stated with utmost candor in the Kerner Report:

"This is our basic conclusion: Our nation is moving toward two societies, one black, one white—separate and unequal.

"Reaction to last summer's disorders has quickened the movement and deepened the division. Discrimination and segregation have long permeated much of American life; they now threaten the future of every American.

"The deepening racial division is not inevitable. The movement apart can be reversed. Choice is still possible. Our principal task is to define that choice and to press for a national resolution."

Forty-three men, both black and white, prisoners and guards, died at Attica this September.

Attica was emphatically not a racial confrontation so far as the relationship of the inmates with each other was concerned. White prisoners were as deeply involved as were blacks and Puerto Ricans. There was unparalleled unity * * * the prisoners. But to the extent that a very large number of the inmates were black, and most, certainly, came from disadvantaged backgrounds, regardless of race or ethnic background, the problems analyzed in the Kerner Report are the ones which explain how these inmates came to be in prison, and why their feeling of utter frustration and degrading loss of human dignity erupted into the confrontation which cost so many lives.

The lessons of the Kerner Report cannot be ignored much longer.

SENATE—*Monday, December 6, 1971*

(Legislative day of Saturday, December 4, 1971)

The Senate met at 10 a.m., on the expiration of the recess, 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:

O Thou King of Kings and Lord of Lords, our Creator and our Judge, we thank Thee for the season of great expectation and for Thy first advent. Keep us ready in our worship and our work for any sudden divine appearance when Thou shalt come to judge the world. O Lord make us strong but gentle, thorough in discipline but gracious in bearing, resolute in purpose, impatient with evil, and merciful toward all people. Keep alive the radiant hope when all men shall seek first the kingdom of God and His righteousness. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Saturday, December 4, 1971, be approved.

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 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 under the Department of the Treasury, as reported to the Senate last Friday. They have evidently been cleared all the way around. There is no "hold" on them, so I call them up.

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

The PRESIDENT pro tempore. The nominations on the Executive Calendar, under the Department of the Treasury, will be stated.

The second assistant legislative clerk read the nomination of Romana Acosta Banuelos, of California, to be Treasurer of the United States.

The PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

The second assistant legislative clerk read the nomination of Edgar R. Fiedler, of New York, to be an Assistant Secretary of the Treasury.

The PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed; and, without objection, the President will be immediately notified of the confirmation of these two 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.

WEATHER MODIFICATION REPORTING

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 519, H.R. 6893.

The PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

H.R. 6893, to provide for the reporting of weather modification activities to the Federal Government.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to the consideration of the bill, which had been reported from the Committee on Commerce with amendments on page 1, line 10, after the word "nonprofit", strike out "which" and insert "who"; in the same line, after the word "is", strike out "not"; on page 2, line 1, after the word "activities", insert "except where acting solely"; in line 3, after the word "any", strike out "intentional, artificially produced change" and insert "activity performed with the intention of producing artificial changes"; at the top of page 3, insert:

(c) In carrying out the provisions of this section, the Secretary shall not disclose any information referred to in section 1905 of title 18, United States Code, and is otherwise unavailable to the public, except that such information shall be disclosed—

(1) to other Federal Government departments, agencies, and officials for official use upon request;

(2) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding; and

(3) to the public if necessary to protect their health and safety.

And, at the beginning of line 14, insert "whose activities relate to weather modification".

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–537), explaining the purposes of the measure.

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

PURPOSE

The purpose of the legislation is to require all persons engaged in nonfederally sponsored weather modification activities in the United States to report those activities to the Secretary of Commerce.

BACKGROUND AND NEED

Field experiments in scientific weather modification were first attempted in 1946. During the past 25 years basic research in the field has brought scientific weather modification to an operational state in the areas of precipitation augmentation and supercooled fog dispersal. The areas of destructive storm modification, hail and lightning suppression, warm fog dispersal, and more accurate weather prediction methods have also progressed dramatically.

In 1958 the National Science Foundation was given the authority by Public Law 85–510 to require persons engaging in weather modification activities to report such activities. They were also given the responsibility to set up a program of research and evaluation in weather modification and make annual reports on their findings to the Congress and the President. Ten years later in 1968, Congress enacted Public Law 90–407, which repealed the powers of the National Science Foundation to require persons to report all weather modification activities. Since then, no other Federal department or agency has been given that authority.

At present there exists no central information source to provide a complete picture of the " state of the art" in weather modification. Since the expertise in this field, like so many scientific endeavors, is created through an eclectic process, a central information source to which all scientists and environmentalists can refer to in order (1) to compare their results against those of others, (2) to prevent unnecessary duplication of re-

search, (3) to check undesirable atmospheric changes against records of weather modification activities, and (4) to prevent territorial overlapping of weather modification operations, is necessary. Enactment of H.R. 6893 would help solve these problems by allowing the Department of Commerce to keep records of all weather modification activities in the United States.

This legislation in no way attempts to control or regulate any weather modification activities on a Federal or State level. The regulation of weather modification activities is, at present, in the hands of State and local jurisdictions. At present, only the State of Maryland prohibits any form of weather modification activities and 28 other States have statutes concerning reporting and licensing thereof.

The main concern of this legislation is to create an information-gathering mechanism. Such an information source will also provide means for assisting in the administration and enforcement of State statutes.

At present, with no reporting requirement in existence, it is possible that large sums of money are being expended on research that could produce far more accurate results if data were more easily accessible on other research projects that may possibly be territorially convergent. To develop a capacity to modify atmospheric conditions successfully it is imperative that long-range "mapping" of those conditions, as well as development of new theories of air quality, be done. For a scientist to predict his results accurately he must be able to include all of the variables in his equations. While many of those variables remain unknown, his percentage of error remains large. If we are to establish guidelines eventually for environmental protection and damage control in weather modification, we must now construct an archive to record those variables as they are discovered.

The United States, as the most advanced technological country in the history of the world, is beginning to realize the dire need to facilitate some form of social management of its technology. As scientific expertise and operational capabilities grow in the field of weather modification we must develop responsible, and yet not unduly repressive, public policies thereto. An accurate and complete data bank in this field is an essential element in the construction of such policy.

LEGISLATIVE BACKGROUND

Recognizing the need to require reporting of weather modification activities to the Federal Government, Senator Magnuson introduced S. 1258, the companion bill of H.R. 6893, on March 16, 1971, at the request of the Department of Commerce. The bill was referred to the Committee on Commerce. No action was taken on S. 1258 while awaiting hearings, debate, and passage of the companion bill in the House or Representatives. After the House passed H.R. 6893, the committee held no hearings, but discussed the bill in two executive sessions of the full committee. The committee ordered the bill reported favorably, with amendments, on November 23, 1971. Most of these amendments were suggested by the General Counsel of the Department of Commerce in his letter of November 12, 1971, a copy of which appears hereafter under "Departmental Reports."

COMMITTEE AMENDMENTS AND SECTION-BY-SECTION ANALYSIS

The first unnumbered section defines the terms "Secretary" (which means the Secretary of Commerce), "person," "weather modification," and "United States."

The first committee amendment redefined the term "person" to clarify that the only people excepted from the reporting requirements of the act are those "acting solely as an employee, agent, or independent contractor of the Federal Government." As originally defined the term excepted those who are concurrently engaged in weather modification activities on their own behalf and on behalf of the Government. Insertion of the word "solely" limits exceptions from the reporting requirements to Federal departments, agencies, employees, and those contractors whose sole weather modification activity is on behalf of the Federal Government.

The second committee amendment redefines "weather modification," to mean any activity performed with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere. As amended the definition excludes inadvertent weather modification, such as might result from discharge of particle-laden smoke from a factory chimney.

Section 2 requires any person engaging or attempting to engage in weather modification activities in the United States to submit reports prescribed by the Secretary of Commerce. The third committee amendment would permit the Secretary to require reports during, as well as before and after weather modification activities. In some cases weather modification activities may extend over a prolonged period. To insure adequate reporting, it is desirable to permit the Secretary to require reports during such prolonged periods of weather modification activity. Only departments and agencies of the United States, and their contractors, would not be subject to the reporting requirements of this act. However, such departments, agencies, and contractors would be required to detail their weather modification activities and evaluate the environmental impact of those activities pursuant to section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Under section 3 the Secretary is required to keep records of weather modification activities in the United States, and periodically to publish summaries of them. The Secretary is also required to make all reports, documents, and other information he receives under this act available to the public to the fullest practicable extent.

The fourth committee amendment adds a new subsection (c) to section 3 and provides specifically how reports, documents, and other information received by the Secretary will be made available to the public "to the fullest practicable extent" as required in section 3(b). The subsection relates to trade secrets and other proprietary information, and is intended to clarify and protect the legitimate rights of owners of such information and to provide for full use of such material within the Federal Government. The subsection provides that such information shall be disclosed (1) to other Federal Government departments, agencies, and officials for official use upon request; (2) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and (3) to the public if necessary to protect their health and safety.

Section 4 defines the processes the Secretary may use to obtain information on weather modification activities. The fifth and final committee amendment applies the provisions of the section to any person whose activities relate to weather modification. Under this amendment the Secretary would have access, as necessary, to the records of persons who are collaterally involved in weather modification, such as suppliers of equipment and chemicals to a weather modifier. On the other hand, it would place bounds on the power of the Secretary by requiring that there be some reasonable relationship between the records and weather modification activities.

Section 5 sets a maximum fine of $10,000 for knowing and willful violation of section 2 of any rule issued under the act.

Section 6 authorizes $150,000 to be appropriated for the fiscal year ending June 30, 1972, and $200,000 each for the fiscal years ending June 30, 1973, and June 30, 1974, to carry out the provisions of the act.

ESTIMATED COST OF THE LEGISLATION

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91–510), the committee estimates that the cost of H.R. 6893 to be $150,000 for fiscal year 1972 and $200,000 each for fiscal years 1973 and 1974. Cost estimates are not made for succeeding fiscal years since the appropriation authorization terminates after the fiscal year ending June 30, 1974.

The committee is not aware of any estimates of costs made by any Federal agency which are different from those made by the committee.

WAIVER OF THE CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the legislative calendar, under rule VIII, be dispensed with as it applies to unobjected-to measures.

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

THE INDIA-PAKISTAN WAR

Mr. SCOTT. Mr. President, the war between India and Pakistan is deplorable. I have twice on the floor of the Senate urged Senators to maintain strict neutrality. I repeat that. We are, of course, disappointed in the veto in the United Nations, in view of the large number of members of the Security Council who obviously wanted to do what they could to bring a restoration of peaceful relationships.

Our economic program in that area is being reviewed, although, of course, this does not apply to our humanitarian efforts, which are greater than all the efforts of other nations combined.

The important thing for all of us to remember, I think, is not to take sides, not to involve this controversy in legislative debate, and to hope that within or without the United Nations ways to peace can be explored and, hopefully, discovered.

So I again repeat my hope that the United States will not become involved in South Asia and in this unfortunate conflict, that it will be remembered that our services as a peacemaker are always available, and that the best chance for peace lies through the collective action of many nations.

Mr. MANSFIELD. If the distinguished minority leader will yield, just for the purpose of saying that I concur completely with what he has said and I compliment him for his initiative.

Mr. SCOTT. I thank the distinguished majority leader.

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, not to exceed 30 minutes, with statements therein limited to 3 minutes.

Is there morning business?

The Senator from Maryland is recognized.

(The remarks of Mr. BEALL when he introduced Senate Joint Resolution 181 are printed in the RECORD under State-

ments on Introduced Bills and Joint Resolutions.)

NOTICE OF PHOTOGRAPH TO BE TAKEN OF THE SENATE IN SESSION ON THURSDAY, DECEMBER 9, 1971, AT 3 P.M.

Mr. SCOTT. Mr. President, for the benefit of all Senators, at 3 p.m. on Thursday next, December 9, a photograph will be taken of the Senate Chamber, with the Senators in attendance at that time.

It is hoped that Senators will make their plans accordingly in order to be present for this photograph.

I make this statement at this time on the record so that all Senators may be duly apprised and may proceed accordingly.

I thank the Chair.

THE U.N. SECURITY COUNCIL VETO BY THE SOVIET UNION

Mr. BYRD of West Virginia. Mr. President, last Wednesday, December 1, I expressed apprehension that the India-Pakistan quarrel seemed to be headed in the direction of all-out war, and I called for positive action by the United Nations to avert what promised to be a bloodbath.

Though reports from India and Pakistan are still conflicting, it seems certain that my worst fears have been realized and caution on both sides has been thrown to the winds. According to radio reports this morning, the Government of India has officially recognized the Bangla Desh as the government of East Pakistan—a move certain to infuriate the Pakistanis and add fuel to the fires of war.

The attempt last night by the Security Council of the United Nations to adopt a resolution calling for a cease-fire was vetoed by the Soviet Union. While it is by no means certain that India and Pakistan would have heeded such a resolution, it seems to me unforgivable and reprehensible that the Soviet Union should use the veto to ruin whatever chance there was of ending the hostilities.

I can only express the hope, Mr. President, that this negative action by the Russians will be regarded by the world body as the obstructionism that it is and that further efforts will be made to persuade India and Pakistan to stop the bloodletting and settle their differences by intelligent negotiation.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

(The remarks of Mr. SPONG when he introduced S. 2952 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

(The remarks of Mr. CURTIS when he submitted Senate Resolution 208 are printed in the RECORD under Submission of a Senate Resolution.)

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of calendar order Nos. 518, 520, 522, and 524.

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

AUTHORIZATION FOR RESTORATION, RECONSTRUCTION, AND EXHIBITION OF THE GUNBOAT "CAIRO"

The Senate proceeded to consider the bill (S. 1475) to authorize the Secretary of the Interior to provide for the restoration, reconstruction, and exhibition of the gunboat *Cairo*, and for other purposes which had been reported from the Committee on Interior and Insular Affairs with an amendment. On page 2, at the beginning of line 10, strike out "such sums as may be necessary" and insert "$2,481,000"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to preserve an object having national significance as part of the history of the Civil War, for the benefit and inspiration of the people of the United States, the Secretary of the Interior (hereinafter referred to as he "Secretary") shall, in such manner as he deems advisable, utilize the authorities contained in the Act of August 21, 1935 (49 Stat. 666) to provide for the restoration, and reconstruction of the gunboat "Cairo," formerly of the Union Navy, sunk in action in the Yazoo River, Mississippi, and for its exhibition at the Vicksburg National Military Park.

SEC. 2. At such time as the restoration and reconstruction of the "Cairo" shall have been completed, and it has been located within the boundaries of the Vicksburg National Military Park, the "Cairo" shall be administered in accordance with all laws, rules, and regulations applicable to such park.

SEC. 3. There are hereby authorized to be appropriated $2,481,000 to carry out the purposes of this Act.

Mr. STENNIS. Mr. President, I rise to urge passage of S. 1475 which authorizes the Secretary of the Interior to provide for the restoration, reconstruction and exhibition of the gun boat *Cairo*. This will enable the display of a famous U.S. Navy vessel which has a colorful and remarkable history. It authorizes the expenditure of $2,481,000 to restore the ship and to construct a building to house certain artifacts taken from it.

The Union gunboat *Cairo* was sunk by naval torpedoes in the Yazoo River, Miss., during the siege of Vicksburg in 1862. It sank quickly—with its cargo, weapons, equipment, and fittings almost intact. It was covered deeply by silt, and for over 100 years was preserved with remarkably little deterioration. It was raised during the period 1960 to 1963, with money contributed privately by interested individuals together with county and State funds. It is now at the shipyard at Pascagoula, where intensive care is necessary to prevent deterioration prior to restoration.

The Department of the Interior has looked carefully at the gunboat, and concludes that it is restorable, and would be a very valuable adjunct to the National Military Park at Vicksburg, as a naval museum. It is estimated that visitation to the *Cairo* would be heavy, and that the income to the Federal Treasury from additional admission fees would be applied toward amortizing the initial investment as well as covering operating costs.

This historic vessel, with its many artifacts, will be a unique exhibit of great historic value. The vast numbers of Americans, from all areas of our country, who visit it in the years to come will have a highly interesting and educational experience in viewing this chapter from our Nation's past.

Mr. President, I am informed by persons expert in this field that the gunboat *Cairo* and its artifacts constitute new source material to such a degree that they will be essential references for students and historians working in the fields of naval history, naval architecture, and the history of the War Between the States.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–533), explaining the purposes of the measure.

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

PURPOSE

To display, for the benefit and education of the visiting public, a restoration of the original gunboat, using as much of the original wood and metal as possible, and certain significant artifacts recovered in the salvage operation. The gunboat and artifacts will be displayed in a visitor-center type construction near the National Cemetery in Vicksburg National Military Park, on the Park's one-way tour route, almost within sight of the spot from which it was recovered. The building would contain, in addition to the display room, storage space to house and protect the extensive and valuable collection of artifacts salvaged with the vessel, an office for the curator and interpretive staff, rest rooms for the public, and a small auditorium for presentation of a short motion picture relating the *Cairo* to the war on the Mississippi and to Vicksburg, as well as such other areas as Shiloh and Fort Donelson.

HISTORICAL BACKGROUND

One month before *Virginia* and *Monitor* were commissioned, and seven weeks before they fought their epic battle in Hampton Roads, the first seven ironclads built in the Western Hemisphere were commissioned at Cairo, Illinois. They were the "city class" gunboats, one of which was the *Cairo*. On February 6, 1862, five weeks before the Hampton Roads battle, they proved their worth by bombarding the Confederate stronghold of Fort Henry into surrender.

In the following months, the Mississippi Squadron, of which these ironclads were the core, cooperated closely with General Grant's army at Fort Donelson, Shiloh, and in the Vicksburg Campaign. The object of these campaigns was to regain control of the lower Mississippi and split the Confederacy.

Cairo and her sister ships, along with other vessels of the Mississippi Squadron, insured the success of General Grant's campaign. Without them, Grant would have been unable to supply his army as it knifed through the Confederacy, and hammered at Vicksburg.

The manner by which *Cairo* was sent to the bottom of the Yazoo helps to illustrate Winston Churchill's statement that the Civil War was the first modern war. Many technological innovations were introduced in the Civil War, and two of the more important of these were involved in the *Cairo* story—the ironclad warship and the submarine mine or torpedo, as it was called in the 1860s. On December 12, 1862, *Cairo* became the first warship in history to be sunk by mines.

For 93 years the *Cairo* lay buried in the mud of the Yazoo River. Then in 1956, after several previous efforts had failed, the boat was located, and thereafter raised. Not only was the sinking itself an event of historic significance, but the degree of preservation of the boat, and the artifacts and relics aboard it have afforded an outstanding opportunity for the study and presentation of naval history and practices. No other armored gunboat survives to illustrate the exact design and construction of this important innovation in naval warfare, and documentation is both incomplete and inaccurate.

The boat was raised through the efforts of the State of Mississippi, the City of Vicksburg and Warren County. Initially, it was believed that the boat could be restored and displayed at Vicksburg. However, facilities were unsuitable for such an undertaking and, in 1965, the remains of the boat were shipped to the yards of the Ingalls Shipbuilding Corporation, Pascagoula, Mississippi. Since that time, the State of Mississippi has been paying for storage and continuing preservation costs. Pursuant to a 1965 agreement with the Warren County Board of Supervisors, the National Park Service has had custody of the artifacts, some of which are at Vicksburg National Military Park, and some of which are at the museum facility at Springfield, Virginia. In 1966, the State, which had obtained title to the boat from the Treasury Department, determined that it had neither funds nor facilities to effect the restoration, and thereafter offered it to the United States.

NEED

Cairo is the only one of the first seven ironclads which is still in existence.

"The . . . gunboat . . ., and the objects recovered with it, comprise a unique document for the study and presentation of naval history and practices. No other armored gunboat survives to illustrate the exact design and construction of this important innovation in naval warfare, and the written and pictorial documentation is both incomplete and inaccurate. The artifacts found aboard the boat offer for the first time the opportunity to visualize and comprehend in depth the activities and practices aboard a commissioned vessel of the period. Some of these objects are well known and immediately recognizable to students because similar pieces have survived from other sources. Other objects can be recognized because their existence was known from documentary sources even though no actual specimens had been found prior to the recovery of those aboard the *Cairo*.

COSTS

The Senate Subcommittee on Parks and Recreation took the position that a full-size replica of the gunboat "Cairo" would be the most desirable and practical manner in which to display this spectacular Civil War memorial. Their reasoning was that a controlled atmosphere building to house the vessel was too expensive. Also they felt that such a restoration would be vulnerable to both time and usage.

