minuteman III's deployment is completed; and if we should then decide to proceed with the modernization of the balance, not only will we suffer a substantial delay in being able to do so, but the overall costs will be immeasurably increased because the production line would have to be started up all over again.

Mr. President, I submit that this amendment represents a prudent manner in which to proceed. No one, least of all I, wishes to spend more on national defense than is absolutely necessary. But I believe that the expenditure in question is the very least which is required if we are to provide, under today's rapidly developing circumstances, what the Senate Armed Services Committee report has correctly described as the need for "more defense than that which is barely enough." Too many experts in national security matters have expressed their grave concern over the adequacy of our defense posture and the research and development base which supports it, in light of the startling advances which have been made by the Soviet Union.

These concerns have a solid basis in fact. Since 1966, the Soviet Union has in-

creased its ICBM force from less than 300 missiles to over 1,600 today. Moreover, because Soviet ICBM's are much larger than their U.S. counterparts in terms of payload capacity, their potential striking power is significantly greater than our own. If the Soviet Union were to employ the warhead technology which we now have on a production-line basis, she could launch eight times the number of separately targetable warheads as the United States.

It is important, then, that the United States take those minimal and prudent steps which we are required to insure that her existing forces are as effective as they can reasonably be made; and such steps can be taken without in any way jeopardizing the ongoing strategic arms limitation talks. It should be kept in mind that after these talks were instituted, the Soviet Union continued the vigorous buildup of her strategic forces. Specifically, since the talks began, she has increased the number of her SS–9 ICBM's by over 200, and has increased her SS–11's by 400. If we are to maintain a semblance of "balance" we must improve the quality of our strategic weapons as a substitute for increasing their quantity.

An effort to increase the quality rather than the quantity of strategic nuclear force is entirely in keeping with the spirit of the current arms control negotiations, however defined; and such an effort may become critical to our security even if the present buildup of Soviet strategic weapons is leveled off because of the built-in advantage which the Soviet already possess in the field of payload capacity.

Therefore, it is my view that it is elementary prudence for the Senate to authorize the expenditure of $5 million in fiscal year 1972 in order to initiate an R. & D. program which would provide the United States with the ability to increase the effective payload capacity of its Minuteman forces by over 42 percent.

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

Mr. BUCKLEY. I yield to the Senator from Colorado.

Mr. DOMINICK. I just want to congratulate the Senator for bringing up this package. It is refreshing, in my mind, to have someone stand on the floor of the Senate and point out not that we need cuts but that we need more to defend this country. It has been a long time since I have heard that on the floor of the Senate. All I can say is that it pinpoints, without any doubt, the very crucial statements which were made in the Blue Ribbon Defense panel report on our situation vis-a-vis the Soviet Union.

So I would sincerely hope that we could consider these things rather carefully. I do not think that $5 million is going to mean night and day in any of these things, but it is a start, it would seem to me.

I should like to ask the Senator this question: Has he been able to find out whether any R&D has been proposed in this particular field on prior occasions by the Defense Department or otherwise?

Mr. BUCKLEY. I thank the Senator for his remarks.

Yes. My understanding is that such proposals have been made.

Mr. DOMINICK. I thank the Senator. Once again, I want to tell him how refreshing I think this is. It may bring home to our colleagues and to the people as a whole the need for doing something very effective in this field.

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

Mr. BUCKLEY. I yield.

Mr. HANSEN. Mr. President, I should like to join the distinguished Senator from Colorado in complimenting the distinguished junior Senator from New York for the very persuasive statement he has just made.

It seems to me to make good sense to improve the quality rather than the quantity of our defense weapons, and that is precisely the point to which the Senator's amendment addresses itself, as I understand it.

I come from that part of the country where a number of these Minuteman missiles are installed. I am not unaware of the fact that it was the preponderance of power on our side which gave the ultimatum of the late President Kennedy validity. His statement was accepted by the Russians, and they did withdraw their missiles from Cuba, because at that time they were well aware that we had the punch to follow up with appropriate steps in order to make certain that they were removed from there.

The United States is playing a very important role as keeper of the peace. These defensive weapons are not offensive in nature. They are intended to protect this country. I think it is a step in the right direction.

We are all aware of the concern—among our other concerns—about our balance-of-payments position. A number of resolutions have been presented on this floor to restrict and to cut back the U.S. military expenditures in foreign countries. Again, I find the amendment by the distinguished Senator from New York to be fully in conformity with that idea. As we build and perfect through research the ability to defend ourselves, we lessen the need for expansion or for maintenance of the present defensive budget we have around the world now. The money that is spent in improving these missiles at home will not add to the outflow of capital and currency from this country to other countries, but it will be spent at home for improvements that will make even more valid our defense posture. This amendment, of course, does not buy any missile improvement program. It is directed exclusively and modestly to research leading to knowledge whereby we could make such improvements.

I think the Senator has spoken most persuasively in saying that this will in no way constitute any threat to the SALT talks. As a matter of fact, it seems to me that it cannot help but give added incentive to the Soviets in coming to terms with America in trying to limit this strategic arms race we are now in.

I am completely convinced that the Senator from New York has offered a very wise amendment. I hope it will be accepted by the managers of the bill because it seems to me to be fully in conformity with the overall objectives of that distinguished committee.

Mrs. SMITH. Mr. President, will the Senator yield?

Mr. BUCKLEY. I yield to the distinguished Senator from Maine.

Mrs. SMITH. Mr. President, I should like to join the able Senator from Colorado and the able Senator from Wyoming in commending the distinguished Senator from New York for his approach. I expect to support his amendment for this $5 million.

It is most refreshing to hear someone on the floor say something good about our national security and the needs.

Mr. BUCKLEY. I thank the Senator from Maine.

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

Mr. BUCKLEY. I yield.

Mr. STENNIS. Mr. President, I join the Senator from Maine in her complimentary remarks about the Senator's attitude and his willingness to stand up and be counted and to say a word in this field. I am very regretful, however, that I cannot agree with the Senator's amendment—I think it is a highly important matter—for the following reason.

The PRESIDING OFFICER. Is the Senator speaking on his own time?

Mr. STENNIS. Yes. I yield myself 5 minutes.

The PRESIDING OFFICER. Has the Senator from New York yielded the floor?

Mr. BUCKLEY. I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi has the floor.

Mr. STENNIS. I will ask the Senator from New York to remain, so that we can have a colloquy on this matter.

I yield myself 10 minutes, Mr. President.

The Department of Defense testified that this money was intended to provide a further shelter program, research in connection with the shelter program. We checked the evidence on that here this morning. The military have never testified that it would be used to extend the range.

In view of that situation, the Senator from New York has a proposal here that is entirely different from what was submitted to our committee. The chairman of that subcommittee, the Senator from New Hampshire (Mr. McINTYRE), could not be here this morning. It is an entirely different proposition. Somewhere, some error has been made.

If I correctly understand the Department of Defense, their purpose now, their interpretation of this amendment, is that it will be further researched in connection with the shelter program and not for the purpose of extending the range.

Just a word about extending the range. I respectfully submit to the Senator from New York that his amendment, with his interpretation on it, is a direct contradiction or a frontal assault on the President's position with respect to the SALT talks—hold everything as is, do not back up, do not go forward. It is directed, according to what the Senator from New York says, toward extending the range of Minuteman III, which is a further affirmative step in one of the major items that the SALT talks is struggling with,

the idea of reducing first defensive weapons and then reducing offensive weapons.

I think a mistake has been made somewhere about what this money is to be used for. If it is for what the Senator has already said in his memorandum—and I have it before me—when he says—

> The remaining 450 Minuteman II missiles must be replaced with a Minuteman III ICBM modified to give it a longer range so that it can be placed in the former Minuteman II bases and still be capable of hitting targets in the Soviet Union.

I would be compelled totally to oppose the amendment on the ground of the SALT talks. So far as research goes in this field, we have not butchered any program. On page 65 of the report, Research and Development—Procurement, Senators will see there, the third item, on the third line, $270.5 million in Senate recommendations for force modernization; so that there is a great abundance of money here, I say to the Senator from Wyoming (Mr. HANSEN), for all kinds of force modernization. But this is a projected matter over into this extra range that is, as I understand it, condemned by the SALT talks position now, especially in view of the fact the DOD in testimony said it was intended to provide research on the shelter program and never testified that it would be used as presented here today.

If the Senator from New York has something from the Department of Defense on that, we would be glad to hear it. He may have it, but we certainly do not. They want the money back, of course. They always are ready to have the money, but we are talking now about purposes.

Mr. BUCKLEY. Mr. President, I should like to suggest several points in answer to some of the questions which my distinguished colleague has brought up, and that is that whatever the existing programs that has been approved by this committee is called—shelter or whatever—it does have the effect of dramatically increasing the offensive capability of our Minuteman forces. Specifically, the modernization of 550 of the Minuteman I's presently located close enough to the Soviet Union so that the Minuteman III can reach targets in the Soviet Union will have the effect of more than doubling the overall ability of the Minuteman system to lob warheads at Soviet targets. It seems to me that merely to carry this program of modernization one small logical step further, at a cost of .18 percent which is presently earmarked for this modernization program, could not be considered as a new threat against the Soviet Union, and could not be considered as something that would jeopardize the SALT talks.

So what we are talking about is not procurement of the modernized missiles but merely the development of technology for a year and a half and, hence, would give this Government the option to continue the job of modernization and adding still 900 more warheads to those we could use against Soviet targets. I submit, therefore, that what the amendment is trying to propose here in no sense whatever goes contrary to the President's policy, or to the SALT talks, or both, even assuming that the Soviet Union is in any position to be concerned about such an increase in our forces and given the fact that since the Soviet discussions in early 1968, she has more than doubled her own strategic capability.

Mr. STENNIS. I said in debate earlier that the foremost thing in my mind is the missile program for our security and that that is the last one that I am going to go to reducing. I want it up front in every particular. We have argued about these matters here on the floor. So that, if I thought this was in any way essential, or was in any way detrimental to that system, why I would be on the other side. But the plain fact is that we have never had presented to the committee the question the Senator presents here. They just did not testify along that line. They did not say they would use the money for those purposes. We took the money out.

On page 107 there is $7 million worth needed there to use on the advance missile option program. The Senator referred to only $5 million for another purpose and giving the reasons here. The money is mixed to that extent. But as to the purpose the Senator is standing on, it is not in here. We took it out for the reason that they questioned the feasibility of the cost effectiveness of developing and mobilizing an ICBM as it was contemplated under the program. That is the reason for presenting the $7 million which is an old question to the distinguished Senator from Maine (Mrs. SMITH) which she will remember. So we are just talking about two totally different things. This is an original proposition that the Senator is presenting. I come back again that it is totally condemned, for the time being, by our position with reference to the SALT talks.

Let us wait and see.

The Senator from Texas spoke here the other day on a different phase. He changed his position on the ABM. The Senate went along with him by a large margin where it had been slim before.

That is about all I can say to the Senate. The Senator from New York has a different program on what the DOD testified about.

Mr. President, I now yield 2 minutes to the distinguished Senator from Iowa.

The PRESIDING OFFICER (Mr. BENTSEN). The Senator from Iowa is recognized for 2 minutes.

Mr. HUGHES. Mr. President, I thank the distinguished chairman of the Armed Services Committee for yielding me this time.

I speak in opposition to this particular amendment, and the whole series he has, because it places an entirely new factor into the debate from what we have been considering.

I have the greatest respect for those people who have risen in support of the Senator from New York, and also for the Senator from New York himself. But I was the main sponsor of the amendment totally to abandon the ABM missile system. The main debate against that particular amendment was the fact that we needed that system as a chip on the table at the SALT talks. So that I do not want to upset the balance. As a matter of fact, this series of amendments would throw an entirely new factor into the balance not only of those talks but also of our whole posture.

It indicates to me that the United States, if we adopt these amendments, will go for a first strike posture and would, in fact, be telegraphing, in my opinion, to those opposed to us in this nuclear arms race, the fact that the United States is implementing a basic decision to start down the road to a first strike capability.

For this reason I feel that the amendments in toto lead us in that direction and that it should be the position of the committee and the members of the committe and, I hope the Senate, that the amendments should be rejected at this particular time.