A replica of the boat on the other hand, constructed mainly of new timbers and using as much of the old material as practical, would be much more durable. It is conceivable that the vessel could be situated on dry land or in the nearby river.

The exhibit structure would be considerably reduced in size, with the temperature and humidity control requirements much less exacting. This smaller building would be for interpretation, display, and storage of artifacts and for visitor facilities.

It is estimated that this lesser scope structure would cost approximately $300,000. Therefore, a breakdown of the estimated cost for this proposal is as follows:

Roads and trails:	
Entrance drive, parking for 100 cars, and walks	$200,000
Ship approach route to landberthing site, grade and repair existing road	60,000
Buildings, utilities, and miscellaneous:	
Water, sewer, power and telephone	81,000
Structure for interpretation, exhibits, artifacts storage and visitor facilities	300,000
Construction of full-size replica of ship	1,500,000
Interpretive exhibits	120,000
Security fencing	40,000
Dredging for landing of ship	130,000
Planting and grounds improvements	130,000
Grand total	2,481,000

The estimated annual maintenance ranges from a low of $85,000 to a high of $100,000.

AMENDMENT

The final cost figure arrived at in the bill ($2,481,000) was the result of discussions and deliberations on the part of the Committee and representatives of the National Park Service. Again, the Committee concluded that the original figure of $4,490,000, including over $2 million for the exhibit storage building, was excessive.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

NAVAJO COMMUNITY COLLEGE ACT

The bill (H.R. 5068) to authorize grants for the Navajo Community College, and for other purposes was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-548), explaining the purposes of the measure.

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

PURPOSE

The purpose of H.R. 5068 is to authorize a Federal financial contribution to the construction and operation of the Navajo Community College, which is a college established and operated by the Navajo Tribe. The Committee also considered a similar bill, S. 2250, introduced by Senators Anderson, Fannin, Goldwater and Montoya.

EXPLANATION

The bill as amended by the committee authorizes the appropriation of $5.5 million as a grant to the Navajo Tribe to assist the tribe in the construction of the college. The bill also authorizes the appropriation of an annual sum as a grant to the Navajo Tribe to assist in the operation and maintenance of the college. The latter sum may not exceed the average amount of the per capita contribution made by the Federal Government to the education of Indian students at federally operated institutions of the same type.

The Navajo Community College is the first college established on an Indian reservation, and it is the only college established and operated by an Indian tribe.

The college has been in operation since January 1969. It is presently using available space in the Many Farms High School building, which is a Federal school located on the reservation. Construction of the college buildings has begun, however, and construction will be undertaken in three stages as funds are available.

The total estimated cost of construction, and the anticipated sources of funds, are as follows:

Housing and Urban Development ($2,600,000 presently committed)	$5,500,000
Bureau of Indian Affairs	5,500,000
Navajo Tribe	1,000,000
Economic Development Administration	3,000,000
Industry and individuals ($700,000 presently committed)	1,000,000
Foundations ($280,000 presently committed)	1,000,000
Total	17,000,000

The annual cost of operation will vary with the number of students that are enrolled. The tribe has asked the Bureau of Indian Affairs to contribute $1,200,000 based on an enrollment of 400 students, and $3,360,000 based on an enrollment of 1,500 students. Both of these figures are within the formula adopted by the committee. The average per capita cost for Indian students attending three schools of higher learning that are operated by the Bureau of Indian Affairs is $3,700.

The Office of Economic Opportunity contributed the major portion of the funds used for the operation of the college to the present time. The grants totaled $2,292,899, and they were made as a part of a demonstration and research program. The OEO's evaluation is that the demonstration was a success, that the college is functioning, and that it should be continued on a permanent basis.

The Navajo Community College is different from the ordinary community college. It is tailored to meet the unique needs of the Navajo people, adults as well as children. The student body includes people of all ages, and the curriculum includes academic, vocational, and adult education subjects. The college is intended to supplement, and not be a substitute for, other college opportunities. Some students may prefer to attend off-reservation colleges. Some of them may prefer to start at the community college and continue elsewhere. Others will not wish to leave the reservation and will want an education fitted to their reservation way of life.

Enactment of the bill bill involve the appropriation of $5,500,000 for construction money in fiscal years 1973 and 1974; and the appropriation of annual sums for the operation of the college that would not exceed $5,500,000 per year on the basis of present cost figures. For purposes of comparison, it should be noted that in connection with the elementary and secondary educational programs on the Navajo Reservation the Federal Government has spent more than $117,500,000 for construction during the past 10 years, and the current operation expense is more than $53 million per year. The proposed expenditures for the Navajo Community College are modest in comparison.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs recommend that the bill be enacted.

CERTAIN FEDERALLY OWNED LANDS HELD BY THE UNITED STATES IN TRUST FOR THE PAIUTE-SHOSHONE TRIBE OF THE FALLON RESERVATION AND FALLON COLONY, NEVADA

The bill (S. 1115) to declare that certain federally owned lands are held by the United States in trust for the Paiute-Shoshone Tribe of the Fallon Reservation and Fallon Colony, Nevada, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right, title, and interest of the United States in land described as the south half northwest quarter northwest quarter and the southwest quarter northwest quarter section 29, township 19 north, range 29 east, Mount Diablo meridian, Nevada, is hereby declared to be held by the United States in trust for the Paiute-Shoshone Tribe of the Fallon Reservation and Fallon Colony, Nevada, subject to the right of the United States to use, without compensation, for so long as necessary, as determined by the Secretary of the Interior, four acres, more or less, of such land for irrigation canal purposes.

SEC. 2. The Indian Claims Commission is directed to determine in accordance with the provisions of section 2 of the Act of August 13, 1946 (60 Stat. 1050), the extent of which the value of the beneficial interest conveyed by this Act should or should not be set off against any claim against the United States determined by the Commission.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–541), explaining the purposes of the measure.

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

PURPOSE

The bill provides that two tracts of public domain land will be held in trust for the Paiute-Shoshone Tribe of the Fallon Reservation and Fallon Colony, Nev., subject to the right of the United States to use, without compensation, for so long as necessary, as determined by the Secretary of the Interior, 4 acres for irrigation canal purposes. It further provides that the Indian Claims Commission will determine the extent to which the value of the trust title conveyed should or should not be set off against any claim against the United States Government determined by the Commission.

One tract of this land contains 40 acres and the other 20 acres. The Fallon Colony is involved in certain improvement projects, and this legislation will provide a land base that will enable the Indians to participate in a much-needed Mutual-Help Housing program.

BACKGROUND

This land has been the home of these Indians for more than 50 years. The 40-acre tract was eliminated from a Reclamation withdrawal and reserved on August 23, 1971, for the benefit of the Indians who at the time were occupying part of the tract and were earning their livelihood in and around the town of Fallon, Nevada. Subsequently, some of the Indians by mistake constructed their homes on the 20-acre tract described in the bill which is contiguous to the north boundary of the 40-acre parcel. This 20-acre tract was withdrawn from further entry on March 14, 1958, in aid of legislation. These two parcels comprise the Fallon Colony.

The Indians are mostly Paiute and a few Shoshone. Some 12 miles to the west another group of Indians live on their allotments on the Fallon Reservation. They, together with the colony Indians, have organized and have a common construction and bylaws. They are known as the Paiute-Shoshone Tribe of the Fallon Reservation and Colony.

The Fallon Colony is an established community of 45 Indians. These Indians have brought electricity and water to their settlement at their own expense.

There are 16 homes located on approximately 25 acres of the 40-acre tract. Eleven acres are under subjugation with water deliveries from the Truckee-Carson Irrigation Project. This parcel is under lease to a member of the Fallon Reservation. Approximately, 4 acres are in the Truckee-Carson Irrigation District's irrigation canal that bisects the property. There are 11 homes on the 20-acre parcel.

The 28 buildings located on the property are classified from good to poor with a value of $85,000. Most of these buildings have been constructed and are maintained by the Indians at their own expense. The land described in the proposal has a current market value of $31,000.

About 90 percent of the Indians of the Colony earn their livelihood working in and around the town of Fallon; therefore, if they were required to move, in order to take advantage of the Mutual Help Housing program, it would mean a considerable hardship to them. There appears to be no use for this property that would surpass the Indians' need for it, nor is there any other property available for their housing program.

Even though there is some tribal land remaining on the Fallon Reservation, all of the good land has been allotted and that remaining would not be desirable for a housing project.

NEED

The Indians of the Fallon Colony have an application before the Housing Assistance Administration for 40 units of Mutual-Help Housing. Up to this time, six new concrete block houses, two mobile homes, and an addition to the church building have been completed. A necessary prerequisite to this housing program is that the Indians have vested property rights in the land, which will be accomplished by this legislation.

COST

No additional expenditure of Federal funds will result from the enactment of S. 1115.

THE SALE AND EXCHANGE OF CERTAIN LANDS ON THE COEUR D'ALENE INDIAN RESERVATION

The bill (S. 345) to authorize the sale and exchange of certain lands on the Coeur d'Alene Indian Reservation, and for other purposes was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of effecting consolidations of land situated within the Coeur d'Alene Indian Reservation in the State of Idaho into the ownership of the Coeur d'Alene Tribe and its individual members and for the purpose of attaining and preserving an economic land use for Indian use, alleviating problems of Indian heirship and assisting in the productive leasing, disposition, and other use of tribal and individually allotted lands on the Coeur d'Alene Reservation, the Secretary of the Interior is authorized in his discretion to:

(1) Sell or approve sales of any tribal trust lands, any interest therein, or improvements thereon.

(2) Exchange any tribal trust lands, including interests therein or improvements thereon, for any lands or interests in lands situated within such reservation.

SEC. 2. The acquisition, sale, and exchange of lands for the Coeur d'Alene Tribe pursuant to this Act shall be upon request of the business council of the Coeur d'Alene Tribe, evidenced by a resolution adopted in accordance with the constitution and bylaws of the tribe, and shall be in accordance with a consolidation plan approved by the Secre- approved by the Secretary of the Interior.

SEC. 3. Any moneys or credits received by the Coeur d'Alene Tribe in the sale of lands shall be used for the purchase of other lands, or for such other purpose as may be consistent with the land consolidation program, approved by the Secretary of the Interior.

SEC. 4. The Secretary of the Interior is authorized to sell and exchange individual Indian trust lands or interests therein on the Coeur d'Alene Reservation held in multiple ownership to the Coeur d'Alene Tribe, to any member thereof, or to any other Indian having an interest in the land involved, if the sale or exchange is authorized in writing by owners of at least a majority of the trust interests in such lands; except that no greater percentage of approval of such trust interests shall be required under this Act than is any other statute of general application approved by Congress.

SEC. 5. Title to any lands, or any interests therein, acquired pursuant to this Act shall be taken in the name of the United States of America in trust for the Coeur d'Alene Tribe or individual Indians and shall be subject to the same laws relating to other Indian trust lands on the Coeur d'Alene Reservation.

SEC. 6. The business council of the Coeur d'Alene Tribe may encumber any tribal land by a mortgage or deed of trust, with the approval of the Secretary of the Interior, and such land shall be subject to foreclosure or sale pursuant to the terms of such a mortgage or deed or trust in accordance with the laws of the State of Idaho. The United States shall be an indispensable party to any such proceedings with the right of removal of the cause to the United States district court for the district in which the land is located, following the procedure in section 1446 of title 28, United States Code: *Provided,* That the United States shall have the right to appeal from any order of remand in the case.

SEC. 7. The second sentence of section 1 of the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415), is further amended by inserting immediately after "the Fort Mojave Reservation", the words "the Coeur d'Alene Indian Reservation,".

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–539), explaining the purposes of the measure.

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

PURPOSE

The bill authorizes the Secretary of the Interior to approve the sale, exchange, or encumbrance of tribal lands and to sell or exchange individually owned trust lands or interests therein held in multiple ownership to other Indians if the sale or exchange is authorized by the owners of at least a majority of the interest in such lands. It would also provide authority for long term leasing of trust lands up to 99 years.

NEED

The Coeur d'Alene Reservation, located in the northwestern part of Idaho and Benewah and Kootenai Counties, originally consisted of approximately 345,000 acres of tribal land. In 1909 approximately 102,570 acres were

allotted to members of the tribe, 330 acres were reserved for administrative purposes, and the remaining lands comprising an area of over 242,000 acres were opened to settlement. Since allotment of the reservation lands and opening the surplus lands to settlement approximately 80 percent of the land has passed from Indian ownership. As of June 30, 1969, there were 53,063 acres of trust land in individual ownership and 16,236 acres in tribal ownership.

The Coeur d'Alene Tribe adopted a land acquisition, consolidation, and development program in 1965 and put it into effect on the reservation at that time. To implement this program the Indians need additional authority for the acquisition and disposal of lands or interests in lands. The Coeur d'Alene Indians voted to reject the application of the Indian Reorganization Act of June 18, 1934, to their affairs. Consequently, the authorities contained therein with respect to acquisition, sale, and exchange of trust lands are not available to them.

The tribe set aside $1,150,000 from a 1958 award of the Indian Claims Commission in Docket No. 81. During the past 5 years the tribe has purchased over 3,000 acres of land at a cost of a little over $450,000. Thirteen purchases are presently pending which will require an expenditure of about $300,000. The tribe is now planning a farming enterprise, and land consolidation is of much importance.

At the time of the approval of the land program the tribe owned 13,362 acres of trust land which consisted primarily of acreages restored pursuant to the act of May 19, 1958. This act also contained authority for the sale or exchange of the restored lands. However, the restored land is outside the general farming area and is not useful for trading and unitization purposes. The authority contained in S. 345 will enable the tribe to dispose of these parcels and use the funds to acquire other tracts within the farming enterprise area or elsewhere on the reservation and assist tribal members in consolidating and unifying their individual interests thereby alleviating to some extent the heirship problem. Further, it will be able to exchange lands with tribal members so that both the tribe and the members will have more economical and manageable units.

Although the tribe does not now have an urgent need for long term leasing authority, it does anticipate this authority will be needed within the foreseeable future. The tribe will endeavor to lease land for industrial purposes and has in mind that eventually it is going to become involved in some enterprises in the Coeur d'Alene Lake area.

COST

No additional expenditure of Federal funds will result from the enactment of S. 345.

QUORUM CALL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON MEDICAL STOCKPILE OF CIVIL DEFENSE EMERGENCY SUPPLIES AND EQUIPMENT

A letter from the Secretary of Health, Education, and Welfare, reporting, pursuant to law, on actual procurement receipts for medical stockpile of civil defense emergency supplies and equipment purposes, for the quarter ended September 30, 1971; to the Committee on Armed Services.

REPORT ON CERTAIN FACILITIES PROJECTS PROPOSED FOR ARMY NATIONAL GUARD

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), transmitting, pursuant to law, a report on certain facilities projects proposed for the Army National Guard (with an accompanying report); to the Committee on Armed Services.

REPORT ON THE STATE OF THE FINANCES

A letter from the Secretary of the Treasury, transmitting, pursuant to law, his report on the State of the Finances, for the fiscal year ended June 30, 1971 (with an accompanying report); to the Committee on Finance.

LIST OF REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a list of the reports of the General Accounting Office, for the month of November, 1971 (with an accompanying report); to the Committee on Government Operations.

REPORT ON THE UNFINISHED EDUCATION

A letter from the Chairman and Members of the United States Commission on Civil Rights, tranmitting, pursuant to law, part II of a report investigating the nature and scope of educational opportunities for Mexican Americans in the public schools of the States of Arizona, California, Colorado, New Mexico, and Texas, dated October 1971 (with an accompanying report); to the Committee on the Judiciary.

REPORT ON STATUS OF PERMANENT RESIDENCE FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, a report on the status of permanent residence for certain aliens (with accompanying papers); to the Committee on the Judiciary.

TEMPORARY ADMISSION OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports on temporary admission of certain aliens (with accompanying papers); to the Committee on the Judiciary.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A resolution of the Legislature of the Territory of Guam; to the Committee on Interior and Insular Affairs:

"RESOLUTION No. 157

"Relative to expressing the extreme indignation and opposition of the people of Guam on the proposed acquisition by the U.S. Navy of one of Guam's most prized possessions, that unspoiled and virgin land in the south of Guam known as Sella Bay

"Be it resolved by the Legislature of the Territory of Guam:

"Whereas, the Commander Naval Forces Marianas has indicated that the Navy intends to go through with the controversial acquisition of Sella Bay and the surrounding lands for use to unload ammunition, thereby seizing from the people of Guam over 4,000 acres of the very limited land of the territory and thereby depriving them of the continued use of a great natural resource; and

"Whereas, the territory of Guam can only cease being a dependency of the military when the relatively little land remaining in civilian control is developed for use of our burgeoning tourist economy, and Sella and Cetti Bays represent the last unspoiled beaches and environs suitable for such development, the loss of these lands denying the territory of Guam its lawful right to develop a viable civilian economy; and

"Whereas, the proposal that lands be exchanged with the Navy so that the territory ends up with as much land after as before the taking is unacceptable since the Sella Bay area is unique in the entire Pacific, maintaining the only pristine Pacific coral reef structure under the American flag and not being capable of duplication anywhere else, the loss to the people of Guam and to the future generations of the territory being so great as to be beyond compensation; now therefore be it

"Resolved, That with the Eleventh Guam Legislature does hereby on behalf of the people of Guam express its ineradicable opposition to the proposed taking of Sella Bay and its environs for a Navy ammunition wharf; and be it further

"Resolved, that the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies of the same be thereafter transmitted to the President of the United States, to the President of the Senate, to the Speaker of the House of Representatives, to the Secretary of Interior, to the Secretary of Defense, to the Secretary of the Navy, to the Attorney General of the United States, to the Chairmen of the Interior and Insular Affairs Committees, Senate and House, to Guam's Washington Representative, and to the Governor of Guam.

"Duly and regularly adopted this 28th day of October, 1971."

A letter from several citizens of California expressing concern for American prisoners of war; to the Committee on Foreign Relations.

A resolution adopted by the Norfolk, Va., Jaycees, expressing disapproval of school busing solely for the purpose of achieving a racial balance in schools; to the Committee on the Judiciary.

A letter from James Talmadge Moore, of Springfield, Mo., praying for a redress of grievances; to the Committee on the Judiciary.

A letter from Mr. and Mrs. Dale B. Smtih, of Long Beach, Calif., regarding the celebration of November 11 as a legal holiday; to the Committee on the Judiciary.

A letter from Otto L. Gutowsky, of Birmingham, Mich., regarding the AFL–CIO convention in Miami; ordered to lie on the table.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BURDICK (for Mr. Moss) from the Committee on Interior and Insular Affairs, with an amendment:

S. 978. A bill authorizing the conveyance of certain lands to the University of Utah, and for other purposes (Rept. No. 92–555).

By Mr. KENNEDY, from the Committee on Labor and Public Welfare, with amendments:

S. 2676. A bill to provide for the prevention of sickle cell anemia (Rept. No. 92–557).

By Mr. ERVIN, from the Committee on the Judiciary, with amendment:

S. 1438. A bill to protect the civilian employees of the executive branches of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy (Rept. No. 92–554).

PROTECTION OF THE FUNDAMENTAL RIGHTS OF FEDERAL EMPLOYEES

Mr. ERVIN. Mr. President, I am filing today the Judiciary Committee report on

S. 1438 to protect civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy. This bill was approved by the committee on November 16 without amendments and is identical to S. 782 which was passed by unanimous consent of the Senate in the 91st Congress.

CONTINUED OPERATION OF PUBLIC HEALTH SERVICE HOSPITALS AND OUTPATIENT CLINICS—CONFERENCE REPORT (S. REPT. NO. 92-556)

Mr. KENNEDY, from the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the concurrent resolution (S. Con. Res. 6) to express the sense of Congress relative to certain activities of Public Health Service hospitals and outpatient clinics, submitted a report, which was ordered to be printed.

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. HRUSKA, from the Committee on the Judiciary:

Richard A. Dier, of Nebraska, to be a U.S. district judge for the district of Nebraska.

By Mr. McGEE, from the Committee on Post Office and Civil Service:

Elmer T. Klassen, of Massachusetts, Frederick Russell Kappel, of New York, Theodore W. Braun, of California, Andrew D. Holt, of Tennessee, George E. Johnson, of Illinois, Crocker Nevin, of New York, Charles H. Codding, of Oklahoma, Patrick E. Haggerty, of Texas, and M. A. Wright, of Texas, to be Governors of the U.S. Postal Service.

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. SPONG (for himself, Mr. BAKER, Mr. BIBLE, Mr. NELSON, Mr. DOMINICK, Mr. PELL, Mr. EAGLETON, Mr. BELLMON, and Mr. CHILES):

S. 2952. A bill to authorize a Federal payment for the construction of a transit line in the median of the Dulles Airport Road. Referred to the Committee on Commerce.

By Mr. YOUNG:

S. 2953. A bill for the relief of Isabelle Gannat. Referred to the Committee on the Judiciary.

By Mr. BURDICK:

S. 2954. A bill to authorize the establishment of the Knife River Indian Villages National Historic Site. Referred to the Committee on Interior and Insular Affairs.

By Mr. COOK:

S. 2955. A bill to amend certain provisions of title 18, United States Code relating to the release of certain Federal prisoners. Referred to the Committee on the Judiciary.

By Mr. JAVITS (for himself, Mr. STENNIS, Mr. EAGLETON, and Mr. SPONG):

S. 2956. A bill to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress. Referred to the Committee on Foreign Relations.

By Mr. HARTKE:

S. 2957. A bill to amend the Economic Opportunity Act of 1964 to provide comprehensive legal services for the elderly, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. JAVITS:

S. 2958. A bill to amend the Urban Mass Transportation Act of 1964 to authorize certain emergency grants to assure adequate rapid transit and commuter railroad service in urban areas, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. TAFT (for himself and Mr. FONG):

S. 2959. A bill to amend the Labor-Management Relations Act, 1947, and the Railway Labor Act to provide for the settlement of certain emergency labor disputes. Referred to the Committee on Labor and Public Welfare.

By Mr. BEALL:

S.J. Res. 181. Joint resolution to establish a Joint Committee on Aging. Referred to the Committee on Labor and Public Welfare.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPONG (for himself, Mr. BAKER, Mr. BIBLE, Mr. NELSON, Mr. DOMINICK, Mr. PELL, Mr. EAGLETON, Mr. BELLMON, and Mr. CHILES):

S. 2952. A bill to authorize a Federal payment for the construction of a transit line in the median of the Dulles Airport Road. Referred to the Committee on Commerce.

Mr. SPONG. Mr. President, I am today introducing a bill with Senators BAKER, BIBLE, NELSON, DOMINICK, EAGLETON, PELL, BELLMON, and CHILES to authorize the Department of Transportation to undertake construction of a rapid rail line to Dulles International Airport.

Dulles International is one of the finest airports in the world and perhaps the only one specifically planned with the needs and problems of the jet age in mind. Yet, one of its greatest virtues—its removal from the densely populated city center—is also the greatest obstacle to its full utilization. It is a problem aggravated by the continued competition of the more centrally located National Airport.

The missing link in the development of the federally owned Dulles has been a means of quick, convenient and inexpensive mass transportation and that is what this bill would authorize. It provides for an extension of the main metro system from just north of Falls Church to the airport utilizing the median strip of the Dulles Access Highway. When completed and tied in with the main metro system, the airport line would make it possible to travel from downtown Washington to the Dulles Airport Terminal Building in approximately 35 minutes during peak traffic conditions or inclement weather at an estimated fare of $1.35. That is roughly half the cost and half the travel time of the best transportation to the airport now available.

A feasibility study of this project undertaken by Day & Zimmerman Consulting Services for the Department of Transportation this year recommended that at least two intermediate stations be located on the line to serve the needs of commuters in the airport area. Experience with the Cleveland, Ohio airport rapid transit line—the only one in operation in this country today—has shown that these commuter stops in no way detract from airport service, averaging in the neighborhood of only 30 seconds lost per stop.On the other hand, it was found that they generated fully two-thirds of the revenue on the line enabling it to cover full maintenance and operating costs.

The bill authorizes construction of appropriate intermediate stations with costs and details of the location of facilities of such stations to be worked out through negotiations among the local jurisdictions, Metro, and DOT officials.

Total cost of the airport line, exclusive of the intermediate stations, but including all construction, equipment and terminal stations, would not exceed $90 million. That allows for inflation over the schedule of construction.

Mr. President, 2 years ago, I chaired a Senate hearing at Dulles Airport exploring ways of improving utilization of Dulles. Every major witness at the hearing endorsed the idea of rapid rail service to Dulles, including the Federal Aviation Administration, the Air Transport Association, local jurisdictions, and the Metro authority itself. Subsequently, my amendment to provide for a $150,000 feasibility study of the project was strongly endorsed by the Department of Transportation.

That feasibility study was completed in July of this year. It concluded that there were no engineering or economic obstacles to early construction of such a line and that it would be a "vital link with what will be the area's most important airport and an important branch of the metropolitan Washington rapid transit system."

Mr. President, this rail link is critically needed to improve access to the airport. Without it, Dulles will continue to be underutilized and the Federal Government will continue to spend millions in subsidizing its operation. Since it was opened in 1962, the average annual deficit at Dulles has been about $7 million. For as far ahead as projections have been made, there will continue to be substantial losses.

I would note also that present Metro plans provide for construction of a rapid transit at National Airport by the mid-1970's. Without also facilitating travel to Dulles, the already serious imbalance in the use of the two airports would be aggravated.

Mr. President, it is my hope that this bill can be enacted in this Congress, and work begun on the line—from the airport in—as soon as construction contracts can be let. It is an investment in the future of air service to the Nation's capital which cannot afford to wait.

I send the bill to the desk for appropriate reference, and ask unanimous consent that it be printed in the RECORD.

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

S. 2952

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the National Capital Transportation Act of 1969, approved December 9, 1969 (83 Stat.

320), is hereby amended by adding at the end thereof the following new section:

"SEC. 9. (a) The Secretary of Transportation shall make payments to the Transit Authority in such amounts as may be requisitioned from time to time by the Transit Authority sufficient, in the aggregate, to finance the cost of designing, constructing and equipping a rail rapid transit line in the median of the Dulles Airport road from the vicinity of Virginia Highway Route 7 on the K Route of the Adopted Regional System to the Dulles International Airport; except that the aggregate amount of such payments shall not exceed $90,000,000.

"(b) The transit line authorized in subsection (a) of this section shall include appropriate station facilities at the Dulles International Airport and at the point of intersection with the Adopted Regional System, but the cost of any intermediate stations on such a transit line shall not be included in this authorization.

"(c) Upon completion of the transit line authorized in this section, all transit facilities and the underlying real estate interests appurtenant thereto shall become the property of the Transit Authority and shall be operated by such Authority.

"(d) It is the intent of the Congress in enacting this section that the transit line authorized in this section be designed and constructed as soon as practicable following the date of the enactment of this section.

"(e) There is authorized to be appropriated to the Secretary of Transportation, without fiscal year limitation, not to exceed $90,000,000 to carry out the purposes of this section. The appropriations authorized in this subsection shall be in addition to the appropriations authorized by section 3(c) of this Act.".

By Mr. COOK:

S. 2955. A bill to amend certain provisions of title 18, United States Code relating to the release of certain Federal prisoners. Referred to the Committee on the Judiciary.

Mr. COOK. Mr. President, today I am introducing a bill which will alleviate a statutory inequity directed at a group of individuals which our society is for the most part unconcerned about, the parolee, or more specifically, the parole violator. This bill affects both classes of individuals who are released from our Federal correctional institutions: First, the mandatory releasee, an individual who has served the full term of his sentence, less good time deductions, and who is deemed "as if on parole" until the maximum term to which he was sentenced has expired, less 180 days; and second, the parolee, an individual who the Board of Parole feels has sufficiently indicated during his incarceration that he is prepared to reenter society without necessarily having to serve behind bars the full term to which he was sentenced.

Section 4082 of title 18 of the United States Code provides that when an individual falls under one of the two categories above, he "shall be allowed in the discretion of the Board, to return to his home, or to go elsewhere, upon such terms and conditions, including personal reports from such paroled persons, as the Board shall prescribe, and to remain, while on parole, in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which he was sentenced." Thus, section 4082 clearly indicates that the parolee, though no longer incarcerated, is indeed still "in the custody of the Attorney General." This legal custody requires the parolee, among other things, to make a complete written report to his probation officer on a monthly basis, to notify his probation officer immediately of any change of residence or change of employment, to abstain from drinking alcoholic beverages to excess or from associating with persons who have a criminal record. In short, although the individual is no longer behind bars he is still far from being a free man. As a parolee he remains both in theory and fact, very much in the custody of the Attorney General.

Should this man violate his parole, however, and be returned to an institution, he receives no credit whatsoever for the length of time he has spent on parole. For instance, if the individual was originally sentenced to 5 years and served 2 of those years and then was paroled and after 2 additional years he violated parole he would be recommitted to an institution to serve the remaining 3 years of his original sentence, receiving no credit at all for the 2 years spent on parole.

Thus, just with this one hypothetical case, we see that the individual above who violates parole will spend 7 years in the legal custody of the Attorney General although he was only sentenced to 5 years. It is possible that the situation might arise where the parolee merely failed to make his monthly written report to his probation officer or was guilty of some other minor technical violation and as a result he would have to return to prison and serve the 2 years of parole time over again plus the remainder of his original sentence.

The bill which I am introducing today, amending sections 4205 and 4207 of title 18 of the United States Code, enables a parole violator to receive credit for one half of the time he spent on parole against his original sentence. Therefore, using the example of the violator above, when he is returned to prison after serving 2 years on parole he would have only 2 years to serve on his original sentence as opposed to the 3 that he would now have to serve under the present provisions of sections 4205 and 4207.

Certain authorities in the field of crime, including the Brown Commission on the Revision of the Federal Criminal Laws, have recommended that the present provisions of 4205 and 4207 are inherently unjust and the parole violator should receive full credit for the time spent on parole should he violate and be recommitted. I feel the realistic solution to this problem, however, is to allow a 50-percent credit since otherwise a parolee could violate near the end of his sentence knowing that if recommitted he would only have a very short time to serve.

Under the provisions of the bill I am introducing today however, such an incentive for violating parole toward the end of custody is negated by the fact that instead of having only a few months to serve on recommitment he could look forward to serving over again at least one half of the time spent on parole. The chances are that any parolee that close to completing his parole requirement would not be tempted to abscond in the last few months of his custody since in all likelihood one half of the time spent on parole to that point would be a substantial figure and would serve as a definite deterent for such last second violations.

In addition, to compensate for special instances where the violation is of a very minor or technical nature, my bill would allow the U.S. Board of Parole to give the violator full credit for the time he had spent on parole. In other words, in all cases the parolee would receive credit for 50 percent of the time he served on parole and, in certain special cases, the Board of Parole, in its discretion, could give the parolee credit for the full amount of time he was on parole.

Mr. President, the purpose of this bill is by no means to aid those who break the law avoid a lawful sentence. No one is more disturbed than I am about the ever-increasing crime rate in this country. However, while doing all we can here in Congress to combat this lawlessness, we must not lose sight of the fact that the very foundation of our great Nation is its body of law, and, hopefully, justice. As Daniel Webster said:

> Justice is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together.

Let us not forget, therefore, that, since justice is the very fabric of our society, it must be available to all of our citizens, rich and poor, white and black, the educated and the illiterate, and even the convicted criminal. Law and justice should be synonymous, but experience has indicated that, in many cases, they are not. Mr. President, it is my hope that the bill which I am introducing today will serve to bring these two concepts just a little closer. I ask unanimous consent that the full text of the bill be printed at this point in the RECORD.

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

S. 2955

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence of section 4205 of title 18, United States Code, is amended to read as follows: "The unexpired term of imprisonment of any such prisoner shall begin to run from the date he returned to the custody of the Attorney General under said warrant, but the amount of time which such prisoner shall be required to serve as a result of his retaking shall be reduced in all cases by a period of time equal to one-half of that period commencing with his release pursuant to sections 4163, 4164, 4202, or 4208 of this title, and ending with the date of the issuance of such warrant for his retaking. In addition, the Board of Parole shall have the discretion, when the circumstances warrant it, to diminish the period which such prisoner was sentenced to serve by the full amount of time he spent on parole prior to his retaking.

SEC. 2. Section 4207 of title 18 United States Code, is amended by revising the third paragraph thereof to read as follows: "If

such order of parole shall be revoked and the parole terminated, the said prisoner may be required to serve the remainder of the term for which he was sentenced subject to the provisions of section 4205 of this title.

SEC. 3. The amendments made by this Act shall be applicable with respect to any person who, on or after the date of enactment of this Act is on parole pursuant to sections 4163, 4164, 4204, 4208 of chapter 311 of title 18, United States Code, or is released pursuant to such sections or chapter.

By Mr. JAVITS (for himself, Mr. STENNIS, Mr. EAGLETON, and Mr. SPONG):

S. 2956. A bill to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress. Referred to the Committee on Foreign Relations.

WAR POWERS ACT OF 1971

Mr. JAVITS. Mr. President, I send to the desk, for myself, for the Senator from Mississippi (Mr. STENNIS), the Senator from Missouri (Mr. EAGLETON), and also for the Senator from Virginia (Mr. SPONG) a bill entitled "The War Powers Act of 1971." I believe that this legislation will prove to be of historic importance and may, in retrospect, be viewed as the most constructive legislative by-product of our Nation's tragic Vietnam experience.

This measure deals with the issue of undeclared war, which has become the great constitutional and legal battleground of recent years. In my judgment, it provides a badly needed, carefully drawn, and wholly constitutional remedy for what presently appears to be a constitutional lacuna—applying the war powers of Congress enumerated in article I, section 8 to the phenomenon of "undeclared" war.

I am greatly honored to be associated in this effort with the distinguished chairman of the Armed Services Committee (Senator STENNIS) and the distinguished Senator from Missouri (Senator EAGLETON). I introduced my original war powers bill on June 15, 1970. To my deep gratification, my original submission stimulated the thinking of Senators STENNIS and EAGLETON, both of whom subsequently introduced war powers legislation, along the basic lines provided in my bill, but containing many excellent provisions which were not in my pilot measure. I am very indebted to Senator STENNIS and Senator EAGLETON for their interest, cooperation and, most importantly, for their contributions to the measure as it now stands. Senator SPONG was on the floor when I introduced my original bill, took an immediate interest in it, and has played an important and constructive role throughout the hearings on this measure.

The Senate Foreign Relations Committee, under the leadership of Chairman FULBRIGHT, conducted an extensive—and I believe truly historic—set of hearings on the war powers bills before it. The printed record of those hearings will be available shortly. I am confident that these comprehensive hearings will become an important point of reference for years to come, for all who are interested in this great issue. At the completion of the hearings, I approached Senators EAGLETON and STENNIS to see if we could all agree on one comprehensive redraft of the original bill, incorporating the important ideas contained in their measures, as well as the best suggestions made by the distinguished witnesses who tetified before the Foreign Relations Committee. One of my most gratifying experiences in the Senate has been working with Senators STENNIS and EAGLETON on this comprehensive redraft.

I am hopeful, now, that the matter is ready for final consideration by the Committee on Foreign Relations under the Senator from Arkansas (Mr. FULBRIGHT). We hope to be able to bring it soon to the Senate and to the country, so that everyone may think about it, discuss it, and consider it further during the weeks ahead. I think we have a war powers bill worthy of the great issue which faces our Nation so urgently in view of our traumatic experience in Vietnam.

Mr. President, I ask unanimous consent to have the text of the bill printed in the RECORD.

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

S. 2956

A bill to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress

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

SHORT TITLE

SECTION 1. This Act may be cited as the "War Powers Act of 1971."

PURPOSE AND POLICY

SEC. 2. It is the purpose of this Act to fulfill the intent of the framers of the Constitution of the United States, and ensure that the collective judgment of both the Congress and the President will apply to the initiation of hostilities involving the Armed Forces of the United States, and to the continuation of such hostilities. Under Article I, Section 8, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also "all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." At the same time, the Act is not intended to encroach upon the recognized powers of the President, as Commander-in-Chief, to conduct hostilities authorized by the Congress, to respond to attacks or the imminent threat of attacks upon the United States, including its territories and possessions, to respond to attacks or the imminent threat of attacks against the Armed Forces of the United States, and, under proper circumstances, to rescue endangered citizens of the United States located in foreign countries.

EMERGENCY USE OF THE ARMED FORCES

SEC. 3. In the absence of a declaration of war by the Congress, the Armed Forces of the United States shall be introduced in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances, only—

(a) to repel an attack upon the United States, its territories and possessions; to take necessary and appropriate retaliatory actions in the event of such an attack; and to forestall the direct and imminent threat of such an attack;

(b) to repel an attack against the Armed Forces of the United States located outside of the United States, its territories and possessions, and to forestall the direct and imminent threat of such an attack;

(c) to protect while evacuating citizens of the United States, as rapidly as possible, from any country in which such citizens, there with the express or tacit consent of the government of such country, are being subjected to a direct and imminent threat to their lives, either sponsored by such government or beyond the power of such government to control: *Provided*, That the President shall make every effort to terminate such a threat without using the Armed Forces of the United States: And provided further, that the President shall, where possible, obtain the consent of the government of such country before using the Armed Forces of the United States; or

(d) pursuant to specific statutory authorization, but authority to use the Armed Forces of the United States in hostilities shall not be inferred from any Treaty or provision of law, including any provision contained in any appropriation act, unless such Treaty or provision specifically authorizes the use of such Armed Forces in hostilities and exempts the use of such Armed Forces from compliance with the provisions of this Act. Specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such forces are engaged, or there exists an imminent threat that such forces will become engaged, in military hostilities. No Treaty in force at the time of the enactment of this Act shall be construed as specific statutory authorization for, or a specific exemption permitting, the use of the Armed Forces of the United States in hostilities, within the meaning of this section.

REPORTS

SEC. 4. The use of the Armed Forces of the United States in hostilities pursuant to section 3 of this Act shall be reported promptly in writing by the President to the Speaker of the House of Representatives and the President of the Senate, together with a full account of the circumstances under which such hostilities were initiated, the estimated scope of such hostilities, and the consistency of such hostilities with the provisions of section 3. Whenever Armed Forces of the United States are engaged in hostilities outside of the United States, its territories and possessions, the President shall, so long as such forces continue to be engaged in such hostilities, report to the Congress periodically on the status of such hostilities as well as the scope and expected duration of such hostilities, but in no event shall he report to the Congress less often than every six months.

THIRTY-DAY AUTHORIZATION PERIOD

SEC. 5. Hostilities commenced pursuant to section 3 of this Act shall not be sustained beyond thirty days from the date of their initiation except as provided in specific legislation enacted for that purpose by the Congress and pursuant to the provisions thereof.

TERMINATION WITHIN THIRTY-DAY PERIOD

SEC. 6. Hostilities commenced pursuant to section 3 of this Act may be terminated prior to the thirty-day period specified in section 5 by statute or joint resolution of Congress.

CONGRESSIONAL PRIORITY PROVISIONS

SEC. 7. (a) Any bill or resolution, authorizing the continuation of hostilities under subsection (a) (b), or (c) of section 3 of this Act, or the termination of hostilities under section 6 of this Act shall, if sponsored or cosponsored by one-third of the Members of the House of Congress in which it is introduced, be considered reported to the floor of such House no later than one day following its introduction unless the

Members of such House otherwise determine by yeas and nays; any such bill or resolution referred to a committee after having passed one House of Congress shall be considered reported to the floor of the House referring it to committee within one day after it is so referred, unless the Members of the House referring it to committee shall otherwise determine by yeas and nays.

(b) Any bill or resolution reported to the floor pursuant to subsection (a) shall immediately become the pending business of the House to which it is reported, and shall be voted upon within three days after it has been reported, unless such House shall otherwise determine by yeas and nays.

EFFECTIVE DATE

SEC. 8. This Act shall take effect on the date of its enactment but shall not apply to hostilities in which the Armed Forces of the United States are involved on the effective date of this Act.

Mr. EAGLETON. Mr. President, I am extremely pleased to join with the senior Senator from New York (Mr. JAVITS) and the distinguished chairman of the Committee on Armed Services (Mr. STENNIS) in proposing the consensus "war powers" bill.

The Senator from New York and I have been working in this area for over 2 years and the Senator from Mississippi has long expressed concern over ever-increasing executive discretion in this area.