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

Mr. STENNIS. Mr. President, I yield the Senator from Iowa an additional 2 minutes.

The PRESIDING OFFICER. The Senator from Iowa is recognized for an additional 2 minutes.

Mr. HUGHES. Mr. President, I thank the Senator. I think, as the distinguished chairman of the committee has said, that the comittee, at least to my knowledge, or as reported to me by members of my staff that had the obligation for me of observing the entire information and input into the hearings, did not consider the matter of the extended range capability. It is a matter that should be considered by the committee and should be considered, I believe, in a totally separate set of hearings. As I indicated here throughout the entire debate—and I think this is a critical part of the debate—although it is a small amount of money when measured against the total amount contained in the bill, it is a telegraphing factor that signals what we would do in the future.

I think the amendment should be rejected by the Senate.

Mr. President, I thank the Senator for yielding.

Mr. BUCKLEY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from New York has 10 minutes remaining. The Senator from Mississippi has 16 minutes remaining.

Mr. BUCKLEY. Mr. President, I yield 5 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 5 minutes.

Mr. BROCK. Mr. President, I am delighted to see the Senator from Iowa support the Senator from Mississippi. I think that perhaps might portend well for the future of the bill.

I would like to question the logic of the argument of the Senator from Iowa when he talks about upsetting balances and achieving first strike capability. I do not think that holds water in any sense of the word.

The program to modernize our entire Minuteman III is a proposal to modernize only 550. If we are going to modernize 550, then how could it possibly be said that will affect the strategic balance and upset the balance and create a first strike capability? It does not hold water.

I cannot imagine that the spending of

a very limited amount of money—$5 million—in R. & D. will so jeopardize the complex of the Soviet Union that they would walk out of the SALT Talks. As a matter of fact, it seems to me that we are always on the defensive in this sort of thing. I think it is pretty obvious that since the initiation of the SALT Talks, the Soviet Union has continued to build a first strike capability. We have done nothing at all in this area.

I would like to ask the Senator from New York if it is in fact true that according to his understanding, the $5 million does not commit us to any hardware but simply enhances our options some 2 years or 2½ years hence.

Mr. BUCKLEY. The Senator is correct. I assure the Senator that all this does is to give us the ability at a future date at a time when we could utilize the ongoing machinery creating the present Minuteman III technology to a new improved version which will give us the added capacity. It does not commit us in any way to a system of first strike capability.

Mr. BROCK. Mr. President, I thank the Senator from New York. I appreciate the clarity with which he has presented the matter.

There is one additional thought that I would like to express. From my own personal point of view, I do not think there is any Member of the Senate for whom I have greater respect than I do for the Senator from Mississippi. The Senator from Mississippi has demonstrated throughout this year more ability to stand on his feet and provide the Senate with sound thought and opinions and information. He has worked harder than any other single individual Senator that I know of this year.

I respect him for his knowledge in this area and in the other areas in which he has exercised his ability so well.

In this particular instance, however, I am deeply concerned that the United States is allowing its research and development to lag to the extent that it would jeopardize the national security.

I am deeply concerned that in the very midst of the negotiations and at a time when the President has taken the lead in the SALT talks, in the trip to the Middle East, and in other matters, and when we are in the midst of negotiating a reduction of international tensions that this Nation is allowing itself to become a second power and is not willing to put up the money that we need to guarantee our superiority 3, 4, or 5 years from now. It would put us in greater jeopardy at a time when we would have to defend ourselves with our Navy, Air Force, and strategic forces in toto. I cannot sufficiently express my gratitude to the Senator from New York for his directing attention to this area.

I vigorously support the Senator from New York in his amendments. I do so with all sincere respect to the Senator from Mississippi. I feel that we should do a better job in research and development.

I think we can find some other money to save in the Defense Department. I think we are spending an inadequate amount in R. & D. to protect ourselves in the long run.

Mr. BUCKLEY. Mr. President, I thank the Senator from Tennessee. He has pointed out, as has my friend, the Senator from Wyoming, the importance of the amendment.

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

Mr. BUCKLEY. Mr. President, I yield 3 minutes to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina is recognized for 3 minutes.

Mr. THURMOND. Mr. President, the distinguished and able Senator from Mississippi and I are together 99 percent of the time.

My good friend, the able and distinguished junior Senator from New York, is, I think, offering a good amendment I intend to support it.

Mr. President, the pending amendment, No. 447, offered by the distinguished Senator from New York (Mr. BUCKLEY) would restore to this bill an important research and development element involving this Nation's land-based strategic missiles.

This amendment provides for $5 million to conduct preliminary studies toward the complete modernization of the Minuteman III missile force. A critical part of this modernization would be work toward a new missile basing philosophy which could provide a more survivable missile force.

When submitted to Congress the military procurement bill included a research and development element titled "Advanced Missile Options." This element was deleted from the bill, possibly because it was confused with another element titled "Advanced ICBM Technology."

In any case, the amendment offered by Senator BUCKLEY is needed and should be approved by this body. The amendment is supported by the Department of Defense.

Mr. President, this addition to the bill is also timely in that evidence continues to show the Soviet Union is rapidly increasing its ICBM forces which presently number around 1,500 compared to around 1,000 deployed on land by this country.

The large SS–9 missiles in the Soviet force give them a first-strike capability and this fact makes it imperative that the United States take all possible steps to protect our smaller forces.

The unfavorable land-based missile balance between the United States and the Soviets is further complicated by the evidence that borings at present Soviet ICBM sites indicate a new or increased missile deployment.

While we all hope the SALT negotiations will bear fruit we cannot continue to close our eyes to the obvious efforts of the Soviets to obtain a clear military superiority over this Nation.

Mr. President, I urge the Senate to approve this relatively small addition to the bill.

Mr. President, I ask unanimous consent that a position paper by the Department of Defense be printed in the RECORD.

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

PROPOSED AMENDMENT NO. 447 BY SENATOR BUCKLEY: $5 MILLION FOR AN ADVANCED MINUTEMAN

Senator Buckley has proposed an amendment to authorize $5.0 million in FY 72 for "conducting preliminary studies on a long-range Advanced Minuteman missile program for the complete modernization of the Minuteman Missile Force." The DoD supports the intent of this Amendment for restoration of funds requested under Advanced Missile Options, P.E. 63333F.

Modernization of the Minuteman Force should consider a change in the basing philosophy so as to provide a more survivable missile force. The Advanced Missile Options program element was established to support the development of basing technology and the investigation of additional ICBM system concepts for the 1980s to determine the proper course of action. Initiation of this program is required because of the uncertainty in projecting Soviet capabilities beyond the near term and the lead time of up to 10 years required to proceed from concept to deployment for a major strategic system. This program would emphasize engineering studies and fabrication of some demonstration hardware as a near term hedge in the event of a continuation of Soviet strategic deployments.

The Senate may have confused the intent of the Advanced Missile Options program with the missile component development activities conducted under P.E. 63305F Advanced ICBM Technology which was requested at a funding level of $8.4 million. Consequently, the funds for Advanced Missile Options were deleted.

Although $5.0 million would not permit the program to proceed at the rate intended, it would permit the program to begin, thereby providing earlier answers to technical questions concerning the shelter basing concept than would otherwise be possible.

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

Mr. THURMOND. I yield.

Mr. STENNIS. I wish to ask the Senator a question.

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

Mr. STENNIS. Mr. President, I yield myself 1 minute. Does the position paper to which the Senator from South Carolina referred approve the idea of extending the range of these missiles?

Mr. THURMOND. This supports the intent of the amendment for restoration of the funds.

Mr. STENNIS. I know, but do they say they think it could be used for extending the range? That is the issue here.

Mr. THURMOND. The Department of Defense endorses the amendment, because they feel it would be helpful to them. With respect, specifically, to deployment it is stated:

The Department of Defense supports the intent of this amendment for restoration of funds.

Then, it states:

Although $5 million would not permit the program to proceed at the rate intended, it would permit the program to begin, thereby providing earlier answers to technical questions concerning the shelter basing concept than would otherwise be possible.

Mr. STENNIS. Mr. President, I yield myself 1 additional minute.

The PRESIDING OFFICER. The Senator is recognized for 1 additional minute.

Mr. STENNIS. Mr. President, I point out that the position paper does not approve the purpose of the program that is outlined here by the Senator from New York. It just does not do it. We have not had one syllable of testimony approving that, and the position of the President, the Department of Defense, and others has been against this extension at this time when the SALT talks are going on.

Mr. President, I yield 2 minutes to the Senator from Ohio.

Mr. SAXBE. Mr. President, I think we are all interested in this matter and I think we are all interested in our capabilities, but I think we have to follow the dictates of the Department of Defense.

We have seen over the years efforts that have given more money than the Department of Defense asked for in bombers and other weapons. It seems to me we were trying to dictate the policy of the Department of Defense over and above their aims and ideas.

I have consulted with people in the Department of Defense. They did not request this and do not request it, and the administration does not desire this. I think that inasmuch as we are trying to get this bill through and follow as much as possible the thinking of the committee after hearing a great deal of testimony, that it has no place.

I recognize it is an effort by persons well intentioned to help our capability but I think we have to follow the Secretary of Defense, and not the project colonels, and that we have to follow the dictates of the administration which would have the spending of this money and the planning to do so.

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

The PRESIDING OFFICER. The Senator has 12 minutes remaining.

Mr. STENNIS. Does the Senator from New York wish to proceed now?

Mr. BUCKLEY. I am willing to yield back the remainder of my time.

Mr. STENNIS. No. Excuse me. I thought the Senator might want to proceed.

Mr. BUCKLEY. Yes. I thank the Senator.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. BUCKLEY. Mr. President, I would like to reiterate one point. We are not asking a commitment to new hardware and we are not asking a commitment for something that is qualitatively different, because the present program in the committee report will have the effect of continuing the deployment of a total of 550 Minuteman III, each of which will have to reach the Soviet Union, leaving behind Minuteman II, which does not have that range. All we ask is to achieve the capability of extending that range.

Second, I would like to point out because we are dealing within existing technology and weapons there is no question that with this $5 million, given the 18 months, we could achieve the desired effects and make the necessary modifications.

I submit again that this country cannot afford, in the light of recent developments and knowledge, to sit on its hands for even another few months and wake up one day to find we need the technology now.

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

Mr. BUCKLEY. I yield.

Mr. STENNIS. Did the Senator say his three amendments have a common purpose?

Mr. BUCKLEY. Yes.

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

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. STENNIS. Mr. President, there is nothing personal in what I have to say. This matter has to be judged on the merits. If Members of the minority party want to risk the chance of having that part of the press that might not be favorable to the President headline that they are bucking the President on a policy connected with the SALT talks, I think they would be taking a chance on that. I do not know what will happen. I feel confident that under the present policy of the President he will never use one dime of this money if this amendment is agreed to for the purposes outlined by the Senator from New York, at least not until the last glimmering hope of success for the SALT talks for this sitting and the next sitting is gone, because this is part of the policy of the administration—no first strike capability.

The Senator said his amendments have a common purpose and I think that is entirely correct. Here is what the position paper on his next amendment states:

> The Department of Defense cannot support the proposed amendments.

Reference there is to the last two amendments and not the first one. I continue to read from the position paper:

> It is the position of the United States to not develop a weapons system whose deployment could reasonably be construed by the Soviets as having a first strike capability. Such a deployment might provide an incentive for the Soviets to strike first.

The position paper on amendments Nos. 448 and 449, the next two amendments, states:

> The Defense Department cannot support the proposed amendments. It is the position of the United States to not develop a weapons system whose deployment could reasonably be construed by the Soviets as having a first strike capability. Such a deployment might provide an incentive for the Soviets to strike first.

It repeats the same language.

That is what they say about those two amendments. The Senator from New York said those two amendments are tied to the first amendment. I say again we never had any testimony in our committee to carry out this purpose. The Department of Defense does not want to testify to that; they will not do it today if we called a meeting on the floor of the Senate.

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

Mr. STENNIS. I will yield in just a moment.

They are precluded from it. On the money part, with reference to this amendment, they would like to have the money back to put it into the bill for experimentation on the basis it was justified, in connection with the shelters.