"Historic" and "momentous" are words that are often used loosely in politics. But, Mr. President, I honestly believe that they are applicable to this consensus bill which was worked out by Senators STENNIS, JAVITS, and myself over the past 5 months.

The bill represents a broad-based consensus of Senators, ranging the ideological and party spectrum, that the unchecked and constant flow of "war powers" from Congress to the President must be stopped.

A democracy cannot allow the single judgment of one man to take the entire Nation to war. No more important decision is made in a democracy than to commit its blood and treasures to a test of force. The Javits-Stennis-Eagleton bill assures that this life-and-death decision will be a collective judgment reached after congressional deliberation.

And that, especially in view of recent history, is "momentous" and "historic," indeed.

Mr. STENNIS. Mr. President, I want to speak briefly on the bill introduced by the distinguished Senator from New York (Mr. JAVITS). I am pleased to be a cosponsor of this measure.

The bill represents the result of a joint effort by the Senator from New York, the Senator from Missouri (Mr. EAGLETON), and myself. Like all such results of somewhat different approaches, it can be improved. I would hope that the Foreign Relations Committee would scrutinize it carefully to insure that the drafting accurately reflects the bill's purpose.

The principles embodied in the bill are, I believe, sound. Under its provisions the President would have the authority, initially, to introduce U.S. Armed Forces in hostilities on his own authority only to repel or forestall attacks on U.S. territory or U.S. Armed Forces, or to protect U.S. citizens while they are being evacuated from danger. In all other cases specific congressional authority would be required—not only a treaty or an appropriation. Procedures are provided so that Congress will be able to act quickly to approve or disapprove the continuation of hostilities begun by the President on his own authority.

I believe that it should be very clear that this bill does not apply to our current efforts to disengage in Southeast Asia. That is, we must make a new start with this bill—not refight old arguments about the legality of the war in Vietnam. By the same token, care should be taken to draft the bill in such a way that it is clear that only the war in Southeast Asia is exempted—that is, hostilities in other areas in which U.S. military men are engaged in delivering weapons or in some other indirect way are clearly not excepted from the bill's provisions.

I believe it should also be quite clear that the President has the authority to deploy forces, for example, on the high seas in an area in which there is tension. Congressional authorization should be necessary in the future before there is a commitment to U.S. participation in war in any form—including the use of U.S. advisers with combat units. But the Congress should not restrain the President's powers, as Commander in Chief, to deploy forces to crisis areas and, for example, "show the flag" by sending a carrier to stand offshore.

Finally, I believe it is quite clear that Congress has the authority to legislate in this area of affairs. Some have claimed that the President's powers as Commander in Chief are so exclusive that they prohibit Congress from legislating in this field. I respectfully, and very strongly, disagree. As the resolution points out, article 1, section 8, of the Constitution specifies that Congress has the power not only to make all laws necessary and proper to carrying into effect its own powers, but also "all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

I am pleased with the study and consideration already given to the like measures by the Committee on Foreign Relations and I trust that after further study and consideration, the committee will include the benefits of their own thought and favorably report a bill soon.

By Mr. HARTKE:

S. 2957. A bill to amend the Economic Opportunity Act of 1964 to provide comprehensive legal services for the elderly, and for other purposes. Referred to the Committee on Labor and Public Welfare.

COMPREHENSIVE LEGAL SERVICES FOR THE ELDERLY

Mr. HARTKE. Mr. President, a serious problem confronting the elderly American is that he is constantly bewildered by the governmental bureaucracy he encounters in his retirement years. Unfortunately, the elderly citizen has limited expertise in coping with the intricacies of programs like social security, medicare, and medicaid. The situation is serious because these programs are essential to the quality of life of the older American.

Although we often think of social security benefits as supplemental, statistics have shown that one-fourth of the couples and two-fifths of the nonmarried elderly depend on Government programs for almost their entire support.

It is clear to all who investigate the matter that the elderly need assistance to secure benefits under Government programs. Yet they rarely find assistance available. Unfortunately the elderly have limited means to pay for aid. This lack of aid often results in the loss of benefits. For example, a number of programs provide for the right to appeal the decisions of the respective agencies. However, since the elderly rarely have the necessary funds to hire counsel, a substantial number do not request hearings.This is of no small importance when one considers a recent study that showed one agency had a 64-percent reversal rate at appeal hearings.

Today most elderly persons live close to the poverty line. Recent Bureau of Labor Statistics found that of 4.4 million retired couples over the age of 65, 56 percent had incomes below $3,857—just above the poverty level currently used by the Office of Economic Opportunity. It goes without saying that these members of our society cannot afford costly legal services and advice to insure that they are not denied their rightful benefits.

Like many of my distinguished colleagues, I receive letters from my senior citizen constituents expressing their frustration with the operation of Government programs. Unfortunately they do not all possess the extraordinary abilities of a 69-year-old widow who took on the Government in a social security case. This determined and articulate Queens, N.Y., native acted as her own counsel and prevailed over the awesome legal resources of the Federal Government. See attached article. It is sad that this case is the exception rather than the example. Most aged citizens are compelled to accept agency action.

To remedy this deplorable situation Congress must take appropriate steps. I propose that Congress act immediately to implement a comprehensive program to alleviate the legal problems afflicting the elderly. This action must span a broad spectrum; including courtroom and administrative advocacy, simplification of the technicalities of Federal and State programs, and research and implementation remedies to problems emanating from governmental programs which do not allow the elderly to live in dignity. In essence, the Federal Government and the States must take coordinated action to develop a national program of forceful advocacy on behalf of senior citizens.

It is necessary to call for a multidimensional approach because of the diversity of need confronting the aged of our society. For example, attempts to amend the Economic Opportunity Act to insure that the elderly poor have the assistance of counsel would not remedy the fact that many current programs lack procedural safeguards. Only one thing is clear, and that is, there must be comprehensive research to develop new knowledge to resolve the issues facing the aged. This new knowledge must be turned immediately toward practical application.

The comprehensive approach must be developed because past attempts in this area have been fragmented and insufficient. This is not to infer that insignificant contributions have been effected by past programs. The facts show quite the contrary. It is common knowledge that the performance of programs like OEO Legal Services has been excellent in serving the elderly where they constitute part of the OEO client community. However, it is equally acknowledged that attemps to discern and alleviate the problems of the elderly as a class have been inadequate. Legal Research and Services for the elderly—sponsored by the National Council of Senior Citizens under an OEO grant—is the only project in the Nation which deals exclusively with the legal difficulties encountered by senior citizens. In 1970 the funding for Legal Research and Services for the Elderly was cut, and the number of LRSE projects was reduced from 12 to five. In essence we have seen a reduction while there should have been an expansion.

To overcome the inadequacies of the past, massive efforts must be made. The first step is to allocate resources specifically for immediate action. The type of action that is necessary must extend far beyond our current efforts. In addition, it is imperative that all governmental agencies affecting the elderly have input into this program. The expertise and knowledge of these agencies can be invaluable in formulating appropriate activity. To cite an example, the experience and knowledge that the Administration on Aging has gained in analyzing the impact of the retired senior volunteer program—now under ACTION—would provide valuable insight into the future development of the legal paraprofessional. Also it goes without saying that the Social Security Administration would also contribute most effectively in developing solutions to difficulties the elderly face with that agency.

There will be those who say that the advocacy role is not proper for Government agencies. I submit that the Government must administer its programs in a way that will encourage and support the participation of the senior citizen.

To coordinate this effort the Office of Economic Opportunity would seem most appropriate. The primary advantage is that within the OEO framework there is an existing vehicle that can be easily adapted to this task. That vehicle is the legal services program. The existence of legal service programs serving the aged has significant advantages in facilitating the development of substantive action. The primary advantage is that many of the necessary changes will no doubt be implemented through legal service programs. Therefore, by having OEO act as the coordinating agency, the implementation of necessary changes and modifications will be eased. Furthermore the establishment of a central coordinating agency will overcome the fragmentation of past efforts. Hopefully the coordinating agency will be able to bring the diverse groups and programs together to enable each to share the knowledge of the other. This is the only way that repetition can be avoided, and accomplishments be made.

The key to this effort to identify and resolve these legal problems is experimentation and innovation. There must be no hesitancy to develop new concepts, as well as to expand those that have worked well in the past. For example the use of the paraprofessional in many programs has provided the vitality and expertise to enable those efforts to survive. This type of activity must be expanded with constant searching to determine new ways to incopropate the use of the paraprofessional. One course of action might be to investigate the use of paraprofessionals as ombudsman. These could be persons who would provide a wide variety of information, given guidance to senior citizens, and act on their behalf in the dealings of the aged with the Government.

This innovation and experimentation I call for must transcend agency and department delineation. All agencies affecting the elderly must be involved to make the programs successful. Experimentation would undoubtedly entail the funding of private as well as public efforts to work on specific areas of concern.

Senior citizen groups should also have input into this activity. The number and variety of senior citizen organizations is constantly on the increase thus creating innumerable repositories of interest and expertise to be used.

The academic community is another area to look to for assistance. Although the program is largely oriented toward the resolution of legal problems, disciplines other than law might offer considerable assistance in developing programs. Within the past few years we have witnessed substantial change of direction in many institutions regarding their awareness of the need of our senior citizens.

In recognizing that the elderly may have unusual legal needs, some law schools have developed programs to provide for legal assistance to the aged. Furthermore, there has been some curriculum change to recognize the special situation of the elderly. Although such action has not been substantial, it is an indication that law schools can rise to the challenge of recognizing the legal needs of the elderly. To cultivate this change of attitude, attempts should be made to include the law schools as well as the rest of the academic community in the efforts to research and resolve these pressing issues.

The suggestions that I have made are in no way to be deemed the exclusive methods to insure that these legal problems are identified and resolved. Rather, it is my hope that the suggestions I have made might serve as a springboard for additional ideas and approaches. The possible course, or courses, of action are unlimited. Activity could range from programs designed to develop methods of informing the elderly of their rights under Federal and State law; to drafting legislation providing procedural safeguards against the arbitrary denial of benefits. The need is overwhelming. We must take affirmative steps to correct the injustice that daily befalls our elderly Americans. The existing fragmented and underfinanced approaches to these legal needs must be supplanted by coordinated and immediate action.

In closing I would like to say that there may be those who feel that this action is superfluous in light of pending legislation to establish a National Legal Services Corporation. My action today does not supplant nor detract from the development of such a program. The purpose of this legislation is to focus attention and action on a very crucial need of the aged of our society. In the event that a National Legal Services Corporation is established it is my hope that a coordinated effort can still be maintained to identify and resolve the legal needs of the elderly. To fail to do so would mean that we continue to have haphazard and insufficient efforts to resolve the bureaucratic problems they face. We must make a national commitment to achieve justice for the aged. The achievement of that commitment requires a well-funded, coordinated effort.

Mr. President, I ask unanimous consent that a copy of this bill and a selected article on this issue be printed in the RECORD immediately following my remarks.

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

S. 2957

A bill to amend the Economic Opportunity Act of 1964 to provide comprehensive legal services for the elderly, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 222(a)(3) of the Economic Opportunity Act of 1964 is amended by adding at the end thereof the following: "The Director in carrying out the program authorized under this paragraph shall take appropriate action to meet the legal problems of the elderly by providing—

"(A) for the development of programs of training, technical, legal and paraprofessional assistance to identify and resolve the legal problems of the elderly;

"(B) for the collection and dissemination of information to coordinate and evaluate the effectiveness of activities and programs affecting the legal problems of the elderly;

"(C) offer advice and assistance to all to all agencies and programs providing legal services and assistance to the elderly;

"(D) take all other necessary action to identify and provide for the resolution of legal problems affecting the elderly."

Section 2, There is authorized to be appropriated $1,000,000 for the fiscal year ending June 30, 1972, and $1,000,000 for the succeeding fiscal year to carry out the provisions of section 222(a)(3) relating to legal services for the elderly.

A WIDOW TAKES UP LAW AND BEATS UNITED STATES

(By Robert E. Tomasson)

"He that pleads his own case has a fool for a client."

A determined and articulate 69-year-old Queens widow who acted as her own lawyer has provided a notable exception to that old English proverb by taking on the awesome legal resources of the Federal Government in a complicated Social Security case—and winning the verdict of a three-judge appeals court.

The case, which spanned nearly 18 months, was argued in two Federal Courts and required scores of pages of complex legal briefs. It involved the widow's claim for $900 in Social Security death benefits after her husband died in 1964.

It pitted Mrs. Persis S. Widermann, a grandmother who has no legal training, against the Secretary of Health, Education and Welfare, Elliot L. Richardson.

In court, her arguments prevailed over those of his legal representatives—Robert A. Morse, United States Attorney for the Eastern District of New York, and Robert Rosenthal and David G. Trager, assistant United States attorneys.

WINS JUDGES' PRAISE

And her arguments won the rare lavish praise by the Federal Judges who ruled in her favor—William H. Mulligan, Harold R. Medina and Walter R. Mansfield of the Second Circuit Court of Appeals, who handed down their decision last Wednesday.

Asked in an interview yesterday why she had chosen to act as her own lawyer, Mrs. Widermann said: "I didn't know any, and considering the amount of money due me I didn't think any lawyer would really be interested."

"I was probably foolish," she added, "but I thought I was right and I thought I would win."

Her case, involving numerous technicalities in the vast thicket of Social Security regulations, required long days of writing and research in the legal tomes of the New York and Brooklyn Public Libraries and the law library of New York University.

THIRTY-SIX-YEAR APPENDIX

The research produced a 27-page brief, a 36-page appendix of notes and legal citations and, after the Government lawyers had submitted their arguments, a 13-page memorandum of reply.

The Government's main argument was that Mrs. Widermann had been denied retroactive death benefits because she waited more than one year to submit her claim.

Her counterargument, in effect, was that she had met the substantial if not the procedural requirements for claims-filing by submitting numerous letters and statements in the year following the death of her husband, Roman, on April 4, 1964.

Her writing style was not the formal epistemological labyrinth of the legal profession, but it was a combination of clear English and well-documented argument.

In her brief, for example, she wrote:

"The intention to claim monthly benefits need not be expressed (Section 2021A of the Claim Manual) and in cases where some doubt exists about the intent to file, the doubt should be resolved by finding an intent to file (Section 2021C of the Claims Manual)."

Legal citations obscure to the laymen included: "Haberman v. Finch, 418 F.2d 664, 667 (2d Cir. 1969); Walston v. Gardner, 381 F.2d 580, 585 (6th Cir. 1967); Rodriguez v. Celebrezze, 349 F.2d 494, 496 (1st Cir. 1965)."

"At first, I started writing 'the applicant' and all that jargon, but I soon gave that up and just wrote 'I'," Mrs. Widermann recalled. "They knew what I meant."

The court allowed Mrs. Widermann to submit typewritten legal papers, rather than having them printed, which could have cost her hundreds of dollars.

Mrs. Widermann, who lives with two of her four daughters at 120–20 Ocean Promenade in the Rockaway Park section of Queens, first filed suit in Federal Court in the spring of 1970. Last May, Federal Judge Anthony J. Travia denied her claim, but she appealed to the Second Circuit Court of Appeals, which reversed Judge Travia's decision.

PATIENT AND DILIGENT

In doing so, Judge Mansfield wrote: "This appeal unveils the travail of a patient and diligent widow seeking to penetrate a labyrinth of complicated Social Security regulations in a frustrating effort to obtain payment of less than $1,000 in survivors' insurance benefits."

He went on: "The standard should be whether the claimant has met the essential substantial requirements of the regulations rather than whether she has complied with non-essential procedural requirements."

Thus, the judge wrote, "the significant fact is the failure of the Administration to tell her, after she had clearly expressed her intention to claim survivors' insurance benefits, that unless she filed promptly on the prescribed form she would be limited to the 12-month period immediately preceding such filing. We have no doubt that if she had been advised of the time limitation, she would have filed a formal application at once."

Outside of court, Judge Mansfield said: "This lady had the ability to limit herself to essentials and be very calm about it. I've seldom seen anyone before who had the qualities to present an application so that we gained something from it."

Judge Medina called Mrs. Widermann "intelligent, right on the ball, extraordinary."

"She doesn't give in very easily," he said. "She made a perfectly splendid argument."

And Judge Mulligan commented: "She was determined, very meticulous. I think it's a great thing that somebody can persist and can end up in the Circuit Court of Appeals on her own."

Mrs. Widermann, a former teacher of the visually handicapped who now is a teaching supervisor in the city school system, graduated from Smith College in 1924 with a degree in history and later earned a master's degree in business administration from the University of Chicago.

The widow, who was called on for oral arguments in court, said afterward: "I enjoyed working on the case. I enjoyed working on the brief. But I didn't enjoy appearing in court.

"I was very nervous. It was too exciting."

By Mr. JAVITS:

S. 2958. A bill to amend the Urban Mass Transportation Act of 1964 to authorize certain emergency grants to assure adequate rapid transit and commuter railroad service in urban areas, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

URBAN TRANSPORTATION EMERGENCY RELIEF ACT

Mr. JAVITS. Mr. President, I send to the desk a bill to authorize certain emergency grants to assure adequate rapid transit and commuter railroad service in urban areas and ask that it be referred to the appropriate committee. Mr. President, this measure has been introduced in the other body by Mr. KOCH and 28 of his colleagues.

This bill is entitled "The Urban Transportation Emergency Relief Act." It is designed to allow the Federal Government to help maintain and repair existing roadbeds and rights-of-way, which include such things as the existing tunnels, elevated structures and tracks, signal systems and power transmission lines. The bill would authorize $1 billion to be spent for such purposes, earmarking $200 million for each of the next 5 years. If it passes, for the New York City area and I expect other urban areas, it could offer sufficient funds to help keep the fares on the subways and commuter lines from running away.

This bill represents a bipartisan recognition that the time has long passed for the Federal Government to offer, at a minimum, certain maintenance subsidies, if not operating subsidies generally, to our mass transportation and commuter operations—just as it does for our Nation's highways. The Federal Government should support its "rail-highways" as it supports its "auto-highways" and its waterways and airways. The purpose of this bill is not to provide funds for additional construction of transit lines; its aim is merely to help insure that the lines we have stay alive. The Federal Government must not stand by negligently, watching transit arteries deteriorate, watching the costs become prohibitive, especially for the poor who must rely almost exclusively on such transportation in the cities.

This bill would provide emergency relief at a time when it must be provided. In no way is it a substitute for more comprehensive, long-term solutions to mass transportation and commuter line problems. My view is that we must proceed to the consideration of transportation trust funds to include mass transit and comprehensive regional transportation planning—which I expect Congress will be doing next session.

I see no reason not to examine also the feasibility of a system of "no-fare operation" of public transit systems. In the meantime the assistance this bill seeks must be made available. This bill is merely an interim measure, but a vital one which we need to pass quickly.

Truly, transportation, especially public mass transportation and commuter service, has become the life-blood of urbanized society. Seventy to 80 percent of the population of our country live in these areas and we cannot allow our transportation systems to deteriorate. To refuse aid to these crippled systems is to neglect those who must use them now, especially the poor, and to restrict job opportunities; such refusals means commerce, too, will suffer and considering the size of urban commerce it means the commerce of the Nation will suffer drastically; additional deterioration of our urban mass transit and commuter lines allows the automobiles to pollute and congest our urban areas even more.

There is a great imbalance between the amounts the Federal Government spends on mass transit and commuter service and what it spends on highways. By authorizing $1 billion more to be spent on mass transit, this bill takes a step to correct this imbalance, but still it hardly matches what has been and will be spent on highways. The $3.1 billion authorized for Federal obligation on mass transit over the five fiscal year period 1971–74 is but a small percentage of the close to $50 billion in Federal funds spent on highways since 1956 or even the estimated $4.7 billion that will be spent this fiscal year alone.

In large measure this imbalance in fundings results from the Government's piecemeal consideration of transportation. We have established a trust fund for highways, one for airports, and a separate system for urban mass transportation. By this method, the lobby with the strongest muscle walks away with the biggest piece of the pie.

Mr. President, our States and local governments are strapped with fiscal problems. The costs of local services have be-

come almost insurmountable, to the extent that in New York we are facing a real fiscal crisis. We are fast approaching the point in New York when there will be no money left to keep existing public transportation services operating and in good repair, let alone to provide new services. Even though Federal funds—though limited—exist to provide additional mass transit structures it may prove too difficult for State and local governments to raise the required matching funds and there is no Federal authority nor money available to at least keep the present systems operating smoothly.

New York's transit and commuter services are in desperate financial condition. Many urban areas face a similar crisis and I am sure still others are fast approaching this condition.

For 1972, the New York transit system will require revenues of approximately $190 million above revenues now derived from the present 30-cent fare. In 1973 the deficit will increase to approximately $250 million. The anticipated cash need for commuter services in the New York City area will amount to $57 million over amounts generated by the present fares. The Governor is now calling a special session of the State Legislature in an effort, among other things, to help offset these deficits and I know the State and city will be contributing significantly. If this bill I am introducing today passes, it should provide funds, together with State and local contributions, sufficient to keep the rapid transit fares from rising and to limit increases in communter fares. It is certain we can no longer rely on passenger fares to offset these enormous costs.

Great benefits have accrued to this country—both to urban and rural areas—from our highway and airways expenditures. I do not dispute that. But no longer can one form of transportation be considered in isolation from the other. Clearly, a single unified transportation trust fund is needed; we must have comprehensive planning.

The Department of Transportation on November 22, 1971, in a report entitled "Feasibility of Federal Assistance for Urban Mass Transit Operating Costs," disappointingly rejected the idea that the Federal Government should subsidize operating costs. Rather the report recommended that the Congress pass the President's transportation revenue sharing proposal.

It is unlikely that the transportation revenue-sharing proposal will be enacted quickly. Accordingly, it should not be considered a substitute for the urgent assistance which is needed now to check the deterioration of our public transportation systems. Some interim measure such as the bill I am introducing is needed at least to keep our present systems in repair. Even the release of the mass transit money the President has impounded—money which I have strongly urged him to release—would not help this situation, for it is money to be used essentially to build new capital structure.

The Senate is beginning to recognize that the time has come when a greater proportion of the Federal transportation funds should be made available to mass transportation. Recent efforts to delete a provision from the Revenue Act of 1971 which would have shifted certain general revenues into the highway trust fund, narrowly failed. Similar efforts to have those funds earmarked for mass transit uses also narrowly failed. Fortunately, that provision shifting the funds was deleted in conference. The Senate votes on these provisions, however, signify the increasing dissatisfaction with the "monopoly" highway trust fund concept and indicate a growing desire to apply more money to urban mass transit and commuter services.

The bill I introduce today does not try to subsidize all operating expenses; it merely tries to maintain and keep in good repair those systems we have, and it appears to me that such concept would appropriately complement the Federal present law.

I firmly believe that healing our cities' transportation woes would go a long way to help solve many of our other urban problems. For cities like New York an improved transportation network would add immeasurably to the quality of life. This bill may keep us at least at status quo until we have the opportunity to develop the programs and devote the money to putting transportation systems in the shape we would like to see them.

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

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

S. 2958

A bill to amend the Urban Mass Transportation Act of 1964 to authorize certain emergency grants to assure adequate rapid transit and commuter railroad service in urban areas, and for other purposes

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

SECTION 1. This Act may be cited as the "Urban Transportation Emergency Relief Act".

FINDINGS AND PURPOSES

SEC. 2. The Congress finds—

(1) that the continued operation of existing rapid transit and commuter railroad facilities in urban areas is threatened by the lack of resources;

(2) that the Federal Government has a responsibility to help support the operations of these facilities until more adequate long-term programs can be enacted; and

(3) that immediate Federal assistance is needed on an emergency basis to avoid the shutting down of some of these facilities and to prevent fares from escalating beyond the reach of rapid transit and commuter railroad users.

EMERGENCY GRANTS TO MAINTAIN RIGHT-OF-WAY

SEC. 3. The Urban Mass Transportation Act of 1964 is amended by redesignating sections 6 through 16 as sections 7 through 17 and inserting after section 5 a new section as follows:

"EMERGENCY GRANTS TO MAINTAIN RIGHTS-OF-WAY

"SEC. 6. (a) Notwithstanding any other provision of this Act, the Secretary shall make grants to States and local public bodies and agencies thereof in an amount equal to all or a part of the total cost incurred on and after January 1, 1972, of the regular maintenance and repair of the right-of-way of a rapid transit or commuter railroad facility serving a city or the metropolitan area surrounding a city.

"(b) Payment of such grants shall be made quarterly, in arrears, based upon such interim proof as shall be required by the Secretary of Transportation that the said costs have in fact been incurred, subject to subsequent verification and adjustment by the Secretary of Transportation upon the completion of detailed post audits.

"(c) Regular maintenance and repair of the right-of-way shall include maintenance and repair of (1) grade, tunnels, subways, bridges, trestles, culverts, and elevated structures; (2) track, including replacement of ties, rail, other track material, and ballast; (3) signal systems, interlockers (including operation thereof) and grade-crossing warning and protection systems (including operation thereof); and (4) power substations (including operation thereof) and power transmission and distribution systems, including replacement of third rail. Where the cost of maintenance and repair as aforesaid reflects the salary of an employee of such facility, such salary shall be augmented by a factor to approximate payroll taxes, fringe, pension, and retirement benefits, and general overhead and supervision expense attributable to such employee.

"(d) A State cr local public body or agency shall be considered to have incurred costs of the regular maintenance and the repair of a right-of-way of a rapid transit or commuter railroad facility if such State or local public body or agency is charged by law or contract with the responsibility to operate or to provide at least 80 per centum of any annual deficit arising from the operation of the rapid transit or commuter railroad facility. Even if a State makes an emergency grant to a local public body or agency comparable to the grant authorized under subsection (a) of this section, the Secretary shall nonetheless make the grant under such subsection (a).

"(e) To finance grants under subsection (a) of this section, there is authorized to be appropriated $200,000,000 for each of the fiscal years 1972, 1973, 1974, 1975, and 1976. Any amount appropriated pursuant to this subsection shall remain available until expended, and any amount so authorized but not appropriated for any fiscal year may be appropriated for any subsequent fiscal year."

By Mr. TAFT (for himself and Mr. FONG):

S. 2959. A bill to amend the Labor-Management Relations Act, 1947, and the Railway Labor Act to provide for the settlement of certain emergency labor disputes. Referred to the Committee on Labor and Public Welfare.

EMERGENCY LABOR DISPUTES ACT OF 1971

Mr. TAFT. Mr. President, the distinguished chairman of the Labor and Public Welfare Committee has scheduled hearings on the 9th of December relative to my proposal for emergency strike legislation.

Since I introduced my amendment No. 765 to the Economic Stabilization Act legislation I have redrafted this proposal by making certain technical changes that I believe will strengthen this approach. Today I introduce for appropriate reference a bill embodying these changes and I ask unanimous consent that the text of this bill appear at this point in the RECORD.

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

S. 2959

A bill to amend the Labor-Management Relations Act, 1947, and the Railway Labor Act to provide for the settlement of certain emergency labor disputes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Labor Disputes Act of 1971".

SEC. 2. (a) Congress hereby finds—

"(1) that the present procedures established by sections 206–210 of the Labor-Management Relations Act, 1947, and section 10 of the Railway Labor Act for dealing with labor disputes which threaten the health or safety of the Nation or a substantial part of its population or territory, or deprive any section of the country of essential transportation services need to be amended to provide greater flexibility in preventing national or regional emergencies created by labor disputes;

"(2) present procedures for resolving such labor disputes need to be amended to prevent serious disruptions in operations and services essential to the health or safety of the Nation or a substantial part of its population or territory; and

"(3) additional procedures need to be made available to permit prompt action to deal with national or regional emergencies created by labor disputes is necessary to prevent imperiling the health or safety of the Nation or a substantial part of its population or territory by such disputes and to encourage and maintain free collective bargaining.

"(b) It is the purpose of this Act to make available a range of flexible procedures to be utilized in taking emergency action, to prevent the interruption of operations or services essential to the health or safety of the Nation or a substantial part of its population or territory because of actual or threatened strikes or lockouts.

"SEC. 3. Sections 206–209 of the Labor-Management Relations Act, 1947, are amended to read as follows:

"'SEC. 206. (a) Whenever in the opinion of the President of the United States a threatened or actual strike or lockout or other labor dispute in an industry affecting commerce may, if permitted to occur or to continue, imperil the health or safety of the Nation or a substantial part of its population or territory, or deprive any section of the country of essential transportation services, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its own position, and, if the President so directs at any time, there shall be included in such report the recommendations of the board of inquiry for the settlement of some or all of the issues in dispute. The President shall file a copy of such report with the Secretary of Labor and shall make its contents available to the public.

"'(b) Upon receiving the report from a board of inquiry, the Secretary may initiate one or more of the following actions:

"'(1)(A) He may issue an order for a specified period not to exceed thirty days that work shall resume or continue, but otherwise no change in the conditions out of which the dispute arose shall be made except by agreement. During such period the parties to the dispute shall be under a duty to bargain collectively, but neither party shall be under a duty to accept in whole or in part any recommendations of the board of inquiry.

"'(B) The Secretary's order shall be conclusive unless found arbitrary or capricious by a three judge Federal district court, pursuant to section 2284 of title 28, United States Code. The judgment of the court shall be subject to review by the Supreme Court in accordance with section 1253 of title 28, United States Code.

"'(2)(A) He may issue an order for partial operation specifying the extent and condition of partial operation that must be maintained: *Provided,* That in no event shall his order place a greater economic burden on any party than that which a total cessation of operations would impose.

"'(B) The parties shall not interfere by resort to strike or lockout with the partial operation ordered by the Secretary. The Secretary's order shall be effective for a period determined by the Secretary, but not to exceed one hundred and eighty days.

"'(C) The Secretary's order shall be conclusive unless found arbitrary or capricious by a three judge Federal district court, pursuant to section 2284 of title 28, United States Code. The judgment of the court shall be subject to review by the Supreme Court in accordance with section 1253 of title 28, United States Code.

"'(D)(i) The Secretary shall issue his order for partial operation no later than thirty days from the receipt of the report from the President, unless the parties, including the Government, agree to an extension of time.

"'(ii) On notice to the parties, the Secretary may at any time during the period of partial operation modify its order as it deems necessary to effectuate the purposes of this section.

"'(E) Until the Secretary makes his determination and during any period of partial operation ordered by the Secretary, no change, except by agreement, shall be made in the terms and conditions of employment. If the Secretary determines that the implementation of any particular term of the existing terms and conditions of employment is inconsistent with the conditions of partial operation, he may order the suspension or modification of that term but only to the extent necessary to make it consistent with the conditions of partial operation.

"'(3)(A) He may direct each party to submit to him within three days a list of all resolved and unresolved issues in the dispute. The Secretary shall, within four days after the expiration of the three day period, prepare a complete list of the unresolved issues, and within three days send a copy of such issues to each party. After receipt of the issues from the Secretary, each party shall within five days submit to the Secretary a final offer covering each of the unresolved issues. Each party may at the same time submit one alternate final offer covering all the unresolved issues. The Secretary shall forthwith transmit the final offers and any alternative offers to the parties.

"'(B) The parties shall continue to bargain collectively for a period of five days after the Secretary has transmitted the final offers and any alternative offers, during such five days the Secretary may act as a mediator. If no settlement is reached during such five day period, the parties shall within two days thereafter mutually appoint a three-member panel to act as the final offer selector. If the parties are unable to agree on the composition of the panel, the President shall appoint the panel.

"'(C) No person who has a pecuniary or other interest in any organization of employees or employers or employers' organizations which are involved in the dispute shall be appointed to such panel.

"'(D) The provisions of sections 207(b) through 207(e) of this Act shall apply to the panel.

"'(E) The panel shall conduct an informal hearing and shall select a final offer within thirty days from the date when the panel was appointed. The government shall not participate in the hearing or in the selection of the offer.

"'(F) The panel shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed by this section.

"'(G) From the time of selection of the panel until such time as the panel makes its selection, there shall be no communication by the members of the panel with third parties concerning recommendations for settlement of the dispute.

"'(H) Beginning with the direction of the Secretary to submit final offers and until the panel makes its selection, there shall be no change, except by agreement of the parties, in the terms and conditions of employment.

"'(I) The panel shall consider only the final offers and alternative offers made pursuant to this subsection A of this section. The panel shall not compromise or alter any final offer or alternative offer. Selection of a final offer shall be based on the content of the final offers and no consideration shall be given to, nor shall any evidence be received concerning, the collective bargaining in this dispute including offers of settlement not contained in the final offers.

"'(J) The panel shall select the final offer or alternative offer which it determines to be the most reasonable. The panel shall take into account the public interest, and any other factors normally considered in the determination of wages, hours, and conditions of employment. If any party has failed or refused to submit a final offer, the panel shall forthwith and without a hearing select the final offer of the other party.

"'(K) The final offer selected by the panel together with the resolved issues shall be binding between the parties, whether or not subsequently signed by both parties thereto.

"'(L) The determination of the panel shall be conclusive unless found arbitrary and capricious by a three judge federal district court, pursuant to section 2284 of title 28, United States Code. The judgment of the court shall be subject to review by the Supreme Court in accordance with section 1253 of title 28, United States Code.

"'(4)(A) Upon receiving the report from the board of inquiry, the Secretary may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lockout or the continuation thereof for a period not to exceed 80 days. If the court finds that such threatened or actual strike or lockout:

"'(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

"'(ii) if permitted to occur or to continue, will imperil the health or safety of the Nation or a substantial part of its population or territory, or deprives any section of the country of essential transportation services;

it shall have jurisdiction to enjoin any such strike or lockout, or the continuation thereof for a period not to exceed 80 days. The court additionally shall issue such other orders as may be appropriate for the enforcement of this subsection.

"'(B) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

"'(C) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in section 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, sec. 1254).

"'SEC. 207. (a) The board of inquiry shall

be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

"'(b) Members of the board of inquiry or panel appointed under section 206(b)(3) shall receive compensation, at the daily rate prescribed for GS–18 under section 5332 of title 5, United States Code, for each working day on the board or panel, together with necessary travel and subsistence expenses.

"'(c) For the purpose of any hearing or inquiry conducted by any board or panel appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C. 19, title 15, secs. 49 and 50, as amended), are hereby made applicable to the powers and duties of the board and panel.

"'(d) Any board or panel established under this Act shall act by majority vote.

"'(e) A vacancy on any such board or panel shall not impair the right of the remaining members to exercise all of the powers of such board or panel. Such vacancy shall be filled by the same procedure as provided for initial appointment outlined in this Act.

"'SEC. 208. (a) The provisions of this title and orders or determinations issued thereunder shall be enforceable upon suit by the Attorney General, through such orders as may be appropriate by any court having jurisdiction of any of the parties.

"'(b) Any action brought under this section shall be heard and determined by a three-judge district court in accordance with section 2284 of title 28, United States Code. The order or orders of the court shall be subject to review by the Supreme Court in accordance with section 1253 of title 28, United States Code.

"'SEC. 209. (a) Notwithstanding any other provisions of this Act, whenever any employer proposes a change in work rules affecting employees as contained in any labor agreement, unless such work rules relate principally to the health or safety of employees, the employer may make such change effective as proposed, if (1) any cost savings realized as a result of such change affecting rules will be shared 50 per centum each by the employer implementing such a change and the nonprofessional and nonsupervisorial employees, as defined in title I of the Labor Management Relations Act of 1947, and (2) any reduction in the number of operating employees of such employer contemplated by the proposed change affecting rules will be accomplished by attrition.

"'(b) Nothing in this subsection shall be construed to prevent carriers and representatives of the employees from entering into an agreement affecting work rules.

"'(c) For the purposes of clause (1) of subsection (a) of this section, payments to employees shall be on a per capita basis and shall be made not later than four months following the end of each fiscal year. In the event that any employee was not employed by an employer for the entire fiscal year preceding the payment date, the payment to such employee hereunder shall be prorated to cover the period of employment.

"'(d) In the event that any representative of affected employees contests the amount of cost savings as determined by the employer under clause (1), subsection (a) of this section, said representative and the employer shall mutually designate and compensate a certified public accountant, whether an individual, partnership, or corporation, which accountant shall make a determination of the cost savings, which determination shall thereupon be final and binding.'".

"SEC. 4. Section 210 of the Labor-Management Relations Act, 1947, is repealed.

"SEC. 5. Section 212 of the Labor-Management Relations Act, 1947, is amended to read as follows:

"'REPEAL OF SECTION 10 OF THE RAILWAY LABOR ACT

"'SEC. 212. Section 10 of the Railway Labor Act is hereby repealed: *Provided*, That such section shall continue in effect with respect to any emergency board in existence on the effective date of this Act. Disputes heretofore subject to section 10 of the Railway Labor Act shall be subject to provisions of this title.'

"SEC. 6. Title II of the Labor-Management Relations Act, 1947, is amended by adding at the end thereof the following new section:

"'RIGHTS OF EMPLOYEES

"'SEC. 213. Nothing in this title shall be construed to limit the right of any employee to resign from his position of employment.'

"SEC. 7. INAPPLICABILITY OF THE NORRIS-LAGUARDIA ACT.—The provisions of the Act of March 23, 1932, entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', shall not be applicable to any judicial proceeding brought under or to enforce the provisions of this Act."

By Mr. BEALL:

S.J. Res. 181. Joint resolution to establish a Joint Committee on Aging. Referred to the Committee on Labor and Public Welfare.

Mr. BEALL. Mr. President, it is said with some justification that perhaps the most neglected minority in the country today are our senior Americans. Perhaps to no group of people do we owe more of a debt of gratitude than to our senior citizens, for they are responsible, in the main, for the many privileges and opportunities which we as Americans enjoy today.

Hopefully, this neglect will shortly be a thing of the past. I am happy that the White House Conference on Aging was called and that it has now been successfully concluded.

The problems discussed at the conference attracted national attention. They show that there is a great responsibility among those who serve in Congress to see to it that that attention is not allowed to sag, as it were. Suggestions have been made as a result of the White House Conference on Aging that deserve the attention of the executive and the legislative branches. It is our responsibility as members of the legislative branch to see that these suggestions are transmitted into meaningful legislative proposals.

It has been my observation recently that, although our intentions are good, the efforts of Congress so far have been fragmented when it comes to dealing with the problems of the aging. Those problems deserve the undivided attention of all of us who serve in Congress.

We must erect a structure so that we can deal with these problems which will result in meaningful solutions.

Therefore, so that Congress can deal effectively with the problems which face the aging, so that we can come up with the kinds of solutions necessary, I send to the desk a joint resolution to establish a Joint House-Senate Committee on the Aging. It seems to me that if we can give these problems the kind of attention they deserve, through concentration of our efforts and through the establishment of a committee which will have the undivided, the sole responsibility of bringing the problems of the aged to the attention of Congress, then we can come up with meaningful legislative solutions, and with meaningful suggestions to carry out the ideas which were born during the recent White House Conference on the Aging.

I send this resolution to the desk in the hope that it will be favorably considered.

This new joint committee will consist of 22 members, 11 Members from the Senate, appointed by the President of the Senate; and 11 Members from the House of Representatives, selected by the Speaker. A similar resolution was introduced in the House by Congressman QUIE. The mandated duties of the joint committee will be:

First, to conduct a continuous study and review of the problems of the senior Americans. This will include income, housing, health—including medical research—welfare, employment, recreation, crime prevention, transportation, and greater participation in family and community lift.

Second, to study methods of encouraging the development of public and private programs which would assist older Americans to take a full part in national lift. These senior Americans have had a lifetime of learning and they have a knowledge of skills and abilities to contribute to help make a better America.

Third, to develop policies encouraging the coordination of both governmental and private programs dealing with the problems of aging; and

Fourth, to review the recommendations made by the President on the White House Conference on Aging.

This latter point is most important for senior Americans are tired of hearing only promises of improvements and no action implementing them. I am particularly pleased that President Nixon has indicated that Arthur Flemming, who heads the White House Conference on Aging, will not only be around to follow up the White House Conference but will be retained even beyond that point as a personal consultant on aging matters to the President.

The responsibility for substantive legislation dealing with senior Americans is fragmented both in the executive branch and in the legislative branch. For example, at the executive level, the Department of Health, Education, and Welfare, the Department of Labor, the Department of Agriculture, and the Office of Economic Opportunity and the Department of Housing and Urban Development all have programs involving senior Americans. President Nixon, in order to help coordinate senior citizens programs at the executive level, has created a Special Cabinet Committee on Aging, as part of the domestic counsel. This action is needed and helpful.