Does the Senator have a statement from the Department of Defense, the President, or anyone else supporting the administration that is in favor of the amendment as the Senator has described its purposes? If the Senator does, we need it now.

Mr. BUCKLEY. I do not have such a paper, but I would want to say that the common purpose behind these three amendments has nothing to do with developing a first strike capability. It has to do with extending our options in existing hardware. If we were to do all the things I propose, including the missiles, it would enable us to launch a first strike capability, so I believe with all deference to my colleague that this is somewhat of a red herring.

The PRESIDING OFFICER. Would the Senator from New York advise the Chair on whose time he is speaking?

Mr. BUCKLEY. I am speaking on my time.

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. STENNIS. Mr. President, I yield the Senator 2 additional minutes.

Mr. BUCKLEY. I thank my colleague.

Mr. President, I want to say we are talking about technology to work within existing missiles, within the concert of the whole philosophy and spirit of the SALT talks. We are not talking about building new missiles, but working with the existing ones. There is nothing in the specific proposal, amendment No. 477, or even in the other two, which would enable the United States to reach a successful first strike. I think we should get back to what is involved; namely, spending a minute amount of money, in the context of the total amount being authorized, and to do it so the President has the option to move in the direction in which he believes the interests and safety of the United States require.

The PRESIDING OFFICER. Who yields time?

Mr. CHILES. Mr. President, will the Senator yield to me for a question?

Mr. STENNIS. Mr. President, I will yield, quite briefly. I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. CHILES. I am somewhat confused by some of the debate. I understood the Senator from South Carolina in his remarks to say that the Defense Department was supporting the intent of this amendment. I wanted to ask the distinguished chairman if the Defense Department ever came to the Armed Services Committee and supported this proposal.

Mr. STENNIS. The answer is a triple no—no, no, no.

Mr. CHILES. Did anyone from the administration come to the Armed Services Committee and urge support of this proposal?

Mr. STENNIS. The same answer—"No." Here is what the Department says on amendment No. 447 offered by the Senator from New York. The last paragraph in that justification sheet, and I ask particular attention to this, reads:

Although $5.0 million would not permit the program to proceed at the rate intended, it would permit the program to begin, thereby providing earlier answers to technical questions concerning the shelter basing concept than would otherwise be possible.

That is on all fours with what I said—that what was justified was something concerning shelter basing. That is why they want the money back in here. Why do I say that? Because they say so. Senators do not have to take my word for it. I invite Senators to come in here and read it. That is the position paper the Senator from South Carolina put in. That is as plain as I can make it. Come and read this.

Mr. CHILES. I appreciate the chairman's explanation. I wonder if the Senator would yield me 30 seconds so I may ask the Senator from New York whether he intends the money to be used for shelters and if that is the intent of the $5 million.

Mr. STENNIS. Mr. President, I yield the Senator half a minute.

Mr. CHILES. Mr. President, I ask the Senator from New York the question whether it is his intention that the money be used for shelters.

Mr. BUCKLEY. Mr. President, the intention of my amendment is that it be used wholly consistently with the whole objective, which is to improve and modernize the capability of our Minuteman missiles. At the present time, as far as shelter goes, it increases our capacity from 1,000 to 1,200 warheads. I suggest we at least have the option to finish the job and go to another 900.

There is no conflict in what I have proposed and the shelter. On the other hand, I would have no objection to using it at the discretion of the military.

Mr. STENNIS. Mr. President, I did not understand the last part of the statement of the Senator from New York.

Mr. BUCKLEY. I suggested that if greater flexibility is thought desirable in the utilization of these funds, I would certainly have no objection.

Mr. STENNIS. Well, that is somewhat vague.

Mr. President, it is regrettable, and I do not blame anyone—I blame myself, to an extent—that this proposal came in here with such a short time for debate and explanation and no chance to call anyone, but I do not have any doubt whatsoever as to what the facts are in this case. This matter has not been presented to our committee. The $5 million was justified on another concept altogether. Its use, as the Senator has explained it, is totally contrary to the President's position of a no-first-strike capability and no extension of what could be interpreted as a first-strike capability during the SALT talks. The explanation of this amendment includes the word "counterforce." Those familiar with these terms know that essentially means a first-strike capability. We have stayed within the terms of deterrence, deterrence, deterrence. That is what we are talking about at the SALT talks.

It makes no difference to me personally. No appreciable amount of money is involved. But I think it would be tragic for the Senate to vote for this amendment in the face of the President's position and in the face of the SALT talks, contrary to what has been outlined over and over again as his position. Each Senator can vote as he sees fit as far as I am concerned, but I do not have any doubt about the possible consequences here. I also feel certain the President would not use any of the money for that purpose.

Mr. President, while I am at it and in motion, the same thing applies to the other two amendments. They are more confessedly geared to the idea of counterforce, extending into another family or capacity for all our missiles.

Mr. President, I commit this decision to the sound judgment of Senators who are here and those who are not.

How much time do I have left?

The PRESIDING OFFICER. The Senator from Mississippi has 1 minute remaining.

Who yields time?

Mr. CRANSTON. Mr. President, will the Senator yield to me?

Mr. STENNIS. Mr. President, I yield 1 minute to the Senator from California.

Mr. CRANSTON. Mr. President, I would like to take this opportunity to stand with the distinguished chairman of the committee. Many people in the country and in the Senate, I think, sometimes misinterpret the zeal and determination of the Senator from Mississippi, the distinguished chairman of the Armed Services Committee, in his determination to see that our country is prepared to defend itself.

I applaud his understanding of the deep danger involved in this particular approach and the suggestion that we move to a first strike capability, which would be so unstabilizing and so dangerous. I am delighted that he has provided this stern leadership on the Senate floor and in our country.

Mr. STENNIS. Mr. President, there seems to be some confusion regarding the purpose for which amendment No. 447 has been introduced. The distinguished Senator from New York has stated that the $5 million to be added to the bill will be used to conduct studies relating to extending the range of the Minuteman missile. The language of the amendment uses the words "long range" which has two possible interpretations. One interpretation could be literal and mean extending the range of the Minuteman. Another interpretation could be that the words "long range" have a connotation of time and convey the meaning of an advanced Minuteman requirement for a later time period.

The Department of Defense apparently has accepted the latter interpretation relating to the employment of Minuteman in a future time period. The committee has received a position paper from the Department of Defense which addresses the use of the $5 million proposed in the amendment. The Defense position paper identifies the use of the $5 million requested for the purpose of conducting studies to answer the technical question concerning the shelter basing concept of the Minuteman missile. This apparent inconsistency points up a lack of communication as between the distinguished Senator's office and the Office of the Secretary of Defense. Let me first address the interpretation concerning the range of the Minuteman missile. The Department of Defense in the very extensive hearings held by the commitee on the pending bill made no specific recommendations for approval to undertake work related to extending the range of the Minuteman missile. Therefore, it must be assumed that such a requirement if it does exist was not considered to be a requirement which should be reflected in the fiscal year 1972 budget. If the distinguished Senator from New York has information to the contrary, it is rather late in the game to undertake at this time to determine all of the facts necessary in this matter much of which I am certain would be classified and not proper for debate on the floor. Other related considerations would be extremely important in considering such a requirement even if time were available. These would include what the need for extending the range of the Minuteman is in terms of the overall strategic targeting plan of the United States which includes the important roles played by the Poseidon fleet and by the strategic bomber force. This interrelation is highly complex and highly classified as well, but should have to be explored in great detail to permit a meaningful position to be established regarding this requirement since none of these matters can be laid before the Senate at this time. In view of the questions which I have raised there is clearly no justification for this amendment.

I will now address the question of the use of these funds for the purposes described by the Department of Defense.

As I understand it, the intent of this amendment is somewhat similar to that included in the fiscal year 1972 administration budget request under a line item called Advanced Missile Options, for which $7 million was requested. The Research and Development Subcommittee, after full hearings and serious consideration of all the facts, deleted this line item from the budget request. The committee accepted this recommendation. I have not seen or heard any additional facts presented in support of this amendment that change the decision of the committee.

Denial of the $7 million requested was based upon the conclusion that this work is considered more appropriate as a candidate in competition with other work included under the separate Advanced ICBM technology program. This latter program was included for $8.4 million, which is $2.4 million more than the program in fiscal year 1971. The $8.4 million requested will support a number of individual efforts under the Advanced ICBM technology program so that if the effort proposed in the amendment is considered to be of greater importance than other projects that are candidates for consideration, preliminary studies on rebasing concepts for the Minuteman missile program could be conducted during fiscal year 1972.

In addition to the above, the committee has certain doubts as to the feasibility or cost effectiveness of mobility for intercontinental ballistic missiles. Another significant consideration is the fact that the concept of shelters or the

"shell game" as a new missile basing concept may be interpreted as inconsistent with SALT since it implies proliferation of missiles. In summary, Mr. President, the proposed amendment is without merit and should be defeated. In my opinion, the arguments against the amendment are clear and I would urge my colleagues to join with me in defeating it.

The research and development budget requested $8.4 million for advanced ICBM technology which is essentially to improve accuracy. The committee approved this as requested.

The PRESIDING OFFICER. All time on the amendment has expired. The question is on agreeing to amend No. 447 by the Senator from New York.

Mr. BUCKLEY. Mr. President, I ask unanimous consent to dispense with the calling of the roll.

Mr. STENNIS. Mr. President, what was the request?

The PRESIDING OFFICER. The unanimous consent request was to dispense with the calling of the roll.

Mr. STENNIS. Mr. President, the yeas and nays have been ordered.

The PRESIDING OFFICER. Does the Senator from Mississippi object?

Mr. STENNIS. Yes. I object.

The PRESIDING OFFICER. Objection is heard.

The question is on agreeing to the amendment of the Senator from New York. The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New Mexico (Mr. MONTOYA), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey (Mr. WILLIAMS), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from New Mexico (Mr. MONTOYA) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Delaware (Mr. BOGGS), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. FANNIN), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business to attend the funeral of the late Congressman William O. Cowger.

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

If present and voting, the Senator from Nebraska (Mr. CURTIS) and the Senator from Texas (Mr. TOWER) would each vote "yea."

On this vote, the Senator from Arizona (Mr. FANNIN) is paired with the Senator from Delaware (Mr. BOGGS). If present and voting, the Senator from Arizona would vote "yea" and the Senator from Delaware would vote "nay."

The result was announced—yeas 17, nays 66, as follows:

[No. 251 Leg.]

YEAS—17

Allen	Dominick	Moss
Allott	Goldwater	Roth
Brock	Gurney	Smith
Buckley	Hansen	Taft
Cotton	Hruska	Thurmond
Dole	Jordan, Idaho	

NAYS—66

Aiken	Gambrell	Packwood
Anderson	Gravel	Pastore
Baker	Griffin	Pearson
Bayh	Hart	Pell
Beall	Hartke	Percy
Bennett	Hatfield	Proxmire
Bentsen	Hughes	Randolph
Bible	Inouye	Ribicoff
Brooke	Jackson	Saxbe
Burdick	Javits	Schweiker
Byrd, W. Va.	Jordan, N.C.	Scott
Case	Kennedy	Sparkman
Chiles	Magnuson	Spong
Church	Mansfield	Stafford
Cooper	Mathias	Stennis
Cranston	McClellan	Stevens
Eagleton	McGee	Stevenson
Eastland	Metcalf	Symington
Ellender	Miller	Talmadge
Ervin	Mondale	Tunney
Fong	Muskie	Weicker
Fulbright	Nelson	Young

NOT VOTING—17

Bellmon	Fannin	McIntyre
Boggs	Harris	Montoya
Byrd, Va.	Hollings	Mundt
Cannon	Humphrey	Tower
Cook	Long	Williams
Curtis	McGovern	

So Mr. BUCKLEY's amendment (No. 447) was rejected.

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

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that on September 30, 1971 the President had approved and signed the following acts:

S. 415. An act for the relief of Mr. and Mrs. Arvel Glinz; and

S. 504. An Act for the relief of John Borbridge, Junior.

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer (Mr. BENTSEN) laid before the Senate a message from the President of the United States submitting the nomination of Thomas E. Ferrandina, of New York, to be U.S. Marshal for the Southern District of New York, which was referred to the Committee on the Judiciary.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed the following bills, each with an amendment, in which it requested the concurrence of the Senate:

S. 708. An act for the relief of the village of Orleans, Vermont; and

S. 932. An act to amend title 13, United States Code, to provide for a revision in the cotton ginning report dates.

The message also announced that the House had passed the bill (S. 2007) to provide for the continuance of programs authorized under the Economic Opportunity Act of 1964, and for other purposes, with an amendment, in which it requested the concurrence of the Senate; that the House insisted upon its amendment to the bill; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PERKINS, Mr. HAWKINS, Mr. WILLIAM D FORD, Mr. BURTON, Mr. GAYDOS, Mr. CLAY, Mrs. CHISHOLM, Mr. BIAGGI, Mrs. GRASSO, Mr. QUIE, Mr. ASHBROOK, Mr. BELL, Mr. REID of New York, Mr. ERLENBORN, and Mr. DELLENBACK were appointed managers on the part of the House at the conference.

The message further announced that the House had passed the bill (S. 646) to amend title 17 of the United States Code to provide for the creation of a limited copyright in sound recordings for the purpose of protecting against unauthorized duplication and piracy of sound recording, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to 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. 8866) to amend and extend the provisions of the Sugar Act of 1948, as amended, and for other purposes.

The message further announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 8817. An act to further cooperative forestry programs administered by the Secretary of Agriculture and for other purposes; and

H.R. 9346. An act to convey certain federally owned land to the Twentynine Palms Park and Recreation District.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (H.R. 8866) to amend and extend the provisions of the Sugar Act of 1948, as amended, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore.

HOUSE BILLS REFERRED

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

H.R. 8817. An act to further cooperative forestry programs administered by the Secretary of Agriculture and for other purposes; to the Committee on Agriculture and Forestry.

H.R. 9346. An act to convey certain federally owned land to the Twentynine Palms Park and Recreation District; to the Committee on Interior and Insular Affairs.

LEAVE OF ABSENCE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from Kentucky (Mr. COOK) may be given official leave of absence this afternoon to attend the funeral of former Congressman Cowger, of Kentucky.

The PRESIDING OFFICER (Mr. CHILES). Without objection, leave is granted.

MILITARY PROCUREMENT AUTHORIZATIONS, 1972

The Senate continued with the consideration of the bill (H.R. 8687) to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

AMENDMENT NO. 448

The PRESIDING OFFICER. Under the previous order, the clerk will now state amendment No. 448, one hour having been designated, to be equally divided between both sides.

The assistant legislative clerk read as follows:

On page 9, line 11, strike out "$2,910,744,000" and insert in lieu thereof "$2,922,744,000, of which amount not less than $12,000,000 shall be available only for the purpose of carrying out work in connection with providing counterforce capability for the Minuteman III system".

Mr. BUCKLEY. Mr. President, amendment No. 448 and my remaining amendment No. 449 to the defense procurement authorization bill are identical in their purpose, although dealing with distinct weapons systems. In the interests of saving the Senate's time, I would like to discuss them both together while reserving the right to have each amendment voted upon separately.

The amendments deal, respectively, with the initiation of appropriate research and development programs to provide for significant improvements in the guidance and control systems of the Minuteman and Poseidon ballistic missiles; the first at a cost of $12 million and the second at a cost of $25 million.

To place the discussion in focus, certain facts must be kept in mind. The first of these is that since 1966, the United States has deliberately and, I might add, unilaterally, chosen to freeze the size of her strategic forces. Specifically, we have since that date maintained a force level of 1,000 Minuteman ICBM's, 54 Titan II ICBM's, and 41 Polaris class nuclear submarines, while reducing the number of our B–52 bombers from about 600 in 1966 to about 400 today. Thus, during this 5-year period, there has in fact been a quantitative reduction in our strategic nuclear forces.

This has occurred despite a most dramatic buildup of the Soviet Union's strategic nuclear capability. Indeed, this buildup has gone far beyond the requirements of simple deterrents or the achievement of nuclear parity. Since the Strategic Arms Limitations Talks were initiated in early 1968, the Russians have deployed 200 SS–9 ICBM's, a missile for which the United States has no counterpart. Moreover, they have added 400 of their SS–11's, a missile somewhat larger than our own Minuteman. The Soviets have also initiated the deployment of the SS–13, a solid fuel ballistic missile similar to our Minuteman, and are in the advanced stages of the development of a mobile ICBM. All of these recent changes in Soviet forces have been quantitative, and as of today the Soviet Union possesses over 1,600 land-based ICBM's, and is continuing to deploy more, while our land-based strategic missiles remain frozen at 1,054.

It terms of payload capacity, the Soviet Union has developed the ability to deliver at least 5,400 additional megatons of destruction since the Strategic Arms Limitations Talks were initiated in early 1968. This increase alone exceeds the entire U.S. megatonnage by over 1,000. Moreover, only about 1,500 megatons of the entire U.S. force is in the form of ballistic missiles, the remainder being represented by bombs carried by 1955-vintage B–52's.

Moreover, if the Soviet Union were to employ the same warhead technology which we now have on a production line basis for our Minuteman III program, the Soviet Union could mount 25 to 30 separate warheads on each of its SS–9 missiles. As the Soviets already have over 900 SS–11's and 300 SS–9's deployed, the potential for a devastating attack on the United States is self-evident. It should, moreover, be kept in mind that much if not most of the missilery is designed to attack not our cities, but our Minutemen silos and B–52 bases with the result that it is now generally conceded that within another 2 or 3 years, if present trends are allowed to continue, the Soviet Union will have achieved the capacity to destroy virtually all of our land-based strategic forces in a preemptive first strike.

The second factor which must be kept in mind is that we have not only deliberately chosen to freeze the quantitative size of our strategic forces, but have chosen as well to limit the precision of our missile guidance systems so as to limit their effective use to attacks on large civilian populations rather than giving them the pinpoint accuracy required to obliterate specific military targets. These policies were pursued as a part of our strategy of mutual deterrence or, as it is better described, mutual terror. The problem with this strategy, however, is that the Soviet Union has failed to play the game by our rules, having expanded the numbers and accuracy of her nuclear weapons far beyond the scope required by a reciprocal policy of terror.

In light of these factors, it seems to be simple prudential commonsense to seek at this stage ways of quickly making those qualitative improvements in the guidance systems of our key strategic weapons; namely, the land-based Minuteman and the submarine-based Poseidon, so that we will at least be given the option—and, in my opinion, the far more humane, the only moral option—of utilizing our weapons to knock out those of a potential enemy rather than in obliterating millions of their citizens.

In considering this issue, Mr. President, I have sought the advice of some of the Nation's leading strategists, men with demonstrated professional competence in the field. Without exception, these individuals are pursuaded that qualitative improvements in our missile and guidance control systems are critically important.

Prof. Morton A. Kaplan, professor of international relations at the University of Chicago states that:

In the absense of an agreement with the Soviet Union that otherwise excludes qualitative improvements such as counter-force capable guidance systems for Minuteman and Poseidon, we have no choice but to go ahead with an R & D program designed to improve the guidance system of our strategic forces. In any case, a posture which permits other options beside city targeting is morally superior to one which does not.

There is no evidence that the Soviet Union shares our prejudice against qualitative improvements to our strategic forces. Dr. Richard B. Foster, a noted authority on Soviet strategic policy and strategic studies director of the Stanford Research Institute observed at the 4th International Arms Control Symposium that:

In developing their (defense) posture the Soviets attempt to hedge against as many uncertainties as possible, and keep their force planning as open-ended as possible.

In short, the Soviet Union does not take seriously the notion that force flexibility should be arbitrarily given up. If we should fail to make qualitative improvements in our forces when we have the technical ability to do so, we would be unnecessarily limiting our options in the employment of our forces in a crisis, should the need ever arise. Since the mere ability to employ these forces flexibly makes any crisis much less likely.

Mr. Herman Kahn, director of the Hudson Institute, was asked to comment on the advisability of developing high quality "counterforce" guidance systems as proposed by my amendment for Minuteman and Poseidon. Mr. Kahn, one of the Nation's most respected nuclear strategists, stated:

Throughout history, it has been considered immoral to threaten civilian populations and their property. To some degree, World War I and World War II were exceptions, but were justified in some sense because they were wars of industrial mobilization, and therefore attacks on civilians were direct attacks on the war effort. The current rationale for nuclear retaliation against cities only does not have this justification. It is basically bad policy for the U.S. to encourage the legitimization of city attacks. It is wrong for the United States to lock ourselves into a policy where the President has no other alternative than attacking an opponent's cities in the event that deterrence fails. If there is any sense to a "flexible response" policy, it must include flexible targeting.

Perhaps most important of all, is the view of the man who has the ultimate

responsibility for the security of this Nation, the President of the United States. In President Nixon's state of the world message, the President asked:

> Should the President have some other option than only attacking an opponent's cities?

The amendments I am proposing, amendments No. 448 and 449, will provide the President with that option. Specifically the $12 million in R. & D. provided for in amendment 448 will enable us in 18 months to develop the ability to increase the kill probability of Minuteman III by about 40 percent; and the $25 million earmarked in amendment No. 449 would in 3 years' time provide us with the ability to improve the kill probability of the Poseidon by a factor of about 500 percent, which coincides with the time at which our existing Polaris submarines are scheduled to be equipped with Poseidon missiles.

This means a significant expansion of the number of targets which can be eliminated by any given number of warheads. A $37 million involvement in research and development, in short, will initiate programs to provide us with the technology for a dramatically improved guidance system which will more than double the effectiveness of our principal strategic weapons.

I know that my distinguished friend, the Senator from Mississippi, will state that the amendment I offer is tantamount to a first-strike capability which goes counter to the desires of the President and could destroy and sabotage the SALT talks.

I submit that this position cannot be taken. The amendments I have offered will not provide us with a first-strike capability for two reasons.

First of all, these are designed only to modify the warheads within existing missiles. We simply do not have enough missiles to mount enough warheads. For a first strike effort, with the improved accuracy, we would need in excess of 12,000 warheads if we were ever to try a first strike against the Soviet Union. Therefore, the Soviet Union—which knows too much about our armaments—would be able to interpret this improvement in our capability—an improvement which she herself has in her SS–9's—if we move toward a first strike capacity.

Second, it should be kept in mind that there are innumerable situations where flexibility is urgently desired. Let me paint a scenario. Let us assume that either from the Soviet Union or from some other country there are indications that they have acquired the capability for a first strike capacity. Let us assume that their first strike knocks most or all of our strategic weapons. We would then have our submarines and additional weapons. We would then face the choice of aiming those at the civilian population of the enemy, thereby destroying tens of millions of human beings in the Soviet Union or trying to defend ourselves by directing our missiles at a second strike against the remaining weapons held by the enemy.

I submit that those options lead to a brutalizing of the concept of warfare beyond what man has yet understood.

I submit that we need not continue to live within a policy of deterrent force, but rather develop this kind of flexibility which our President was urgently asking for in his state of the world message.

Mr. STENNIS. Mr. President, would the Senator yield for a question?

Mr. BUCKLEY. I yield to the Senator from Mississippi for a question.

Mr. STENNIS. Mr. President, in the course of things a lot of interruptions necessarily occur here. I listened to almost the Senator's entire speech. However, would the Senator state again quite briefly his last remarks about the purpose of his amendment?

Mr. BUCKLEY. The purpose of the amendment is twofold.

First it involves an expenditure of $12 million in R. & D. which would have the effect of making sufficient improvements in the guidance system of Minuteman III so as to raise the so-called kill probability by a factor of about 40 percent. This would mean that it could be used at a city target.

Second, the other amendment is designed to extend $25 million in similar research of the Poseidon missiles that we are depending on in the submarines to enable us to achieve a similar degree of strike capability.

The PRESIDING OFFICER. Does the Senator from New York yield the floor?

Mr. BUCKLEY. I yield the floor.

Mr. STENNIS. Mr. President, I thank the Senator for his efforts in this field and for his remarks and for his interest. I look forward to the time when we can team up on some matters. I believe the Senator from New York will be a very favorable ally, and I believe he will be an effective one, too.