In the Congress, we have a similar fragmentation problem. The Senate Fi-

nance Committee has jurisdiction over social security, tax matters, and health insurance, while the Labor and Public Welfare Committee has jurisdiction over such areas of interest to the aged as the Older American Act, health, poverty, and education programs. The Banking, Housing, and Urban Affairs Committee has jurisdiction over housing matters. The Agriculture Committee handles food stamps. It would be very difficult to restructure the jurisdiction of the respective committees because the problem of older Americans crosses committee jurisdictional lines. The Joint Committee envisioned by this joint resolution would not be given legislative authority. In many ways it would be like the Senate Select Committee on Aging, but it would have the additional asset of bringing the House and Senate together for a joint examination and study of the problems of Senior Americans.

Mr. President, there are 20 million Americans age 65 and over. I can think of no group that is more deserving of increased attention. They have through their working years earned the right to live their retirement years in security, independence, and dignity. These citizens are largely responsible for the prosperity and greatness that is America today.

These citizens through hard work and determination pulled themselves and their country from the depths of a great depression. Many of them fought in either World War I or World War II. Thus we owe this segment of our society special obligations. The joint committee that I propose today could be the forum for the needed increased attention to the problems of senior Americans by the Congress. The first White House Conference in a decade is now taking place and hopefully the recommendations will lead to action by the executive and legislative branches and the country as a whole on the problems of the aged.

Mr. President, through the creation of the Special Cabinet Committee on Aging, and the retention of Dr. Flemming, the President and the executive branch have indicated that they are geared to action. The establishment of a joint committee, as I proposed today, whose first order of business will be to focus on the recommendations of the White House Conference on Aging would similarly signal a readiness to redress the longstanding grievances of senior Americans, the largest and most forgotten minority in the Nation.

SENATE RESOLUTION 208—SUBMISSION OF A RESOLUTION TO AUTHORIZE THE COMMITTEE ON FINANCE TO ENGAGE IN STUDIES ON UNITED STATES-CANADA TRADE

(Referred to the Committee on Finance.)

Mr. CURTIS. Mr. President, I submit a resolution authorizing the Senate Committee on Finance or an appropriate subcommittee of that committee to engage in studies and make other inquiries which can result in recommendations to the Congress to assure this Nation and our neighbor, Canada, a continuation of amicable and mutually satisfactory relations in trade and commerce throughout the decade of the 1970's.

I do this with a deep sense of gratitude for the warm and friendly relations which have characterized the United States-Canadian posture in the years of our national histories. The bonds of a common heritage, a common language and, for most purposes, common goals, have been significantly beneficial to both nations.

I submit this resolution with an awareness of problems and of stresses within the current trends of both nations which, if left unheeded, might result in even a minor degree of deterioration of those wholesome and mutually beneficial relations in trade and commerce so important to both nations.

The United States has, indeed, some difficult decisions to make in matters of trade balances and capital outflow which are vital to the domestic economy. Proposals to aid in the making of these decisions are before this Congress in substantial volume and the volume will increase within the next few years.

It is my belief that particular attention should be given to United States-Canada relations. Canada is zealous to preserve its national integrity and Canada rightly deserves status among the formidable nations which will shape the world's destiny. Yet Canada has been enhanced, and I hope it will continue to be enhanced, by the technological and capital support of the United States.

To me it is abhorrent to politicize some of the problems which are inevitable in the courses of both the United States and Canada. Durable solutions cannot result from decisions made with a lack of understanding by either nation of the internal problems of the other nation.

Canada deserves to develop, to fashion, and to market its resources for the fullest benefit of its citizens. The employment of U.S. technology and capital investment need not deter this attainment. Canada will export its resources as finished goods or as raw materials depending on the needs, both present and future, of its domestic economy. But, in such important objectives as exploration for and production of energy resources, it will require substantial investment of U.S. capital and substantial access to U.S. markets to underwrite these developments. Needless to say, investors within the United States need to be advised of the policies within Canada which may support or impede the attainment of the objectives sought in the making of capital investments.

For example, Northern Natural Gas Co., a transmission and distribution company headquartered in Omaha, Nebr., has become, in the past 3 years, a substantial investor in exploration for and discovery of gas in the Province of Alberta. Northern's activity has been important to the economy of the Province. Its investment of $80 million has resulted in Northern acquiring rights to more than 3 trillion cubic feet of natural gas. While discovery in Canada is no guarantee for a license to export, there was never any doubt of Northern's purpose to bring Canadian gas into its system.

Northern anticipated Canadian concerns about foreign investment and created a subsidiary operation under Canadian control. Despite Northern's success in discovery of natural gas in Alberta, it has twice been denied an application to export any gas to the United States. Northern's second application, designed more closely than its first to meet prevailing Canadian attitudes and objectives, would have benefited the Canadian consumer of natural gas to an extent at least equal to benefits flowing to the U.S. consumer.

The Northern Co. experience is an example of an area which needs clarification in United States-Canadian trade relations. Policies of the two governments on trade in energy resources must be clarified before U.S. investors can be expected to make further capital commitments, commitments which will provide benefits over the long term for both nations.

It is my purpose, with this resolution, to meet some of the problems which exist or may come into being in United States-Canadian relations in trade and commerce. I believe that, if we were to pursue a favored-nation policy, Canada would richly deserve our favor. I think we deserve a like measure of favor from Canada. My purpose is an enhancement of our historically good relations to the benefit of both nations.

The resolution reads as follows:

S. RES. 208

Resolved, That the Committee of Finance or any subcommittee thereof, is authorized, under section 134(a) and 136 of the Legislative Reorganization Act, and in accordance with its jurisdiction specified by rule XXV of the Standing Rules of the Senate, to make a complete and full study and investigation of the means necessary to improve, within the next ten years, the relations between the United States and Canada with respect to the investment of domestic capital funds, and to trade and commerce. Such study and investigation shall include, but not be limited to, the investment of domestic capital funds in the exploration for, and discovery of, energy resources within Canada and shall include inquiry into policies within Canada for the disposition of energy resources acquired with domestic capital funds.

SEC. 2. The Committee shall report to the Senate at the earliest practicable date the results of its study and investigation, together with its recommendations for any necessary legislation.

SENATE RESOLUTION 209—SUBMISSION OF A RESOLUTION RELATING TO THE PLIGHT OF JEWS IN THE SOVIET UNION

(Referred to the Committee on Foreign Relations.)

Mr. CHILES submitted the following resolution:

S. RES. 209

Whereas the President has announced his intention to meet with the leaders of the Soviet Union in Moscow in 1972;

Whereas the Government of the Soviet Union has unjustly discriminated against its Jewish citizens and denied them the right to emigrate to other countries; and

Whereas the plight of Jewish people in the Soviet Union is of deep concern to the people of the United States: Now, therefore, be it

Resolved, That the President is urged and requested to give high priority to a discussion of the plight of Jews in the Soviet Union at his upcoming meeting with Soviet leaders.

ADDITIONAL COSPONSORS OF A RESOLUTION

SENATE RESOLUTION 203

At the request of Mr. HATFIELD, the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Florida (Mr. GURNEY) were added as cosponsors of Senate Resolution 203, calling for a fishing industry representative in the delegation of the United States to the United Nations Law of the Sea Conference.

ADDITIONAL STATEMENTS

THE POLITICAL SITUATION IN EUROPE

Mr. BUCKLEY. Mr. President, the cornerstone of our worldwide system of collective security is what NATO Secretary General Manlio Brosio has described as the first line of defense of the United States, our alliance with the nations of Western Europe in the North Atlantic Treaty Organization. In the 1940's and 1950's, the NATO alliance served as a military bulwark against the very real prospect of unalloyed Soviet military aggression against the nations of Western Europe following the subjugation of the nations of Eastern Europe by the Soviet Union in the years following World War II. In the 1960's, the NATO alliance served as the military "umbrella" beneath which the political and economic freedom of Western Europe was assured. In recent weeks, however, there have been some disquieting signs on the political horizon which raise questions about the continued viability of the Western alliance.

There have been two keys to the continued success of NATO as a force for the security and stability of Europe. One has been the steadfast support—diplomatic, economic, and military—of these alliance by the United States. The second has been the political integrity and independence of the Federal Republic of Germany. Because of her economic importance and strategic geographical position at the very heart of Europe, a West Germany strongly committed to the political independence of NATO and her constituent nations is vital to the very existence of the alliance.

There is some preliminary evidence that the political "cement" of NATO unity is weakening as a consequence of the recent negotiations over the status of Berlin.

U.S. policy in Europe since World War II has been most closely identified with preserving the political status of West Germany in general, and the city of Berlin in particular. It has been the position of the United States as well as the other NATO powers, that the United States, France, and the United Kingdom should retain ultimate authority over Berlin. Moreover, it has been emphasized over and over again that Berlin should be integrated into the political and economic life of West Germany. In support of this principle—a principle spelled out in postwar allied documents as well as the West German Constitution—we have committed the resources and prestige of the United States on scores of occasions since World War II.

Berlin has become politically important, because it is the litmus paper of American and European resolve. Failure to support those rights with respect to Berlin which we have supported in the past, mixed up in the incredible subtlties of secret diplomacy as it is, would be taken as an unmistakable signal to the Soviet Union and her Warsaw Pact client states that the time was ripe to initiate a political offensive designed to achieve the destruction of West European unity and the dissolution of the NATO alliance. Should such a political offensive succeed, the inevitable result would be the "Finlandization" of Europe. Because without a spirit of unity and without a strong American military presence, the nations of Western Europe—especially Germany—could retain all of the outward manifestations of national identity and political independence, but they would be unable to act in concert in a manner which would run counter to important Soviet objectives.

There are elements of the recently signed Quadrapartite Agreement on the status of Berlin which concerns me deeply. It is my view that the trend of events which may follow the Quadrapartite Agreement merits the closest congressional scrutiny. Indeed, the terms of the Quadrapartite Agreement strongly suggest that there should be congressional study of the agreement itself since this agreement may be the first in a series of far-reaching agreements affecting the character of European and NATO security arrangements and the relationship of the United States to Europe.

The agreement appears to make a number of crucial concessions concerning the status of Berlin—particularly the establishment that Berlin is not a part of West Germany—in exchange for an extended list of assurances that the Soviet Union will not harass traffic between West Germany and West Berlin. It seems that the heroic diplomatic and military efforts which have been made since World War II to preserve the association of West Berlin with West Germany may have come to naught if we surrender through negotiation what the Soviet Union could not win by intimidation and blackmail.

There is evidence that there is a growing realization among Germans that the consequences of the Quadrapartite Agreement may not be in their interests either. In a recent address before the National Press Club, West German Publisher Axel Springer observed that the West had conceded important political ground. He goes on to state:

For instance, it diminished the influence of the Federal Republic in West Berlin by accepting that no sessions of the Bonn Parliament nor the Congress, which elects the Federal President, may take place in West Berlin.

On the other hand, the situation in East Berlin was not even mentioned, where, contrary to earlier agreements, the East German regime has installed its governmental offices and its mock parliament, not even to speak of the East German troops which are stationed there. No West German soldier may—of course—enter West Berlin.

Completely incredible is the concession to establish a Soviet consulate general in West Berlin, a concession granted upon German urging. The Berliners already call this the future home of all spies who were kicked out of Britain recently.

I ask unanimous consent that the complete text of Mr. Springer's remarks and the full text of the Quadrapartite Agreement be printed in the RECORD.

It is my intention to continue to examine the character of this and future agreements with a view toward their consistency with American interests in Europe, lest we one day, find that our interests have been severely compromised by a series of small steps.

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

STATEMENT BY AXEL SPRINGER

Ladies and gentlemen, your chairman asked me to be brief. I think he was right. Because as you know we Germans write the longest articles in the world and make the longest speeches—with the possible exception of the Russians and the Cubans.

The duty to be brief reminds me of a very pleasant ceremony at the Chaim Weizmann Institute in Rehovot, Israel. Before we, the designated Honorary Fellows of the Institute, got our caps and gowns, there were several speakers; they all were asked to be brief.

One of them, the British Ambassador, solved this problem in a very humorous way: he purposely spoke so fast, that nobody understood him. But he stuck exactly to the given time, and the results were waves and waves of laughter in the audience.

Don't be alarmed. I cannot speak English that rapidly.

Seriously, I am grateful and happy to be here today to talk to you about Berlin.

Before I get to Berlin allow me to introduce myself by telling you the four basic principles to which all journalists of our newspapers are bound.

(1) Reunification of Germany in freedom, if possible within the framework of a United Europe.

(2) Reunification between Jews and Germans, which includes strong support for the life-rights of the people of Israel.

(3) Rejection of any kind of political dictatorship.

(4) Defense of the free market economy with social responsibility.

When I said before that I am grateful to be here at this time, my main reason is that I believe we are witnessing today not the beginning of a Berlin solution, as many want us to believe, but the beginnings of a new future Berlin crisis, different from earlier ones.

Many who compared the building of the Wall in 1961 to a painful amputation, now fear that in the meantime the city has been infected by a dangerous creeping illness.

It is, therefore, not a matter of accident that people are leaving Berlin these days in great numbers. The census officials of the city are alarmed. Many more Berliners, they say, have left the city in the past months than those who left even after the building of the Wall.

For years and years I have been calling attention to this danger.

I remember especially a dinner in Bonn, ten years ago, on Friday, August 11th, 1961. Next to me sat the late Edward R. Murrow, then head of the USIA.

At that time, once again, access routes to Berlin were under discussion, and Mr. Murrow asked for my opinion.

"You are all looking in the wrong direction. Watch out for a move to cut off West Berlin from the East by barbed wire and military units."

Mr. Murrow seemed more than interested and urged a detailed continuation of our talk a few days later, when he planned to be in Berlin.

One night later the barbed wire was actually strung, the Western powers reacted only reluctantly, and a short while afterwards a very excited and agitated Ed Murrow sat in my Berlin home.

In a long, extremely serious talk I warned him that this period may some day be regarded as the starting point of a neutralism which might embroil Germany at some future date and break up the NATO alliance.

You all remember, that soon thereafter President John F. Kennedy sent his Vice President, Lyndon B. Johnson, and the, in Germany, very popular General Clay to Berlin, to bring reassurance to the threatened city and to its people.

But the doubts remained.

It seems that especially Willy Brandt, the former Mayor of Berlin and present German Chancellor, never got over the shock caused by Western inaction in face of the Wall. It may be that the seeds for his new dangerous policy towards the East were already laid on this fateful August 13th, 1961.

During a recent discussion in the Bonn parliament, Herbert Wehner, the strong man in the SPD, said: "We must not forget that this Wall was accepted, even though with protest, by those who solemnly signed with us mutually binding treaties;—meaning the Western powers.

Brandt underlined this statement by almost jumping from his seat and three times in a row nodding his head in approval.

Ladies and gentlemen, we spoke of the days when the Berlin Wall was built. Those were trying times. But all this did not in any way change my earlier decision to move the headquarters of my publishing group from Hamburg to Berlin. I felt at that time, as I am convinced now, that in Berlin the future not only of Germany will be decided, but the future of Europe, possibly even the future of modern Western society.

Our move to Berlin was a deliberate decision motivated by politics and not by economy. Almost five years ago we opened our 20-story publishing house, a stone's throw from Checkpoint Charlie and seemingly astride of the ugly and dangerous Berlin Wall.

West Berlin, by the way, is not a small enclave. It covers an area in which you could put the cities of Munich, plus Frankfurt, plus Duesseldorf, plus a large hunk of Hamburg too.

From my office window I look deep into the other, the Eastern part of the city, and I invite each and everyone of you here to come, visit us in Berlin, and share with me this depressing but illuminating view.

A few years ago Willy Brandt said: "Berlin exists for the vision, some day once again to be the capital of a free and united people. The note of alarm from Berlin will continue to exist, even if people elsewhere should get tired."

Let me add two other quotes from earlier speeches of the present German chancellor:

"We must get used to the fact that Russia insists on treating and denouncing Berlin as an alleged focus of danger, a cancer, as they say, a fuse in the powder barrel, a foreign body. But behind the Soviet demand for a treaty with the two forms of state on German soil there is not merely the—understandable—desire on the Soviet part to pocket Berlin, immediately or bit by bit; there is also the idea of globally fixing the results of World War II as the Soviet Union sees them."

Nobody could have put it more clearly. Nor this: "For anyone who put up with the partition of Germany, Berlin would become unnecessary. Berlin upsets the all too comfortable concepts. For it is clear that that miserable Soviet satellite regime which is neither German, nor democratic, nor a republic cannot be consolidated as long as the reddening evening skies over the free part of Berlin light up the hopes of men on the other side of the Wall."

Willy Brandt spoke like this for many, many years. But in the past two years something almost unthinkable has happened in Germany:

After the last federal election campaign in 1969, during which no political party mentioned that a totally new foreign policy was planned, the traditional, generally accepted, common political basis of all three democratic parties in the Bonn parliament *vis-a-vis* the communists broke apart. (As an aside let me add, that this reported by a man who in past elections has given his vote to everyone of these parties, as the occasions demanded.)

Let me make something else clear: I am not here to criticize my government or its policies. This my political friends and I do at home. And be assured, what I am saying here has been said and printed again and again back in Germany.

But because our papers are printed in German, I play the role of the interpreter to you today.

As to the Nobel prize given to Willy Brandt, I don't know exactly what my papers have written because I have been away from home for two weeks.

Personally, I am very happy that a German chancellor got this prize. Peace in connection with the new Germany I like very much. For me, in this respect, Willy Brandt is a link in the chain of all German chancellors since the foundation of the Federal Republic, all of whom worked for peace.

I do not like the prize, though, as approval of Brandt's new policies towards the East because I consider these policies very dangerous. I shall explain why in detail in the course of this speech.

Many are warning who, like myself, have all respect for Willy Brandt's political past.

One out of many of these I quote:

"The future of the Federal Republic is dependent upon its ties with the West. Therefore, the new Eastern policies of the present government must be criticized again and again. I foresee a sad ending."

This warning was given just last week by Margarete Buber-Neumann on her 70th birthday. Mrs. Buber-Neumann, a former communist, is an important German political writer. In 1945 she was freed from a Nazi concentration camp. She now lives in Frankfurt.

Some politicians in Germany never stop arguing behind closed doors that the United States is preparing withdrawal from Europe, and that therefore Germany must make arrangements with the Soviets. This German flirting with the communists in turn strengthens the hand of those in America who want to pull back the troops. And this again gives new arguments to the proponents of the German "Ostpolitik." This goes on and on—a vicious circle.

When I discuss today here in Washington the trends of the present West German policies towards Communist Europe, I do so, because I feel and fear that by these policies the whole West is endangered. If this goes on unchanged, the result will not be a peaceful, prosperous, quiet, united Europe, which is a partner of the United States, the result will be rather a Europe whose total resources would be at the disposal of the Soviet Union.

I know others are less alarmed and believe once again in "peace in our time."

Who is right? Those who believe that the Soviets have changed their aims and that we can trust them? Or those who, while admitting that the Soviets have at times modified their methods, are convinced that their aims are the same?

I belong to the latter group, and with good reasons. We in the West focus our eyes on measures of disarmament, arms limitations, manpower cuts, etc. The Soviets however give only lip service to such intentions, and at the same time build up their armed forces. They rearm in such a way and with such speed, that soon they may be the world's number one military power.

This, by the way, is not only the opinion of a disillusioned publisher from Berlin, it has been confirmed to me by top intelligence officers from my own country as well as from yours, from Britain, from Switzerland and from Israel.

What is to be done?

Maybe the question to be answered is a very simple one: Will we see in the last third of our century a *pax americana* or a *pax sovietica?*

One excludes the other. *Pax americana* would mean continued hope for all mankind; *pax sovietica,* new dark ages in our times.

You, our American friends, after your victory in 1945, had the wisdom to help rebuild the destroyed countries of Europe, including my own, your former enemy. This is never forgotten.

When shortly after the war the Soviet Union resumed its aggressive policies, you brought together worldwide alliances. Especially in Europe, they stopped the aims of the communists and allowed the countries protected by the NATO shield to live through years of unheard-of prosperity and growth.

The question, as I said, is: Do we want to work for this *pax americana,* or are we willing to let the other side win?

These are the only alternatives—a compromise is not possible. Even the Soviet term for international compromise—peaceful coexistence—does not mean cooperation, but continuation of the confrontation on other levels.

Piotr Abrassimov, until a few weeks ago Soviet Ambassador in East Berlin, calls peaceful co-existence "a form of the 'class struggle' on an international level."

"Trybuna Ludu," the communist party paper in Poland, makes it still clearer, saying:

"The policy of peaceful co-existence aims at taking away from the capitalists by peaceful means all positions they still hold."

Aggression and peaceful co-existence, disarmament talks and rapid build-up of the armed forces, subversion and cooperation, trade negotiations and trade war—all these and many other seeming opposites are for the Soviets only two different sides of one coin. As long as we refuse to realize this, we are in great danger.

In this worldwide gamble for final victory by the communists, Berlin is one of the most important pawns for the Soviet Union.

The Soviets still quote Lenin who said: "Whoever controls Berlin will rule Germany, and whoever controls Germany rules Europe."

Up to this time, in the struggle for Berlin, the communists have not won. The blockade in 1948, the Khrushchev ultimatum in 1958, the Wall in 1961, the constant intimidations and the shootings—all were a combination of naked power and blackmail. But they did not succeed.

Should the Soviets and their friends now obtain by sweet talk what they failed to get by threats.

Sweet talk? What am I saying?

In the Berlin agreement of the third of September of this year, the four powers condemned the use of force. But of course we continue to hear the shots and also the cries of those who try to flee from the East. Their number has even increased.

Ladies and gentlemen, just about ten years ago Robert Kennedy told me in Berlin that the Wall was the most effective propaganda against communism. I answered:

"I am afraid, in time, people will get used

to this monstrosity. And if we keep quiet, if we fail to create permanent worldwide moral pressure, ten years from now the Wall will still be here, will be an accepted "reality."

Today, ten years later, the Wall *is* still there. Worse: its existence has been silently tolerated by the West in the Berlin agreement, which was signed only a few weeks ago.

What was really gained by the West in this agreement? I know the Western representatives invested immense good will and the greatest efforts. But the so-called concessions from the Russians are all self-understood and accepted among decent nations.

Travel simplified from and to West Berlin. Visits by West Berliners to East Berlin and East Germany, of course *not* vice versa. All this is emotionally important to individuals, but politically unimportant.

The West, however, conceded important political ground.

For instance, it diminished the influence of the Federal Republic in West Berlin by accepting that no sessions of the Bonn parliament nor the Congress, which elects the Federal President, may take place in West Berlin.

On the other hand, the situation in East Berlin was not even mentioned, where, contrary to earlier agreements, the East German regime has installed *all* its governmental offices and its mock parliament, not even to speak of the East German troops, which are stationed there. No West German soldier may—of course—enter West Berlin.

Completely incredible is the concession to establish a Soviet consulate general in West Berlin, a concession obviously granted upon German urging. The Berliners already call this the future home of all the spies who were kicked out of Britain recently.

You may be interested to hear how a member of the Western negotiation team sees the future of this institution. He said:

"At first the Soviets will do nothing. But after two years at the latest, they will press for their own liaison officer at the seat of the West Berlin government. Then we shall have Four Power Rule for West Berlin."

The West also gave a deathblow to all hopes for eventual reunification of Berlin and Germany. I mean, of course, reunification in freedom. This new policy will most likely bring in its wake international diplomatic recognition for the East German regime. The run has already been started.

This is, of course, not admitted in such terms by the involved Western representatives. But these are the facts, and the Soviets and their allies already speak and act accordingly.

Believing that self-determination is a basic political right, I, for one, would have been happier, had it been possible to put the Berlin agreement up for a referendum vote to the people of West Berlin.

Ladies and gentlemen! "Berlin exists for the vision some day to be the capital of a free, and united people," said Willy Brandt in former times, as I have quoted earlier. This has also been the policy of all American Presidents from Harry S. Truman to Richard M. Nixon.

Without this vision, what will Berlin be? To this city, also, the aphorism applies: "It shall not live by bread alone."

Are these the words of a German nationalist? Certainly not.

If I speak of reunification, I think mainly of bringing freedom and civil liberties to the Germans in the other part of my city and my country. Reunification on other terms is for me unthinkable.

For a long time I have been content, because at last Germany has found itself on the right side in world politics. It was on the side of the free world, on the side of the United States, on the side of Israel.

The German Chancellor claims that this will continue. But I am not so sure.

What will be the next moves?

The Soviets, and probably also my own government, will press for a speedy accord among the two parts of Germany to fulfill the Berlin agreement. They will also press for a speedy ratification of the Moscow and Warsaw treaties.

Concerning these treaties, a friend of mine, a high official in a country which is also under pressure from the Soviets, asked me recently: "Please explain to me the Russian 'Westpolitik,' which in your country is called German 'Ostpolitik'."

These treaties, in my mind, are so dangerous, not only because they give away German rights without getting anything back in return, but because they are the first sign of a new "renversement des alliances", reversal of alliances, as Bismarck called it.

And this would most certainly be a catastrophe. Without the alliance of the West, which was built with your help and with America as the leading member, the free world would be doomed.

The next step, according to the Soviet timetable, will be the so-called European Security Conference. Here the often-told, long-range aim is to find a political and a legal justification for the demand, that "all troops return home from foreign soil." This in effect would mean that the Soviet units might retire beyond the new Polish eastern border, and that the American units retire beyond the Atlantic.

The Russians plan to have the European Security Conference by spring 1972. During his visit in the Crimea, near Yalta, Willy Brandt accepted this timetable. Or, so I have been informed.

The Soviets expect that next spring President Nixon will be so involved in the elections that only little energy can be spared by him for other matters. This the Russians hope to exploit.

It appears that the British government has chiefly recognized this situation and tries to at least postpone this conference. I hope it succeeds.

If the Moscow and the Warsaw treaties and the Berlin agreement become effective, and if the Soviets reach their goal at a European Security Conference, Russia would become the dominant power over all of Europe.

However, the majority of Europeans and most certainly the majority of my German countrymen still hope for the *pax americana*. In a recent poll 70 per cent of all West Germans considered continued friendship with the U.S.A. as the most important foreign policy issue. And I know that the *pax americana* can only be reached with the full and enthusiastic cooperation of all the friends and allies of the United States. And this, of course, also includes the fair sharing of financial burdens.

Finally: A last word about Berlin. Almost exactly 25 years ago today the first free, secret and direct elections under the Four Power Statute were held in all of Berlin. Shortly before election day, Hans Wallenberg, then an American Major and chief editor of the "Allgemeine Zeitung", wrote an important article. It was entitled "Have No Fear" and, among other things, killed the viciously-spread rumors that American and British troops soon were to leave Berlin.

The elections brought an overwhelming victory for freedom against the darkness of a new, a Soviet dictatorship. Hopes were high.

But never again have there been free elections in all of Berlin. Instead we have had set-back after set-back.

We must recover lost ground and, once again, together build something new, so that it never again will be necessary to say: "Have No Fear."

THE BERLIN ACCORD

The governments of the United States of America, the French Republic, the Union of Soviet Socialists Republics, and the United Kingdom of Great Britain and Northern Ireland,

Represented by their ambassadors, who held a series of meetings in the building formerly occupied by the Allied Control Council in the American sector of Berlin.

Acting on the basis of their quadripartite rights and responsibilities, and of the corresponding wartime and postwar agreements and decisions of the four powers, which are not affected,

Taking into account the existing situation in the relevant area,

Guided by the desire to contribute to practical improvements of the situation,

Without prejudice to their legal positions

Have agreed on the following:

PART I—GENERAL PROVISIONS

1. The four governments will strive to promote the elimination of tension and the prevention of complications in the relevant area.

2. The four governments, taking into account their obligations under the Charter of the United Nations, agree that there shall be no use or threat of force in the area and that disputes shall be settled by peaceful means.

3. The four governments will mutually respect their individual and joint rights and responsibilities, which remain unchanged.

4. The four governments agree that, irrespective of the differences in legal views, the situation which has developed in the area, and as it is defined in this agreement as well as in the other agreements referred to in this agreement shall not be changed unilaterally.

PART II—PROVISIONS REGULATING TO THE WESTERN SECTORS OF BERLIN

A. The government of the Union of Soviet Socialist Republics declares that transit traffic by road, rail and waterways through the territory of the German Democratic Republic of civilian persons and goods between the Western sectors of Berlin and the Federal Republic of Germany will be unimpeded; that such traffic will be facilitated so as to take place in the most simple and expeditious manners; and that it will receive preferential treatment.

Detailed arrangements concerning this civilian traffic as set forth in Annex I, will be agreed by the competent German authorities.

B. The governments of the French Republic, the United Kingdom and the United States of America declare that the ties between the Western sectors of Berlin and the Federal Republic of Germany will be maintained and developed, taking into account that these sectors continue not to be a constituent part of the Federal Republic of Germany and not be governed by it.

Detailed arrangements concerning the relationship between the Western sectors of Berlin and the Federal Republic of Germany are set forth in Annex II.

C. The government of the Union of Soviet Socialist Republics declares that communications between the Western sectors of Berlin and areas bordering on these sectors and those areas of the German Democratic Republic, which do not border on these sectors will be improved. Permanent residents of the Western sectors of Berlin will be able to travel to and visit such areas for compassionate, family, religious, cultural or commercial reason, or as tourists, under conditions comparable to those applying to other persons entering these areas.

The problems of the small enclaves, including Steinstuecken, and of other small areas may be solved by exchange of territory.

Detailed arrangements concerning travel, communications and the exchange of territory, as set forth in Annex III will be agreed by the competent German authorities.

D. Representation abroad of the interests of the Western sector of Berlin and consular activities of the Union of Soviet Socialist Republics in the Western sectors of Berlin can be exercised as set forth in Annex IV.

PART III—FINAL PROVISIONS

This quadripartite agreement will enter into force on the date specified in a final quadripartite protocol to be concluded when the measures envisaged in Part II of this quadripartite agreement and in its annexes have been agreed.

Done at the building formerly occupied by the Allied Control Council in the American sector of Berlin, this 3d day of September, 1971, in four originals, each in the English, French and Russian languages, all texts being equally authentic.

Annex I

Communication from the government of the Union of Soviet Socialists Republics to the governments of the French Republic, the United Kingdom and the United States of America.

The government of the Union of Soviet Socialists Republics, with reference to Part II(A) of the quadripartite agreement of this date and after consultation and agreement with the government of the German Democratic Republic, has the honor to inform the governments of the French Republic, the United Kingdom and the United States of America that:

1. Transit traffic by road, rail and waterways through the territory of the German Democratic Republic of civilian persons and goods between the Western sectors of Berlin and the Federal Republic of Germany will be facilitated and unimpeded. It will receive the most simple, expeditious and preferential treatment provided by international practice.

2. Accordingly,

(A) Conveyances sealed before departure may be used for the transport of civilian goods by road, rail and waterways between the Western sectors of Berlin and the Federal Republic of Germany. Inspection procedures will be limited to the inspection of seals and accompanying documents.

(B) With regard to conveyances which cannot be sealed, such as open trucks, inspection procedures will be limited to the inspection of accompanying documents. In special cases where there is sufficient reason to suspect that unsealed conveyances contain either material intended for dissemination along the designated routes or persons or material put on board along these routes, the content of unsealed conveyances may be inspected. Procedures for dealing with such cases will be agreed by the competent German authorities.

(C) Through trains and travel buses may be used for travel between the Western sectors of Berlin and the Federal Republic of Germany. Inspection procedures will not include any formalities other than identification of persons.

(D) Persons identified as through travelers using individual vehicles between the Western sectors of Berlin and the Federal Republic of Germany on routes designated for through traffic will be able to proceed to their destinations without paying individual tolls and fees for the use of the transit routes. Procedures applied for such travelers shall not involve delay. The travelers, their vehicles and personal baggage will not be subject to search, detention or exclusion from use of the designated routes, except in special cases, as may be agreed by the competent German authorities where there is sufficient reason to suspect that misuse of the transit routes is intended for purposes not related to direct travel to and from the Western sectors of Berlin and contrary to generally applicable regulations concerning public order.

(E) Appropriate compensation for fees and tolls and for other costs related to traffic on the communications routes and between the Western sectors of Berlin and the Federal Republic of Germany, including the maintenance of adequate routes, facilities and installations used for such traffic, may be made in the form of an annual lump sum paid to the German Democratic Republic by the Federal Republic of Germany.

3. Arrangements implementing and supplementing the provisions of paragraphs 1 and 2 above will be agreed by the competent German authorities.

Annex II

Communication from the governments of the French Republic, the United Kingdom and the United States of America to the government of the Union of Soviet Socialist Republics:

The governments of the French Republic, the United Kingdom and the United States of America, with reference to Part II(B) of the quadripartite agreement of this date and after consultation with the government of the Federal Republic of Germany, have the honor to inform the Government of the Union of Soviet Socialist Republics that:

1. They declare, in the exercise of their rights, and responsibilities, that the ties between the Western sectors of Berlin and the Federal Republic of Germany will be maintained and developed, taking into account that these sectors continue not be to a constituent part of the Federal Republic of Germany and not to be governed by it. The provisions of the basic law of the Federal Republic of Germany and of the constitution operative in the Western sectors of Berlin which contradict the above have been suspended and continue not to be in effect.

2. The federal president, the federal government, the Bundesversammlung, the Bundesrat and the Bundestag, including their committees and Fraktionen, as well as other state bodies of the Federal Republic of Germany will not perform in the Western sectors of Berlin constitutional or official acts which contradict the provisions of paragraph 1.

3. The government of the Federal Republic of Germany will be represented in the Western sectors of Berlin to the authorities of the three governments and to the senate by a permanent liaison agency.

Annex III

Communication from the government of the Union of Soviet Socialist Republics to the governments of the French Republic, the United Kingdom and the United States of America.

The government of the Union of Soviet Socialist Republics, with reference to Part II (C) of the quadripartite agreement of this date and after consultation and agreement with the government of the German Democratic Republic, has the honor to inform the governments of the French Republic, the United Kingdom and the United States of America that:

1. Communications between the Western sectors of Berlin and areas bordering on these sectors and those areas of the German Democratic Republic which do not border on these sectors will be improved.

2. Permanent residents of the Western sectors of Berlin will be able to travel to and visit such areas for compassionate, family, religious, cultural or commercial reasons, or as tourists, under conditions comparable to those applying to other persons entering these areas. In order to facilitate visits and travel, as described above, by permanent residents of the Western sectors of Berlin, additional crossing points will be opened.

3. The problems of the small enclaves, including Steinstuecken, and of other small areas may be solved by exchange of territory.

4. Telephonic, telegraphic, transport and other external communications of the Western sectors of Berlin will be expanded.

5. Arrangements implementing and supplementing the provisions of paragraph 1 to 4 above will be agreed by the competent German authorities.

Annex IV

A. Communication from the governments of the French Republic, the United Kingdom and the United States of America to the government of the Union of Soviet Socialist Republics:

The governments of the French Republic, the United Kingdom and the United States of America, with reference to Part II (D) of the quadripartite agreement of this date and after consultation with the government of the Federal Republic of Germany, have the honor to inform the government of the Union of Soviet Socialist Republic that:

1. The governments of the French Republic, the United Kingdom and the United States of America maintain their rights and responsibilities relating to the representation abroad of the interests of the Western sectors of Berlin and their permanent residents, including those rights and responsibilities concerning matters of security and status, both in international organizations and in relations with other countries.

2. Without prejudice to the above and provided that matters of security and status are not affected, they have agreed that:

(A) The Federal Republic of Germany may perform consular services for permanent residents of the Western sector of Berlin.

(B) In accordance with established procedures, international agreements and arrangements entered into by the Federal Republic of Germany may be extended to the Western sectors of Berlin provided that the extension of such agreements and arrangements is specified in each case.

(C) The Federal Republic of Germany may represent the interests of the Western sectors of Berlin in international organizations and international conferences.

(D) Permanent residents of the Western sectors of Berlin may participate jointly with participants from the Federal Republic of Germany in international exchanges and exhibitions. Meetings of international organizations and international conferences as well as exhibitions with international participation may be held in the Western sectors of Berlin. Invitations will be issued by the senate or jointly by the Federal Republic of Germany and the senate.

3. The three governments authorize the establishment of a consulate general of the USSR in the Western sectors of Berlin accredited to the appropriate authorities of the three governments in accordance with the usual procedures applied in those sectors, for the purpose of performing consular services, subject to provisions set forth in a separate document of this date.

B. Communication from the government of the Union of Soviet Socialist Republics to the governments of the French Republic, the United Kingdom and the United States of America:

The government of the Union of Soviet Socialist Republics, with reference to Part II (D) of the quadripartite agreement of this date and to the communication of the governments of the French Republic, the United Kingdom and the United States of America with regard to the representation abroad of the interests of the Western sectors of Berlin and their permanent residents, has the honor to inform the governments of the French Republic, the United Kingdom and the United States of America that:

1. The government of the Union of Soviet Socialist Republics takes note of the fact that the three governments maintain their rights and responsibilities relating to the representation abroad of the interests of the Western sectors of Berlin and their permanent residents, including those rights and responsibilities concerning matters of security and status, both in international organizations and in relations with other countries.

2. Provided that matters of security and status are not affected, for its part it will raise no objection to:

(A) The performance by the Federal Republic of Germany of consular services for permanent residents of the Western sectors of Berlin;

(B) In accordance with establishd procedures, the extension of the Western sectors of Berlin of international agreements and arrangements entered into by the Federal Republic of Germany provided that the extension of such agreements and arrangements is specified in each case;

(C) The representation of the interests of the Western sectors of Berlin by the Federal Republic of Germany in international organizations and international conferences;

(D) The participation jointly with participants from the Federal Republic of Germany and permanent residents of the Western sectors of Berlin in international exchanges and exhibitions, or the holding in those sectors of meetings of international organizations and international conferences as well as exhibitions with international participation, taking into account that invitations will be issued by the senate or jointly by the Federal Republic of Germany and the senate.

3. The government of the Union of Soviet Socialist Republics takes note of the fact that the three governments have given their consent to the establishment of a consulate general of the USSR in the Western sector of Berlin. It will be accredited to the appropriate authorities of the three governments, for purpose and subject to provisions described in their communication as set forth in a separate document of this date.

FINAL QUADRIPARTITE PROTOCOL

The governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the French Republic.

Having in mind Part III of the quadripartite agreement of Sept. 3, 1971, and taking note with satisfaction of the fact that the agreements and arrangements mentioned below have been concluded, have agreed on the following:

1. The four governments, by virtue of this protocol, bring into force the quadripartite agreement, which, like this protocol, does not affect quadripartite agreements or decisions previously concluded or reached.

2. The four governments proceed on the basis that the following agreements and arrangements concluded between the competent German authorities shall enter into force simultaneously with the quadripartite agreement:

(To be filled in after agreements concluded)

3. The quadripartite agreement and the consequent agreements and arrangements of the competent German authorities referred to in this protocol settle important issues examained in the course of the negotiations and shall remain in force together.

4. In the event of a difficulty in the application of the quadripartite agreement or any of the above-mentioned agreements or arrangements which any of the four governments considers serious, or in the event of nonimplementation of any part thereof, that government will have the right to draw the attention of the other three governments to the provisions of the quadripartite agreement and this protocol and to conduct the requisite quadripartite consultations in order to ensure the observance of the commitments undertaken and to bring the situation into conformity with the quadripartite agreement and this protocol.

5. This protocol enters into force on the date of signature. Done at the building formerly occupied by the Allied Control Council in the American sector of Berlin this 3rd day of September, 1971. In four originals each in the English, French and Russian languages, all texts being equally authentic.

AGREED MINUTE I

It is understood that permanent residents of the Western sector of Berlin shall, in order to receive at appropriate Soviet offices visas for entry into the Union of Soviet Socialist Republics, present:

(A) A passport stamped "Issued in accordance with the quadripartite agreement of Sept. 3, 1971";

(B) An identity card or other appropriately drawnup document confirming that the person requesting the visa is a permanent resident of the Western sectors of Berlin and containing the bearer's full address and a personal photograph.

During his stay in the Union of Soviet Socialist Republics, a permanent resident of the Western sectors of Berlin who has received a visa in this way may carry both documents or either of them, as he chooses. The visa issued by a Soviet office will serve as the basis for entry into the Union of Soviet Socialist Republics, and the passport or identity card will serve as the basis for consular services in accordance with the quadripartite agreement during the stay of that person in the territory of the Union of Soviet Socialist Republics. The above-mentioned stamp will appear in all passports used by permanent residents of the Western sectors of Berlin for journeys to such countries as may reqiure it.