Mr. President, we are now faced with a different situation. This amendment goes outside and beyond the field that has been laid down by the President of the United States. I disagree with the President whenever I think I should—in this bill or in any bill. And I have done so during this debate.

He has laid down his views on the SALT talks and in the program in this budget. I must point out that it has been largely accepted by Congress and by the Senate in the debate on this bill. I am talking about what is laid out here by the President in view of the SALT talks. And that is what he was looking at, and that is what I think we should be looking at.

The ABM, for instance, is a defensive weapon. That was a great concern and was part of the start that we made with Soviet Russia in these talks.

The budget required the continuation of this program at four sites. Our committee reported those four sites in the bill. We reduced the money some, but solely because of slippages and delays and strikes, because a lesser sum would be used than was originally thought. That committee recommendation came to the floor.

The ABM program was once debated for about 3 weeks in an effort to strike it out of the bill. It ended up with a tie vote of 50 to 50. We then had another vote and it finally survived with a 1-vote margin.

But it was more or less accepted here the other day because of the SALT talks. Now, we have these ICBM's and the Poseidon. The program laid before us this year was not a counterforce, not a first strike, capability. We can argue that for a long time but that is not what the Department of Defense, under the direction of the President, attempted to lay down here. They attempted to lay down a program where there would be no large effort on counterforce, which means no large effort on a first strike capability, and that is the program we have before us.

But the Buckley amendment, in spite of the good intentions of the Senator from New York, goes beyond that and it is a counterforce amendment as he states in his amendment. There is no question about that. The very terms of the amendment state:

> Shall be available only for the purpose of carrying out work in connection with providing counterforce capabilities.

In the one amendment it refers to counterforce capabilities for the ICBM and in the other amendment to counterforce capabilities for the Poseidon.

Mr. President, straight up and down, that is the issue. What do I have to back me up in what I am saying about this matter? I have the statement of the Department of Defense and it is a direct statement. It is not like the one I mentioned a while ago where they said they would like to have the money and to use it for shelters. This one is hard to explain.

Here is what they say in their position paper on proposed Amendments No. 448 and 449. We are now talking about No. 448:

> The Defense Department cannot support the proposed amendments. It is the position of the United States to *not* develop a weapon system whose deployment could reasonably be construed by the Soviets as having a first strike capability. Such a deployment might provide an incentive for the Soviets to strike first.

That first-strike capability essentially means the same as the word "counterforce." The word "counterforce" is in the amendment.

Here is what the situation means, boiled down. It is not stated there, but this is what it means. The SALT talks are on and it is possible to do some good there. They do not know how it is going to come out, but we do not want to rock the boat. They are at a crucial point. I believe there is something to it. I do not discount the possibility. I do not think the President is easy to fool, and I do not think he would want to fool the American people or Congress. There is a meaning. This thing is grinding on. In fact, in a few weeks they will go back to Helsinki or Vienna, for a resumption.

I stand squarely on that ground. It is not often that the Department of Defense comes out against an amendment that would put more money in a bill. If they are permitted and if they can find a good reason they will agree to

an amendment, but they come out squarely and hit this on the nailhead and they say that it is the position of the United States—that means the position of the United States through its Chief Executive.

So that is the message I bring, and that is about all I can say at this time.

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

Mr. STENNIS. I yield to the Senator from New York.

Mr. BUCKLEY. Is it not true that during the hearings before the Armed Services Committee of the House, General Holloway, chief of SAC, testified on the necessity of improving Minuteman guidance, not for first-strike capability, but to improve the efficiency of our force and its versatility?

Mr. STENNIS. I think that there is plenty of money in here. I know there is money in here for Minuteman guidance, and it can be used for that purpose, but not to the extent of creating a counterforce capability. That is where the Pentagon drew the line for the time being, or even the appearance of counterforce.

These things are not as thin as tissue paper. There are lines of distinction.

We know how it is when negotiations are going on and agreements perhaps will be made. One just does not rock the boat. Under some conditions I would favor this amendment, but I say again I do not know what would be the situation in those talks. Submarines are important and we also have to have the ICBMs and their capability, as I say. But if we agree to the amendment, the money would not even be used under the President's policy, but it would counteract or contradict what we have been doing under this bill and it could start a ripple that could get beyond control and do irreparable harm.

Mr. BUCKLEY. Mr. President, I very much appreciate the concerns of the Senator from Mississippi but I also have a tremendous appreciation for the pragmatic judgment of the Russians. I believe they would be able to see the distinction, even if certain editorial writers in this country predictably would not, between learning the facts, investment in research, which at some future date would give the Government of the United States the capacity to mobilize more sophisticated warheads than we have available to us, and first-strike capability.

I cannot in all candor see how these two amendments would set any ripples in motion that would terminate the SALT talks. After all, we know that since the SALT talks were originated the Soviet Union has more than doubled her deployment of intercontinental ballistic missiles. Second, we know some of these missiles are so large that their effect has been to give her the effect of delivering eight times as many warheads as we can deliver in return. We know also that since these talks started she has developed her ABM system and it has a guidance of sufficient precision that her weapons today are, in effect, counterforce weapons.

To suggest that we invest purely in research and development the kind of money required to make our Minuteman, and most particularly the Poseidon, effective to give the President a choice in a nuclear war to kill machinery and not people makes no sense to me. We must keep in mind that a counterforce capability is not equivalent to a first strike capability. To have a first strike capability we must keep and deploy many times the number of missiles we now have in existence.

So with all due respect to my distinguished colleague I submit once again that considerations of national safety, which is the highest priority of any government—the security and the survival—require that we at all times be in as advanced a stage of research as we have the capacity to be.

These two arguments are not exploring the unknown and will not boondoggle themselves into tens of millions of dollars and other stories we have heard.

We are operating within existing technology, within existing systems, where the cost can be accurately predicted and where the timetable can be accurately predicted. I submit that if we do not go forward with this kind of basic research and development and if something should throw the SALT talks off kilter, one of these days we will wake up with Russian ICBM's staring down on us without our ability to protect ourselves.

I think there is another factor we must keep in mind, and that is if we have learned anything in this century, it is that to be weak invites war and aggression. The First World War was triggered because Germany thought she could roll over Europe. The same is true of the Second World War. Only the strong can remain free. I submit that if the United States gives the appearance of weakness, we would be inviting military adventurism that could spark a war that would destroy us all.

Mr. President, I would like to ask for a voice vote on amendment No. 448.

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

Mr. BUCKLEY. Mr. President, I yield back my time on amendment No. 448.

The PRESIDING OFFICER. All time having been yielded back, the question is on the adoption of amendment No. 448.

The amendment was rejected.

Mr. BUCKLEY. Mr. President, I trust the Chair recorded me as voting "aye."

The PRESIDING OFFICER. The Senator will be so recorded.

Pursuant to a previous order, the Chair lays before the Senate amendment No. 449 by the Senator from New York, which the clerk will read.

The legislative clerk read amendment No. 449, as follows:

On page 9, line 10, strike out "$2,376,869,000" and insert in lieu thereof "$2,401,869,000, of which amount not less than $25,000,000 shall be available only for the purpose of carrying out work in connection with providing counterforce capability for the Poseidon submarine-launched ballistic missile system".

Mr. STENNIS. Mr. President, I yield such time to the Senator from Alabama (Mr. SPARKMAN) as he may require, not to exceed 5 minutes.

VISIT TO THE SENATE BY DISTINGUISHED MEMBERS OF THE NATIONAL ASSEMBLY OF FRANCE

Mr. SPARKMAN. Mr. President, I am happy to introduce a distinguished delegation from the National Assembly of France spending several days in Washington. They are here on a United States-French parliamentary exchange sponsored by the Ford Foundation and coordinated by the School of Advanced International Studies at the Johns Hopkins University. I understand that their Washington program has included meetings with an equal number of Members of the House of Representatives and appointments with officials of the executive and judicial branches. They have just met with Chairman FULBRIGHT at the Foreign Relations Committee. I am honored to welcome them to the U.S. Senate. The delegation is composed of the following:

Alain Terrenoire, Henri de Gastines, Jean-Marie Poirier, Michel Alloncle, Jacques Chaumont, Jean-Pierre Cassabel, Pierre LeLong, Guy Begue, Claude Gerard Marcus, Marc Becam, Jean-Pierre Roux, Bertrand des Garets and Jean Durieux.

[Applause, Senators rising.]

RECESS

Mr. President, I ask unanimous consent that the Senate stand in recess for 2 minutes for the purpose of allowing Senators on the floor to greet our distinguished visitors.

The PRESIDING OFFICER. Without objection, it is so ordered. The Chair is pleased to have our distinguished guests.

At 1:34 p.m. the Senate took a recess until 1:36 p.m.

On the expiration of the recess, the Senate reassembled, and was called to order by the Presiding Officer (Mr. CHILES).

MILITARY PROCUREMENT AUTHORIZATIONS, 1972

The Senate continued with the consideration of the bill (H.R. 8687) to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

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

Most of the remarks that I have to make about amendment No. 449 have already been made, but we are dealing here with a critically important weapon system. I might remind the Senate that in the long debates about the Safeguard system and about the ABM's, the opponents of those systems stated that they were superfluous: that so long as we had submarines capable of launching nuclear

weapons, presumably weapons that could find their targets, we could maintain that second strike clout with the inevitable destruction which would make it impossible for any enemy or combination of enemies at any time to threaten the United States with a first atomic strike.

There are those, of course, who feel that it is foolhardy to place our entire security on one particular system. The Soviets, for example, could develop a whole new technique in connection with hover submarines which could immobilize our submarine forces at the time of a first strike. That is neither here nor there. The fact is that it is generally conceded that, in the last analysis, perhaps the most important system which the United States has, not only for its own security but for that of the whole free world, is represented in having the nuclear submarines and the Poseidon missiles, which are still in the process of being installed.

At the present time, for a combination of reasons, number one being that in order to shoot a missile with necessary accuracy from a moving base we would have to have a very high degree of precision in the navigational systems and also because we have to use self-will to develop the best accuracy with which our technology can provide us, our present Poseidon missiles are not nearly as accurate as is required even if we forget the whole business of a counterforce capacity. In other words, our Poseidon missiles do not have the existing necessary accuracy of the Minuteman.

The $25 million provided in amendment No. 449—again, I underscore the words "for research and development"—is designed to enable us to come to grips with the navigation problem, which will have certain fallout in our civilian air system and in other ways, and also to make the kind of improvements in the guidance systems and controls we would like to have in our Minutemen.

I submit that we cannot maintain our responsibilities if we do not have weapons impervious to Soviet neutralization, if we do not have weapons the accuracy of which will accomplish our specific goals. I believe that we must repudiate the concept of obliterating a city as the only response available to us in the event nuclear war should break out. I believe that the Commander in Chief should have, as the Commander in Chief so clearly requested in his state of the world message, some option under these terrible circumstances other than aiming a nuclear weapon at a populated city.

Mr. President, we have gone over the ground rather thoroughly in connection with my prior amendments. I gladly yield to the Senator from Mississippi, and if he does not wish to continue the debate, I shall be happy to yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield myself 10 minutes, if the Chair will indulge me for a moment.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. STENNIS. Let us make clear from the beginning, Mr. President, that the committee's bill has not neglected the submarines, the Navy research and development. As a matter of fact, as far as new submarines are concerned, the budget called for five of them, and the committee added one additional submarine—that is, lead time items for it—and we have a great abundance of money in the bill for research and development, there is no question about that, in the submarine field.

But we come rapidly to the position that I have already stated with reference to these other amendments, that this proposal by the Senator from New York is not backed by the President of the United States. In fact, it is opposed by the President through the Department of Defense, as I shall read again here in a few moments.

I am in favor of all the accuracy we need, and all the extra strength, but I am totally opposed to this amendment at this time in this place, for the reasons I have indicated and for further reasons that I shall state.

There is something to these SALT talk negotiations, and I want to keep the responsibility for those talks exactly where it belongs, and that is on the President of the United States. He is our Chief Executive. He has asked for a program that he thinks will back him up in those negotiations. He has shown evidence that those negotiations are perhaps making some progress, and I think it is a dangerous thing, for that reason alone, to come here now and stir the matter up, refute his position, and try to add to it these disturbing influences which, to use an old term, probably would rock the boat.

Let us put the responsibility where it belongs. We want to cooperate. Certainly we do not want to provide any reason or excuse for not letting this progress be made.

Mr. President, on the question of the accuracy of these weapons, we have further funds in the bill for research, as I have stated, but we are not getting into this area of first strike capability or counterforce capability because of SALT.

We have amazing accuracy already. We have had amazing achievements in that field. The exact information is classified, but we can come well within a half-mile of targets now. Our accuracy on the targets is well within a half-mile. I state that because I am told it is a fact. So certainly we are not neglecting this field.

I have here a statement that I think is correct, and I shall move through it rapidly. Its point is that we do not need this type of improvements in payload and guidance now, the type of improvements that are proposed, in order to have the option of attacking military targets other than cities. Our accuracy is already sufficiently good to enable us to attack any kind of target we want, and to avoid collateral damage to cities. The only reason to undertake the type of program the amendment suggests is to be able to destroy enemy missiles in their silos before they are launched. This means a U.S. first strike, unless the adversary should be so stupid as to partially attack us, and leave many of his ICBM's in their silos for us to attack in a second strike.

Mr. President, these matters are so delicate that it is difficult to discuss them. But I know as a fact that nothing has been given more thorough attention by the Department of Defense. Nothing has been given more attention by the services and by the administration, from the President of the United States down. Certainly ample attention was given by the committee. We did not strike out anything except what was obviously not needed, or was deferred because of time lapses, and so forth, and we stayed out of this field for the additional reason, as I have stated, of these SALT talks.

So by way of presummary, I refer again to this Department of Defense statement with reference to proposed amendment No. 449, which states:

> The Defense Department cannot support the proposed amendment. It is the position of the United States to not develop a weapons system whose deployment could reasonably be construed by the Soviets as having a first strike capability. Such a deployment might provide an incentive for the Soviets to strike first.

Many things, of course, cannot be absolute, but the view of the Chief Executive is that he does not want anything that could reasonably be construed by the Soviets as having this first strike capability. So that is the position of our Government. That is the position of the Chief Executive, the man who carries the load of the responsibility.

I say let us give him his program. Let us hold him to a position of responsibility, and by all means, let us not rock the boat. I hope this amendment, together with the other two which have already been defeated, will be defeated also.

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

Mr. STENNIS. I yield.

Mr. BUCKLEY. I should like to ask the Senator from Mississippi whether he can educate me as to what it was the President might have had in mind when, in his state of the world message, he asked the question, ought not the President of the United States to have some option other than launching a nuclear attack on the opponent's cities? Did he not mean the need to have some military opinions other than that for the launching of widely destructive nuclear weapons?

Mr. STENNIS. Mr. President, as I have just been arguing, as I understand it the President has the option now. We have the capacity. That is within his capability today. This is what he wants now, and we have given him all he wants in this field.

Mr. BUCKLEY. I appreciate the remarks of my distinguished colleague. I could give the other side of the coin, just as I have in the case of the earlier amendments, but in deference to the time of the Senate, I shall not extend my own remarks further; however, I understand the Senator from South Carolina would like to have some time.

The PRESIDING OFFICER. Does the Senator from Mississippi yield the floor?

Mr. STENNIS. Yes, I yield.

The PRESIDING OFFICER. Who yields time?

Mr. BUCKLEY. I yield 8 minutes to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, the amendment proposed by the junior Senator from New York would provide counterforce capability for the Poseidon system. There is more involved in the decision to provide this capability than simply adding more hardware to our defense setup. This amendment would fill-in an astounding gap in our defense strategy.

At the present time the enormous investment in our intercontinental ballistic missile system is based on the strategy of launching an attack on so-called soft targets, that is to say population centers of the Soviet Union. The theory behind this strategy is that this kind of targeting provides us with the second-strike capability to retaliate if we are fired upon. This is the so-called assured destruction strategy.

However, this strategy leaves the President with no option in a crisis situation except to destroy millions of civilians. It is argued that the Soviet Union would never launch a first strike because we, in effect, hold their urban population in hostage.

In my opinion, this kind of strategy does not affect Soviet planners in the way in which former Secretary McNamara's planners thought it would. From the Soviet point of view, such a strategy involving the potential killing of millions of people is irrational and close to madness. Soviet strategists have always maintained—in line with classic military strategic thinking—that prime emphasis should be given to attacking military targets, giving first priority of the weapons systems of the enemy. Evidence that this strategy is being followed is the well-known program for the construction of the gigantic SS9's, which are clearly counterforce weapons.

I cannot condone the Soviet strategy, but I must admit that there is a certain logic in it when they perceive our strategy as one that is irrational and contrary to reasonable strategic military thinking. One who thinks that his opponent is not acting according to reason conceivably would take all steps possible to provide for any eventuality. In my judgment, our failure to provide a counterforce capability—that is the capability for our missiles to hit hard targets such as ICBM silos—may have provoked the Soviets into starting the construction of their SS–9 program.

It is especially disturbing that our failure to provide a counterforce capability has come about by decision rather than because of our inability to do so. It is well known that the necessary technology is fully within the state of the art. What is necessary is simply to provide more accurate guidance systems.

This can be done fairly inexpensively when considered against the total cost of our Poseidon missile program. We have deliberately held back from increasing our missile accuracy on the specious grounds that an accurate weapon is provocative. But commonsense tells us that an enemy will always perceive any weak point in our system. Clearly, the low-accuracy, soft-targeted missiles which we now have are such a weak point. I would also like to point out that the strategy of so-called assured destruction runs contrary to the traditional Christian ethic, which always seeks to minimize injury to noncombatants. It is sometimes impossible to avoid hitting civilians in a war zone, but it strikes me as profoundly immoral to base a strategy upon the mass extinction of civilians when the capability to destroy purely military targets is a reasonable alternative within our grasp.

This point was made very clearly by the distinguished military strategist, Dr. Frank Armbruster, who is a defense analyst with the Hudson Institute and a consultant on defense to IDA, the Rand Corp., and the Department of Defense. Dr. Armbruster testified before a special House committee, headed by Congressman FLOYD SPENCE of South Carolina a few weeks ago. Dr. Armbruster spoke as follows:

> Apparently, according to Deputy Secretary Packard's statement a while ago, we are not concentrating on the best guidance for our warheads on our missiles that we could launch if we had to. I happen to think this is very bad because I believe perhaps one of the most, or perhaps the only morally justifiable target that you could have for a strike by nuclear weapon would be the other fellow's nuclear weapon. Yet here we take away the best capability these missiles have to disarm him by shooting at those weapons. This leaves us with a soft target force which is a very bad thing to have when you force the President into a crisis when all you can do is hit cities. It is even bad if you don't get guidance and we hit the weapons system anyhow because instead of having a few well guided warheads that can do a surgical strike, we throw in larger warheads that would throw out a fallout. So our whole posture is one which if the war should come, it is more horrible.

It is imperative, therefore, that we give the President sensible options in our defense strategy and that we approve the amendment proposed by the Senator from New York. The problems of providing accuracy for the Poseidon is, of course, much more difficult than providing the same accuracy from a solid land-based missile. This accounts for the fact that the appropriation is larger than proposed in the previous amendment. This is a reasonable amendment and I hope my colleagues will approve it.

The PRESIDING OFFICER. Who yields time?

Mr. BUCKLEY. I yield myself 2 minutes.

Mr. President, I thank the Senator from South Carolina for his very complete and thoughtful statement. He covered many aspects of this problem which I had omitted in my remarks. He brings to his presentation his years of experience as a member of the Senate Armed Services Committee.

I believe the Senator from South Carolina succeeded in underscoring, far more eloquently than I have been able, the moral issues that are involved here, of deliberately limiting our only response to one which would wipe out literally tens of millions of lives. This ought not be the only option available to this country if faced with a nuclear crisis.

I know that this debate has taken quite a while thus far, and as I have indicated, I have no desire to prolong it. I am prepared to yield back the remainder of my time, if the Senator from Mississippi is.

Mr. STENNIS. I yield myself 2 minutes.

Mr. President, let us not become confused about this research. We have a great abundance of money in here for research for the Navy. I have heard them make these arguments before. We have $103 million in here for research on ULMS, for example. Adequate research money is contained in many other places in the bill. We have never had anything like this amendment presented to our committee. The President does not want it. He would ask for it if he did. The Department of Defense never has communicated to us, even by grapevine, that they want this money. As a matter of fact, they disapprove of it specifically, in writing.

I repeat what I said a moment ago. Our accuracy is already sufficiently good to enable us to attack any kind of target we want and to avoid collateral damage to cities. That has been one of our major goals for years, and it is now one of our major achievements.

I know that we can argue on and on, ad infinitum, about research money. I just decline to go further on that. But I repeat that here is the position of the President of the United States. Here is his responsibility. The SALT talks are in progress. There are some signs of developments that are desirable. Certainly, the last thing we want to do is to have a recorded Senate vote on this subject that could be used in any way to cause concern, alarm, or distrust of our good faith and the President's good faith as he continues to carry on the talks. So I hope that this amendment will be rejected.

Let me thank the distinguished Senator from New York for raising these points and for presenting them in such a splendid fashion.

Mr. President, I yield back the remainder of my time.

Mr. BUCKLEY. Mr. President, just for the record let me state this one fact. What the distinguished Senator from Mississippi has just said may very well be true with respect to the Minuteman III guided missile system. My information is that with a Poseidon, it would take at least 11 warheads reliably to destroy a given Soviet silo, in the present state of accuracy, which suggests that 10 warheads would fall off target.

That is the sort of thing I have been hoping to avoid through these amendments.

I appreciate the Senator's concern. I

have done enough talking that can be fruitful and I therefore yield back the remainder of my time.

The PRESIDING OFFICER (Mr. CHILES). All time on this amendment has now been yielded back.

The question is on agreeing to the amendment (No. 449) of the Senator from New York (Mr. BUCKLEY).

On this question the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. THURMOND. On this vote I have a pair with the senior Senator from West Virginia (Mr. RANDOLPH). If he were present, he would vote "nay." If I were at liberty to vote, I would vote "yea." I therefore withhold my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Virginia (Mr. BYRD), the Senator from Nevada (Mr. CANNON), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Mexico (Mr. MONTOYA), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Missouri (Mr. SYMINGTON), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Montana (Mr. METCALF) are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey (Mr. WILLIAMS), the Senator from Missouri (Mr. SYMINGTON), and the Senator from New Mexico (Mr. MONTOYA) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Delaware (Mr. BOGGS), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. FANNIN), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business to attend the funeral of the late Congressman William O. Cowger.

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

The Senator from Kentucky (Mr. COOPER) is detained on official business.

If present and voting, the Senator from Delaware (Mr. BOGGS), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. FANNIN), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 12, nays 68, as follows:

[No. 252 Leg.]

YEAS—12

Allen	Dole	Hruska
Brock	Dominick	Scott
Buckley	Gurney	Smith
Cotton	Hansen	Young

NAYS—68

Aiken	Brooke	Ellender
Allott	Burdick	Ervin
Anderson	Byrd, W. Va.	Fong
Baker	Case	Fulbright
Bayh	Chiles	Gambrell
Beall	Church	Goldwater
Bennett	Cranston	Gravel
Bentsen	Eagleton	Griffin
Bible	Eastland	Hart
Hartke	McGee	Roth
Hatfield	McIntyre	Saxbe
Hughes	Miller	Schweiker
Humphrey	Mondale	Sparkman
Inouye	Moss	Spong
Jackson	Muskie	Stafford
Javits	Nelson	Stennis
Jordan, N.C.	Packwood	Stevens
Jordan, Idaho	Pastore	Stevenson
Kennedy	Pearson	Taft
Magnuson	Pell	Talmadge
Mansfield	Percy	Tunney
Mathias	Proxmire	Weicker
McClellan	Ribicoff	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY ANNOUNCED—1

Thurmond, for.

NOT VOTING—19

Bellmon	Fannin	Mundt
Boggs	Harris	Randolph
Byrd, Va.	Hollings	Symington
Cannon	Long	Tower
Cook	McGovern	Williams
Cooper	Metcalf	
Curtis	Montoya	

So Mr. BUCKLEY's amendment (No. 449) was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. SCOTT. Mr. President, will the distinguished Senator yield to me briefly?

Mr. STENNIS. I yield.

PROGRAM

Mr. SCOTT. Mr. President, I rise to ask the distinguished majority leader if he will tell us the plan for future business of the Senate.

Mr. MANSFIELD. Mr. President, I am delighted that the distinguished minority leader has raised that question. To the best of my knowledge, there will be no further rollcall votes or votes of any kind this afternoon.

The Senate will come in at 9 o'clock tomorrow morning, and after the leadership has been recognized, and the 30 minutes for morning business have expired, it is the intent then that the Senate will turn to the consideration of the Montoya amendment, on which there is a 3-hour limitation. The yeas and nays have been ordered on that amendment.

Following disposal of the Montoya amendment a rollcall vote will occur immediately on the Fulbright-McGee amendment.

Then, it is my understanding that the distinguished Senator from Maryland (Mr. MATHIAS) has indicated he might have an amendment tomorrow which, if it is offered, would come after the disposal of the Fulbright-McGee amendment.

There is also an amendment to be offered, I understand, by the distinguished Senator from Nebraska (Mr. CURTIS).

Both the Curtis amendment and the Mathias amendment will be limited to one-half hour each. If there are amendments to their amendments, they will be limited to 20 minutes each, the time to be equally divided. This time will come out of the 3 hours on the bill. So it is anticipated that somewhere around 4 o'clock tomorrow afternoon, more or less, we would reach the point of final passage on the pending bill, the Military Procurement Act.

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

Mr. MANSFIELD. I yield.

Mr. STENNIS. The 3 hours on the Montoya amendment might be lessened.

Mr. MANSFIELD. It could be.

Mr. STENNIS. I think the chances are that the time will be lessened.

Mr. MANSFIELD. That could be.

Mr. STENNIS. I thank the Senator for yielding.

Mr. MANSFIELD. Mr. President, I am glad the manager of the bill brought out that point. Hopefully the time can be lessened.

Then, on Thursday, if I may have the attention of the Senate, the pay resolution will be up, and I have been requested to ask unanimous consent that the Moss bill now before the Committee on Post Office and Civil Service, S. 2647, to be reported hopefully later today, be laid before the Senate and made the pending business on Thursday at the conclusion of the morning business.

Mr. SCOTT. Mr. President, reserving the right to object, I must, on behalf of certain Senators, object at this point.

The PRESIDING OFFICER. Objection is heard.

Mr. MANSFIELD. Then, Mr. President, I will have to leave the determination as to what will be done in the hands of the distinguished Senator from Utah (Mr. Moss) and in the hands of the Committee on Post Office and Civil Service which, I understand, is meeting later this afternoon.

However, I think it should be stated that because of the fact the time limit expires at midnight on Thursday, the pay resolution, which is privileged, will be brought up some time that day and I am fairly certain there will be a rollcall of some sort.

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

Mr. MANSFIELD. I yield.

Mr. MOSS. I thank the majority leader for yielding.

As the majority leader stated, the pay resolution is a privileged matter and can be brought on, and it must be disposed of on Thursday to have any effect at all because the time expires on Thursday at midnight.

Therefore I would think we ought to be able to get it before the Senator early in the day to enable the Senate to work its will.

I am a bit surprised that objection has been offered to considering this privileged matter when the majority leader asked for unanimous consent that it be made the pending business right after the morning hour.

The Committee on Post Office and Civil Service is meeting at 3 o'clock this afternoon and it is expected it will be reported at that time and, therefore, there will be a full legislative day between the time of reporting and before it comes up Thursday, and I hope we can get to the business of disposing of the matter on an up and down vote Thursday.

Mr. MANSFIELD. It is my understanding that the distinguished minority leader made his objection at the request of a Member.

Mr. SCOTT. It was indicated to me about 2 hours ago that someone would like it noted. I have so made it.

Mr. MANSFIELD. Mr. President, continuing, on Friday, there will be two appropriation measures before the Senate: The continuing resolution, which I understand from the distinguished chairman of the Committee on Appropriations, the Senator from Louisiana, will be ready.

Mr. ELLENDER. Both bills will be reported Thursday.

Mr. MANSFIELD. The continuing resolution would be to November 15.

Then there is the urgent supplemental having to do with payments to Vietnam veterans. The funds have run out having to do with the OEO program, and I understand this is of the highest priority and there is no difficulty attached thereto.

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

Mr. MANSFIELD. I yield.

Mr. SCOTT. I do not have any word from the distinguished ranking member of the Committee on Appropriations on that matter.

Mr. MANSFIELD. It is for unemployment of Vietnam veterans, primarily.

Mr. SCOTT. I express the hope the matter has been cleared with the ranking member of the committee, the Senator from North Dakota (Mr. YOUNG).

Mr. ELLENDER. He has been consulted and it is satisfactory to him.

Mr. MANSFIELD. Those two measures will be taken up Friday, and Calendar No. 382, S. 2482, a bill to authorize financial support for improvements in Indian education and for other purposes. It is my understanding as of this morning that a rollcall vote will be requested on S. 2482.

Then, if these measures are out of the way it is anticipated that the Senate, with its approval, will go over from Friday to Tuesday, at which time S. 1437, a bill to amend the Airport and Airway Development and Revenue Acts of 1970 will be laid before the Senate and made the pending business, to be followed by the District of Columbia home rule bill which will be reported tomorrow. It is possible there will be a rollcall or rollcall votes on both of these bills.

On Wednesday it is anticipated that the bill, Calendar No. 332, S. 215, a bill by the distinguished Senator from North Carolina (Mr. ERVIN), about which there is some controversy and to which some amendments will be offered, will be laid before the Senate and made the pending business.

I think following that we ought to keep in mind that the equal employment opportunity amendments should be reported around mid-October; that consumer legislation should be reported, hopefully, sometime in the latter part of next week; that the foreign aid bill should be ready next week.

That is about the immediate situation as I see it at this time.

Mr. SCOTT. Mr. President, if the distinguished Senator will further yield, I have been attending a session today of the Foreign Relations Committee. Efforts are going on to mark up that bill. I think it important that it be reported by the committee as soon as may be feasible.

I had understood earlier that the distinguished majority leader was giving some thought to calling up Calendar Nos. 383 to 387, inclusive, on Friday. Has that been changed?

Mr. MANSFIELD. No. I am delighted that the distinguished minority leader caught that, because I had forgotten it.

I understand, after talking with the distinguished chairman of the Committee on Agriculture and Forestry and the ranking Republican member, the Senator from Vermont (Mr. AIKEN), that these matters are not controversial and came out unanimously, and those, too, will be taken up on Friday, leaving the calendar pretty clear by the end of the week, if things go according to Hoyle.

Mr. SCOTT. Mr. President, I understand some of these measures relate to hoof and mouth disease, and that is in no way critical of this body. Is that correct?

Mr. MANSFIELD. Yes; nor of any country.

Mr. SCOTT. I thank the distinguished majority leader.

ORDER TO CONSIDER S. 2647 ON THURSDAY

Mr. MANSFIELD. Mr. President, as long as the distinguished chairman of the Committee on Post Office and Civil Service is here, I think I should call this to his attention, because it is a matter which comes within the ken of his responsibility.

Earlier I asked unanimous consent that S. 2647, the Moss bill, to be reported at a later hour, be laid before the Senate and made the pending business on Thursday next at the conclusion of morning business. The distinguished Senator from Utah was here, so he was aware of it. Objection was raised, but I think I should point out that the objection was made by request and not on the part of the Member of the Senate who objected.

ORDER THAT SENATE CONVENE AT 10 A.M. ON THURSDAY AND FRIDAY NEXT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate convenes on Thursday and Friday next, it convene at the hour of 10 a.m.

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

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE BUSINESS ON THURSDAY AND FRIDAY NEXT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, after the joint leadership is recognized, if it desires recognition, there be a period of not to exceed 30 minutes for the conduct of morning business, with a time limitation of 3 minutes for each Senator attached thereto.

The PRESIDING OFFICER. On each day?

Mr. MANSFIELD. No; this is for Thursday and Friday.

The PRESIDING OFFICER. Thursday and Friday.

Is there objection? Without objection, it is so ordered.

Mr. MANSFIELD. We will go over until Tuesday when we adjourn on Friday.

As of now, we have one special order on Thursday for the distinguished Senator from Florida (Mr. CHILES). If other requests are made, they will, of course, be honored, but, to the best of the leadership's knowledge at this time, that is the only request made up to the moment.

MILITARY PROCUREMENT AUTHORIZATIONS, 1972

The Senate continued with the consideration of the bill (H.R. 8687) to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that it be in order to order the yeas and nays on the Montoya amendment, which will be the next amendment to be considered.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the Montoya amendment.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, has the Senate received permission for the yeas and nays on final passage?

The PRESIDING OFFICER. No.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

RHODESIAN CHROME ORE AMENDMENT

Mr. McGEE. Mr. President, the opponents of the Rhodesian chrome ore amendment to section 503 of the military procurement bill have made much of the 1969 statement by Mr. Russell of the Office of Emergency Preparedness to the effect that there is no way to see the chromium ore needs of the United States being met without chrome ore from Rhodesia.

That is an interesting statement but is, of course, rather dated. It raises questions which, I believe, should be viewed in the light of equally expert and much more recent testimony on the same subject. I believe that my colleagues will, therefore, read with interest two excellent statements on the chrome situation which were made in June of this year before the House Foreign Affairs Committee, Subcommittee on International Organizations and Movements. One is by

Mr. Joseph B. Kyle, Director of the Office of International Commodities, Bureau of Economic Affairs, at the State Department. The other is by Mr. William N. Lawrence, Chief of the Stockpile Policy Division, Office of Emergency Preparedness.

These statements provide the most recent discussion of the chrome ore situation as viewed by responsible officials in the executive branch.

Also, I have received a statement from the Department of State that outlines the proof which we have that the Soviet Union is not involved in shipments of Rhodesian chrome to the United States, contrary to what the proponents of section 503 have indicated.

Mr. President, I request unanimous consent that these three statements be inserted in the RECORD.

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

STATEMENT OF JOSEPH B. KYLE, DIRECTOR, OFFICE OF INTERNATIONAL COMMODITIES, BUREAU OF ECONOMIC AFFAIRS, DEPARTMENT OF STATE

Mr. KYLE. Thank you, Mr. Chairman.

Mr. Chairman, members of the subcommittee, my name is Joseph B. Kyle. I am Director of the Office of International Commodities in the Department of State.

I will comment this afternoon on several aspects of the U.S. market for chrome as these relate to the Rhodesian sanctions program. My remarks will be directed toward a discussion of the supply and demand for chrome ore, the question of U.S. dependency on imports of chrome ore, and, lastly, the effect which a continuation of the sanctions program will have on supplies of chrome for our domestic metallurgical industry.

Chrome is one of the 12 Rhodesian products covered by the U.N. Security Council's decision of December 16, 1966, to impose selective mandatory economic sanctions against the British Colony of Southern Rhodesia.

There are three basic grades of chrome ore: metallurgical, refractory, and chemical grade. Of these, metallurgical grade ore accounts for two-thirds of U.S. consumption of chrome; it is an essential ingredient in the production of stainless steels.

Rhodesia possesses major reserves of metallurgical grade chromite as does the Soviet Union and Turkey. In the year 1965, prior to the imposition of sanctions, the United States imported 36 percent of its chromite for metallurgical uses from Southern Rhodesia and 35 percent from the Soviet Union.

Reserves of commercial exploitable chromite in the United States are insignificant and the process of beneficiation, or raising our low-grade deposits to a level of chrome concentration suitable for use in the metallurgical industry, would be inordinately expensive.

Thus, for all practical purposes, the United States is dependent upon imports to meet the domestic demand for metallurgical grade chrome ore.

I will now turn to a review of the world supply position in chrome. The major sources of supply traditionally have been the Soviet Union, South Africa, Turkey, and Southern Rhodesia. The Philippines supply much of our refractory grade chromite, and Iran, Pakistan, and India are residual suppliers of chrome ores.

World production of chrome from all sources is currently estimated to be between 5 and 5½ million short tons per year. U.S. consumption of all grades in 1970 was just under 1.4 million tons. Of this figure, consumption of metallurgical grade chrome was 900,000 tons, of which imports accounted for 98 percent, or 885,000 tons. Industry stocks of all grades of chrome ore at the end of 1970 were approximately 730,000 tons and at the end of the first quarter in 1971 stood higher at 800,000 tons. Thus, an increase in stocks of 70,000 tons has occurred since the end of the year, but in metallurgical grade chrome there has been an increase of 104,000 tons in stocks. The current chrome supply situation, therefore, suggests an approximate balance with U.S. demand requirements for 1971.

I might add parenthetically, the reason it went up 70,000 tons, yet metallurgical went up 104,000 tons, is because there has been a larger drawdown in the chemical grade.

With respect to U.S. imports of Soviet chrome ore, I would note that these purchases did not result solely from the imposition of Rhodesian sanctions nor, as I already have mentioned, does the Soviet Union enjoy a monopoly position in this market.

In the years immediately prior to sanctions, Rhodesia and the Soviet Union each accounted for about one-third of U.S. imports of metallurgical grade chromite. In the period since sanctions were imposed the United States has imported approximately 51 percent of its supplies from the U.S.S.R., while increasing its purchases from other producers such as Turkey and South Africa.

Soviet ore has traditionally brought premium prices because it is generally superior to ores from other sources, although problems frequently occur with these physical properties. It contains an average chromic oxide content of 54–56 percent and has a 4-to-1 chrome/iron ratio, whereas Rhodesian, Turkish, and Iranian chromes average 46–48 percent chromic oxide and have a 3-to-1 chrome-to-iron ratio.

Prices quoted for 1971 deliveries of metallurgical grade chrome by the principal producers reveal increases over 1970 quotations. However, there are difficulties in ascribing these price increases to any one factor or set of factors.

To begin with, significant price increases throughout the metallurgical industry have occurred in other raw materials during the past 4 years, most notably antimony, fluorspar, nickel, and tungsten. These increases have occurred because of strong demand for these important ores and inflationary trends in world prices.

Further, price differences between Soviet and Rhodesian chrome ore and between embargo and preembargo levels are not susceptible to close comparison. No current Rhodesian price is ascertainable, since Rhodesian chrome is not freely traded.

To compare 1971 Soviet ore prices with 1966 Rhodesian ore prices would be similarly misleading. While prices for Soviet chrome have doubled since 1966, lower quality chrome ores from other sources have also increased in price more or less proportionately to that for Soviet ore.

If I may return to a point made earlier, not only have purchases from the Soviet Union increased since sanctions were imposed, but our purchases from other sources have also risen. Higher prices for chrome ore have apparently stimulated greater production in chrome producing countries such as Turkey.

Since 1967, our imports of Turkish ore have more than doubled and in 1970 totaled 257,000 tons. In the period January–March 1971, chrome ore imports from Turkey amounted to over 108,000 tons, 67,000 tons of which was for metallurgical uses.

Should shipments from Turkey continue at this rate for the balance of 1971, Turkish chrome imports would be more than 400,000 tons for the year.

The rise in chrome ore prices has been a matter we have followed very closely. It is obvious that recent price increases reflect, in part, supply factors stemming from Rhodesian sanctions. However, I have attempted here to place these factors in the wider, and we think more accurate, perspective of a dynamic world market for raw materials in which many forces have been at work in recent years to increase costs.

With respect to continued supplies of chrome ore under the Rhodesian sanctions program, I would point out that chrome purchases in the United States are in the hands of private American firms and reflect private commercial decisions.

Within the metallurgical industry, there is wide variance in the position of companies due both to long-term purchase contracts and differing capability to utilize a wider mix of ores.

The matter of chrome ore supply in this country is kept under constant review by my office and other interested agencies within the executive branch. I would like to reiterate my earlier statement that in our opinion adequate supplies of chrome ore are available to American industry at the present time. While the supply condition could be characterized as tight, it is premature at this time to suggest that there is a shortage.

Thank you, Mr. Chairman.

Mr. FRASER. Thank you very much, Mr. Kyle.

Now we will hear from Mr. William N. Lawrence, Chief, Stockpile Policy Division, Office of Emergency Preparedness.

Mr. Lawrence.

STATEMENT OF WILLIAM N. LAWRENCE, CHIEF, STOCKPILE POLICY DIVISION, OFFICE OF EMERGENCY PREPAREDNESS

Mr. LAWRENCE. Thank you.

Mr. Chairman, and members of the subcommittee, my name is William N. Lawrence, Chief of the Stockpile Policy Division, Office of Emergency Preparedness. I have with me today, Mr. Louis Neeb.

The Office of Emergency Preparedness is charged with the responsibility for establishing policy guidance for the administration of strategic and critical material stockpiles.

These stockpiles are designed to assure that the United States avoids costly and dangerous dependence upon foreign sources of supply for critical materials during a period of national emergency.

To accomplish this, OEP conducts analyses of expected supply and requirements situations for various materials.

These analyses cover a 3-year emergency period beginning not less than 1 nor more than 2 years in the future.

Estimated requirements for the period are projected on an economic model for the time period and are based on the capacity of industry to consume, taking into account necessary wartime limitations, conservation and substitutions measures.

Estimates of supply for the mobilization period are based upon readily available capacity and normal resources in the United States and upon other countries considered by the Department of Defense to be accessible in wartime.

The quantities of foreign supply included in the analysis of the U.S. potential position during a period of emergency are adjusted to reflect uncertainties involved in depending upon supply from the various foreign countries. Such analyses include the relationship of the foreign country to the United States, its location, and the transportation and other problems involved in assuring that material would be physically available to the United States.

Stockpile policy planning activities are coordinated through the Interdepartmental

Materials Advisory Committee which include representatives of all the interested departments and agencies including the Departments of the Interior, Commerce, State, Agriculture, Defense, and Labor. Each of these departments is responsible for advising on the potential impact of stockpile policy actions upon their respective areas of responsibility. The Department of State is responsible for advising on international aspects of stockpile policy.

The Office of Emergency Preparedness approved a new review of the stockpile objective for metallurgical grade chromite on March 4, 1970. At that time the objective for this material was reduced from 3,650,000 short dry tons of chrome ore equivalent to approximately 3.1 million short dry tons of chrome ore equivalents.

In establishing the requirements and supply for this objective, ample allowance was made for any contingency that might arise in an emergency. This objective has been concurred in by the interested departments and agencies including the Department of Defense.

The primary reason for the chrome ore objective change was adoption of strategic guidance changes received in February 1970 from the Director of OEP. These changes include discontinuance of general application of concentration allowances for the domestic production facilities. Concentration allowances were previously included as protection against conventional attack on concentrated domestic production facilities. However, over the history of stockpile there have been no such attack and it seems to be useless inclusion into the stockpile objective. The only purpose it served was to increase it. The decrease in the objective had nothing to do with foreign supplies or foreign chromite.

As of June 1, 1971, the uncommitted stockpile inventory held by the General Services Administration was approximately 5,350,000 short dry tons of chrome ore equivalent. With an objective of 3,100,000 short dry tons of chrome ore equivalents, there remains in excess approximately 2,250,000 short dry tons of chrome ore equivalent. Of this quantity, approximately 44,000 short dry tons of chrome ore was approved for disposal under subspecification authority, and 900,000 short dry tons of low grade chrome ore was approved for disposal under the Defense Production Act Authority. Its chrome chemical content is such that it is not readily usable, particularly in present economic conditions.

The passage of S. 773, a bill now pending in the Senate, would provide disposal authority for all remaining excess metallurgical grade chromite ore equivalents.

Disposal authorities for excess stockpile materials are regularly requested so that we may minimize costs of the stockpile program to the taxpayers. Much of the excess chrome disposal authority now being requested was also requested in 1966. At that time industry opposed disposal authority for the upgraded chrome forms and the disposal authority passed, Public Law 89–415, dated May 1, 1966, was limited to disposal of ore.

STATEMENT ON THE QUESTION OF TRANSSHIPMENT VIA THE SOVIET UNION OF RHODESIAN CHROME ORES TO THE UNITED STATES

The U.S. Geological Survey recently analyzed seven samples of chrome ore selected at random by the U.S. Customs Department from shipments imported from the U.S.S.R. Of the seven samples analyzed, five were found to be physically, that is, texturally, unlike any Rhodesian ores known to the Geological Survey. This finding was confirmed by detailed chemical analysis conducted by two of these five samples. In these samples the ratios of titanium and iron to chrome were so markedly different from those found in Rhodesian chrome ores as to allow a positive confirmation of the physical analysis.

Under microscopic analysis, all chrome ores are crystalline in nature. However, in the Rhodesian ores the chromite typically forms fine-grained octahedral crystals. Only two of the samples of Soviet ore resembled Rhodesian in crystalline structure. These two samples were low-grade ore found in Soviet deposits in the Northern Urals containing less than 38% chromic oxide. The low-grade ore mentioned above is significantly lower in quality than any ore that has historically been exported from Rhodesia to the United States. Further, there is no evidence that the Rhodesians are presently exporting ore of this low quality.

Therefore, five of the seven Soviet samples examined were completely different in physical texture from Rhodesian ores and could not have come from any known Rhodesian deposits. With regard to the remaining two samples from the Soviet Union, it would make no economic sense for the Soviets to import high-grade Rhodesian chrome ore for mixing with this low-grade Soviet ore and further transshipment to the United States.

The conclusion of the U.S. Geological Survey was, therefore, that the Soviet Union is not involved in shipments of Rhodesian chrome to the United States, either in pure or commingled form.

ORDER TO HOLD AT DESK H.R. 10880, TO AMEND TITLE 38 OF THE UNITED STATES CODE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that H.R. 10880 be held at the desk pending the report to the Senate of a companion bill.

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

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum. I assume this will be the last 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.

ORDER TO LAY UNFINISHED BUSINESS BEFORE THE SENATE AT CONCLUSION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on tomorrow, at the close of routine morning business, the Chair lay before the Senate the unfinished business, that the Senate may then resume its consideration thereof.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 9 o'clock a.m. After the recognition of the two leaders under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes, and in the order stated: Mr. BENTSEN and Mr. BYRD of Virginia.

At the conclusion of the orders for the recognition of Senators, there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements limited therein to 3 minutes. At the conclusion of morning business, the Senate will resume its consideration of the unfinished business, H.R. 8687, and the pending question at that time will be the amendment by Mr. MONTOYA, amendment No. 419, on which there is a time limitation of 3 hours. As was indicated a little while ago by the disinguished manager of the bill, and the distinguished majority leader, it is quite possible, and even probable, that the time on the Montoya amendment will be reduced somewhat.

Following the vote on the Montoya amendment, a rollcall vote having already been ordered, there will immediately be, and without debate, a rollcall vote, which is automatic, on the amendment by Mr. FULBRIGHT, amendment No. 438, dealing with Rhodesian chrome ore.

Following the vote on the amendment of Mr. FULBRIGHT, debate on the bill will be limited to 3 hours, and amendments may be offered during that period. Time on each such amendment will be limited to 30 minutes, and on amendments in the second degree to 20 minutes, with the time on any amendments to come out of the time allotted to the bill.

At the conclusion of the time allotted, the Senate will proceed, by rollcall vote, to final passage of the military procurement bill, H.R. 8687.

ADJOURNMENT UNTIL 9 A.M.

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9 a.m. tomorrow.

The motion was agreed to; and (at 2 o'clock and 40 minutes p.m.) the Senate adjourned until tomorrow, Wednesday, October 6, 1971, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate October 5, 1971:

DEPARTMENT OF JUSTICE

Thomas E. Ferrandina, of New York, to be U.S. marshal for the southern district of New York for the term of 4 years, vice Anthony R. Marasco, term expired.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 5, 1971:

IN THE COAST GUARD

The nominations beginning Klaus Addie, to be lieutenant (junior grade), and ending John Rice, to be lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 29, 1971.