AGREED MINUTE II

Provision is hereby made for the establishment of a consulate general of the USSR in the Western sectors of Berlin. It is understood that the details concerning this consulate general will include the following. The consulate general will be accredited to the appropriate authorities of the three governments in accordance with the usual procedures applying in those sectors. Applicable Allied and German legislation and regulations will apply to the consulate general. The activities of the consulate general will be of a consular character and will not include political matters related to quadripartite right or responsibilities.

The three governments are willing to authorize an increase in Soviet commercial activities in the Western sectors of Berlin as described below. It is understood that pertinent Allied and German legislation and regulations will apply to these activities. This authorization will be extended indefinitely, subject to compliance with the provisions outlined herein. Adequate provision for consultation will be made. This increase will include establishment of an "office of Soviet foreign trade associations in the Western sectors of Berlin," with commercial status, authorized to buy and sell on behalf of foreign trade associations of the Union of Soviet Socialist Republics, Soyuzpushnina, Prodintorg and Novoexport may each establish a bonded warehouse in the Western sectors of Berlin to provide storage and display for their goods. The activities of the Intourist office in the British sector of Berlin may be expanded to include the sale of tickets and vouchers for travel and tours in the Union of Soviet Socialist Republics and other countries. An office of Aeroflot may be established for the sale of passenger tickets and airfreight services.

The assignment of personnel to the consulate general and to permitted Soviet commercial organizations will be subject to agreement with the appropriate authorities of the three governments. The number of such personnel will not exceed 20 Soviet nationals in the consulate general; 20 in the office of the Soviet foreign trade associations; one each in the bonded warehouses; six in the Intourist office; and five in the Aeroflot office. The personnel of the consulate general and of permitted Soviet commercial organizations and their dependents may reside in the Western sectors of Berlin upon individual authorization.

The property of the Union of Soviet Socialist Republics at Lietzenburgerstrasse 11 and at Am Sandwerder 1 may be used for purposes to be agreed between appropriate representatives of the three governments and of the government of the Union of Soviet Social Republics.

Details of implementation of the measures above and a time schedule for carrying them out will be agreed between the four ambassadors in the period between the signature of the quadripartite agreement and the signature of the final quadripartite protocol envisaged in that agreement.

(Note from the three ambassadors to the Soviet ambassadors).

The ambassadors of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America have the honor with reference to the statements contained in Annex II of the quadripartite agreement to be signed on this date concerning the relationship between the Federal Republic of Germany and the Western sectors of Berlin, to inform the ambassador of the Union of Soviet Socialist Republics of their intention to send to the chancellor of the Federal Republic of Germany immediately following signature of the quadripartite agreement a letter containing clarifications and interpretations which represent the understanding of their governments of the statements contained in Annex II of the quadripartite agreement. A copy of the letter to be sent to the chancellor of the Federal Republic of Germany is attached to this note.

The ambassadors avail themselves of this opportunity to renew to the ambassador of the USSR the assurances of their highest consideration.

(Signed by the three ambassadors.)

(Attachment to Note).

His Excellency the Chancellor of the Federal Republic of Germany, Bonn.

Your Excellency:

With reference to the quadripartite agreement signed on Sept. 3, 1971, our governments wish by this letter to inform the government of the Federal Republic of Germany of the following clarifications and interpretations of the statements contained in Annex II, which was the subject of consultation with the government of the Federal Republic of Germany during the quadripartite negotiations.

These clarifications and interpretations represent the understanding of our government of this part of the quadripartite agreement, as follows:

A. The phrase in Paragraph 2 of Annex II of the quadripartite agreement which reads: ". . . will not perform in the Western sectors of Berlin constitutional or official acts which contradict the provisions of Paragraph 1" shall be interpreted to mean acts in exercise of direct state authority over the Western sectors of Berlin.

B. Meetings of the Bundesversammlung will not take place and plenary sessions of the Bundesrat and the Bundestag will continue not to take place in the Western sectors of Berlin. Single committees of the Bundesrat and the Bundestag may meet in the Western sectors of Berlin in connection with maintaining and developing the ties between those sectors and the Federal Republic of Germany. In the case of fraktionen, meetings will not be held simultaneously.

C. The liaison agency of the Federal Government in the Western sectors of Berlin includes departments charged with liaison functions in their respective fields.

D. Established procedures concerning the applicability to the Western sectors of Berlin of legislation of the Federal Republic of Germany shall remain unchanged.

E. The term "state bodies" in paragraph 2 of Annex II shall be interpreted to mean: the federal president, the federal chancellor, the federal cabinet, the federal ministers and ministries, and the branch offices of those ministries, the Bundestrat and the Bundestag, and all federal courts.

(Soviet Reply Note.)

The ambassador of the Union of Soviet Socialist Republics has the honor to acknowledge receipt of the note of the ambassadors of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America, dated Sept. 3, 1971, and takes note of the communication of the three ambassadors.

(Formal Close.)

THE AIR WAR IN VIETNAM

Mr. GRIFFIN. Mr. President, some Americans have been under an erroneous impression that there has been no de-escalation of the air war in Southeast Asia.

A recent article in the authoritative Christian Science Monitor makes clear that the air war, as well as the ground war, in Vietnam has been winding down.

I ask unanimous consent that the text of the article be printed in the RECORD.

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

[From the Christian Science Monitor, Dec. 2, 1971]

UNITED STATES CUTS BACK VIET AIR WAR

(By George W. Ashworth)

WASHINGTON.—This air war in Southeast Asia is declining steadily.

Official and unofficial figures on bomb tonnages and sortie raids by attack and fighter planes, as well as by B–52's operating out of Thailand, show a continuing drop.

The air war is falling off at a much slower pace than the involvement of Americans in the ground war in South Vietnam. But its intensity is being lowered.

The decline can be seen in South Vietnam, Cambodia, and Laos. Only along the trail leading out of North Vietnam and into Cambodia and Vietnam through Laos does the air war seem to be holding at a relatively constant level.

However, the continued withdrawal of U.S. Air Force and Navy attack and fighter planes, plus B–52's, will inevitably mean that the war along the Ho Chi Minh Trail must also decline.

Critics of President Nixon's war policies have charged that air warfare is being substituted for ground warfare as American troops are withdrawn.

In one sense, this is true, as it has been announced administration policy to keep the air capability of allied forces up, to cover the withdrawal process.

However, any impression that the air war has been increased because of the decrease on the ground seems to be groundless, from evidence available here.

In a study sponsored by the Center for International Studies at Cornell University, it was concluded that "U.S. air activity in Indo-China as a whole, measured either by sortie raids or bomb tonnages, has declined substantially in the years since the air war reached its greatest intensity."

ONE CARRIER ON STATION

One graphic illustration of the drop in the air war is simply the number of planes available now to carry it out. At one point, when the war was at its hottest, the U.S. Navy regularly had three carriers operating on Yankee Station, off the coast of Vietnam. Now there is only one.

At one point, B–52 strikes were launched from both Guam and Thailand. Now there are, reportedly, only a few more than 40 B–52's available for air missions in Southeast Asia, and all of them are flying out of UTAPAO Air Base in Thailand.

In all, fighter and attack aircraft strength maintained by the U.S. for use in Indo-China has dropped by more than one half.

In a press release accompanying the Cornell report, it was charged that "by the end of this year, the Nixon administration will have deployed in three years as much tonnage of bombs as the Johnson administration did in four."

WINDING DOWN DRAGS

The figures on bomb tonnages indicate that winding down the war is a slower process than escalation. The main reason the charge can be made is that it is taking longer to bring the U.S. war effort to a close than it did to intensify it in the late 1960's.

Tonnage figures made available here by the Pentagon cover all air-delivered munitions expended in Southeast Asia by the allies, including South Vietnam.

The figures disclose that the allies expended 496,310 tons in 1966, 932,119 in 1967; 1,437,370 in 1968, 1,387,259 in 1969, and 977,446 in 1970. Through October of 1971, tonnage came to 651,678 tons. A projection through the end of the year indicates that roughly 750,000 tons will be dropped in 1971.

SORTIES DROPPED

Information in the Cornell study illustrates some of the declines. In North Vietnam, for instance, annual fighter-bomber sorties (one mission by one plane) have dropped from a high of more than 100,000 in 1967 to the hundreds in 1969, 1970 and 1971, following the bombing halt.

After the bombing was stopped in North Vietnam, much of it was shifted to Laos where annual sorties topped 140,000 in 1969. The roughly 100,000 sorties of 1970 will apparently be roughly equaled in 1971.

In South Vietnam, rates have dropped from a peak of around 230,000 in 1968 to 50,000 to 60,000 now. In Cambodia, sortie raids are running at between 25,000 and 30,000 per year. The Cornell study predicts 1971 will be slightly higher than 1970. Unofficial sources estimate a sortie-raid total approaching 30,000 for 1971.

The decline in sorties and tonnages has brought a shift of the destruction away from populated areas, which many sources consider an encouraging trend.

FREEDOM OF THE PRESS

Mr. ERVIN. Mr. President, for some weeks, the Subcommittee on Constitutional Rights of the Senate Judiciary Committee has been holding hearings on the freedom of the press. I ask unanimous consent that the following articles and editorials relating to these hearings be printed in the body of the RECORD:

An editorial entitled "Senator ERVIN Fights For People's Freedom," which appeared in the Salisbury, N.C., Post of October 3, 1971.

An article by Peter Lisagor entitled "Nixon Commands News Coverage," which appeared in the Washington Star of October 5, 1971.

An article by Crosby S. Noyes entitled "First Amendment Is Already Strong Enough" which appeared in the Washington Star of October 5, 1971.

An article by Carl T. Rowan entitled "What's at Stake at Press Freedom Hearings," which appeared in the Evening Star of October 6, 1971.

An article by James J. Kilpatrick entitled "Freedom of the Press Is Alive and Healthy," which appeared in the Washington Star of October 10, 1971.

An article entitled "Protecting Privilege," which appeared in Time magazine for October 11, 1971.

An editorial entitled "The Public's Right To Know," which appeared in the Alexandria, Va., Gazette for November 3, 1971.

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

[From the Salisbury (N.C.) Post, Oct. 3, 1971]

SENATOR ERVIN FIGHTS FOR PEOPLE'S FREEDOM

North Carolina's Senator Sam Ervin, generally appraised as a conservative, has established himself as one of history's greatest statesman-defenders of the United States Constitution.

Senator Ervin's continuing battle with the federal establishment is refreshing and much needed in this day when many bureaucrats stamp "confidential" on purchase order contracts covering thumb stacks.

Tuesday, Senator Ervin spoke his opinion as plainly as it could be put into words: "Freedom is in peril—not only in the press, but in the Congress of the United States."

Senator Ervin, a former justice of the North Carolina Supreme Court, blasted attempts by the Nixon administration to call the press before grand juries and to prevent publication of classified documents. He just as plainly denounced "executive privilege" to hide information from Congress.

Every American should share Senator Ervin's concern that the Nixon administration has implied that it may prosecute Sen. Mike Gravel of Alaska for releasing portions of the Pentagon papers.

Through use of his subcommittee on constitutional rights, Senator Ervin is attempting to re-examine and re-assert constitutional guarantees of the press because of these recent developments:

—The administration's attempt to prevent The New York Times and other papers from publishing the Pentagon's study of the Vietnam War.

The growing number of subpoenas trying to compel newsmen to testify and turn over their notes, tapes and films to grand juries.

—The attempt by Congress to compel CBS to produce unused film from its controversial documentary about Pentagon public relations.

—The widespread use of false press credentials by government investigators.

The North Carolina Senator had only harsh words for President Nixon and Vice President Agnew. And Norman E. Isaacs, editor in residence at the Columbia Journalism School told the subcommittee: "There is a deep hostility on the President's part toward the Press and I do not consider it a healthy thing for the country."

President Nixon's allergy for the press is well known to anyone familiar with American history of the last two decades. Possibly it started following his much-ridiculed "Checkers speech," which he made in 1952 to blunt criticism of the fact that as a U.S. Senator he was receiving more than $18,000 per year from a group of millionaires. Dwight Eisenhower had just threatened to kick Nixon from the ticket as his running mate when the payola exposé came to light. Mr. Nixon's explanation satisfied the General—but all of America has never been satisfied with his documentary or alibi—depending on the point of view.

After Mr. Nixon's defeat by John Kennedy in 1960, he returned to California to rebuild his political fortunes by capturing his home state's gubernatorial post. When he was beaten by Democrat Pat Brown, he put on

one of the most peevish press interviews ever conducted by a responsible national leader during this century.

He blamed the press for his defeat. Paraphrastically he said he was retiring to private life to deprive the press of a whipping boy.

Of course since Mr. Nixon became President, he has seen quite restrained in open criticism of the news media. There was no necessity, because Vice President Agnew's tirades are too familiar to need repeating.

The press and particularly television have their many imperfections to which this newspaper lays claim to its share.

To Mr. Agnew's credit, we agree that many of his criticisms of the news media have been valid.

We believe the upsetting facet to Senator Sam Ervin is that they have been said by a man who is but a heart beat away from the Presidency of the United States. Mr. Agnew by constant repetition of his criticisms has led many people to believe Senator Ervin's charge that "Freedom is in peril—not only in the press but in the Congress of the United States."

We think that much of what Mr. Agnew has said should have been said, but not by the Vice President of the United States.

If it had been said by the chairman of the National Republican Committee, it would have seemed much less like a threat to suppress free speech and a free press.

[From the Washington Star, Oct. 5, 1971]

NIXON COMMANDS NEWS COVERAGE

(By Peter Lisagor)

To most people in the news business, it is virtually impossible to be too sensitive, too vigilant or too outspoken about government attempts to censor or discredit their professional performance.

They don't even want to have their courage tested in withstanding federal actions that seem intimidating. They don't want to reveal confidential sources, yield up their notebooks or unused film. The Federal Communications Commission has no better yardstick for measuring the fairness doctrine than any other agent.

Besides, the founding fathers in writing the First Amendment, as well as the rest of the Constitution, felt that government as they knew it tended toward tyranny and they wanted to protect the people.

All of this is being argued before the Senate Subcommittee on Constitutional Rights by the corporate heads of the networks and newspapers and by those folk heroes who broadcast the nightly news. They know that freedom of the press is a commodity of great delicacy in an open society; the media can anger and confuse, as well as inform and entertain. Neither the print nor the broadcast media believe themselves sacrosanct, beyond the law or legitimate criticism. But they oppose the government's right to meddle, to apply subtle pressures that intimidate the craven or those beholden to the FCC for license approval.

In any case, they know that by a switch of the dial or cancellation of a subscription, the public can do them in quicker than a dozen Agnew speeches.

The Nixon administration didn't invent the ceaseless struggle to influence and cajole the news media into favorable reportage. Many Nixon men genuinely believe newsmen are more hostile toward their man than toward past Presidents, ignoring the virtual vendetta that existed between Lyndon B. Johnson and certain members of the press establishment.

But the cold fact is that the President and his works have been treated fairly on the whole, and many in the current White House grudingly admit this in private. One need only ask those Democrats eyeing the White House as a domicile about this fairness doctrine now being scrutinized by the panel headed by Sen. Sam Ervin, D-N.C.

On the day that Sen. Fred Harris, D-Okla., introduced a bill to break up most of the nation's large manufacturing firms, the nation's front pages featured a picture of President Nixon sitting with Soviet Foreign Minister Andrei Gromyko in the Oval Room office beneath a portrait of George Washington. It was a miserable match up.

Harris, an announced presidential candidate, had planned to add a dash of drama to his antitrust bill by holding a news conference on the steps of the General Motors Building in New York City. But he could have stood on his head directing traffic in Times Square without making the kind of splash the President makes on a relatively routine day in the White House.

Earlier in the day of the Gromyko visit, the President pinned the Medal of Freedom on Manlio Brosio, the retiring secretary-general of NATO. In the East Room audience were some of the fiercest and most steadfast cold warriors of the post-war world, including at least three former supreme commanders, former Secretary of State Dean Acheson and other notables. The President could speak feelingly of peace and freedom, and NATO's value in support of both, before returning to his office to await the Soviet representative.

And so it goes. Sen. Hubert Humphrey, D-Minn., introduced a bill to provide a daily free meal to every school child from high school down. The President visits with the leaders of the top education associations in America to plump for his views, visions and programs, and then in the afternoon, receives Prince Souvanna Phouma of Laos.

It's no contest, in fact, and the fairness doctrine is a laugh to those hustling presidential contenders struggling to get a few sticks of type in the paper or to insinuate their ways into the television newscasts.

The President's command of the news media is awesome. He can time events to suit his political timetable, manage his moves for maximum impact. And he, like the media, will be judged by the arbiters who really matter in this society, the people. And that's the way it should be.

[From the Washington Star, Oct. 5, 1971]

FIRST AMENDMENT IS ALREADY STRONG ENOUGH

(By Crosby S. Noyes)

Right-on, Sen. Sam J. Ervin Jr., D-N.C.

The First Amendment of the Constitution—the inalienable right of each of us to shoot his mouth off and publish what he pleases—is said to be in danger. And there is no man, since the lamented departure of Supreme Court Justice Hugo Black, more eloquently qualified to leap to its defense.

Ervin's leap takes the form of hearings, now in progress before the Senate Subcommittee on Constitutional Rights. And the prefatory comments on the problem offered by the senator leave little doubt where the investigation will lead and what the conclusions will be.

According to Ervin: "These hearings have been organized because it is apparent in today's America that many people doubt the vitality and significance of the First Amendment's guarantee of freedom of the press.

"Recent developments," he says, "have brought into sharp relief existing concern about the relationship between government and the working press."

Noting that confrontation has replaced negotiation" and referring to attacks on the news media by "high government officials," Ervin adds:

"Some government officials appear to believe that the purpose of the press is to present programs to the public in the best possible light."

The senator is strong on constitutional history and the intentions of our forebears. "Our founding fathers," he says, "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." He even extends this right to the vice president of the United States, leaving it up to his audience to judge into which category of protected free speakers Spiro T. Agnew falls.

With much of this, no newspaperman in his right mind would disagree. The confrontation exists. The rights also exist and it is true that in some cases they have been abused.

In the view of most newspapermen, including this one, it is preposterous to claim, as some do, that the protections of the First Amendment do not apply to the broadcast and television media. We also do not believe that newsmen, except perhaps in cases of extreme gravity, should be required to reveal their sources or divulge unpublished confidential information.

We willingly go along with the Supreme Court in denying the right of the Justice Department to forbid in advance the publication of any news. And we would argue that the practice of issuing fake press credentials to undercover government investigators is indefensible.

This said, however, we can get back to the central theme of Ervin's investigation: The fact that there is a "growing deterioration of the relationship between the press and government" and the implication that the responsibility for this state of affairs is entirely on the government's side.

I doubt, very frankly, that this is so. On the contrary, it seems to me, the attitudes toward the war in Vietnam held by a large segment of the press have exaggerated and distorted the traditional adversary relationship between the press and the government. And this, in turn, has stimulated a reaction of antagonism and hostility toward the press by some members of the government, the Congress and the public.

It can be argued, of course, that in opposing the war in Vietnam, the press was simply doing the job that it is supposed to do in criticizing and, where possible, changing public policy. But the distortion of the adversary relationship goes beyond this today. To a large extent, the press is beginning to assume a posture of systematic opposition to the executive branch of the government, regardless of the result so far as the effectiveness of government itself is concerned.

In the confrontation that has ensued, it is the government and not the press which is on the defensive. The effective weapons are very largely on the side of the media. In the recent past, we have seen these weapons used with devastating effect to frustrate the policies of the government and to destroy an elected president as an effective political leader.

In this situation, the reaction of the press to any official criticism may strike some people as little short of hysterical. Newspapers, certainly, have no reason whatever to be intimidated by anyone. And the need for new legislation to reinforce the guarantees provided by the First Amendment remains most obscure.

[From the Washington Star, Oct. 6, 1971]

WHAT'S AT STAKE AT PRESS FREEDOM HEARINGS

(By Carl T. Rowan)

Small wonder that much of the public is confused by the current Senate hearings on freedom of the press; even some of my colleagues don't seem to comprehend what is going on.

With a swashbuckling declaration that "I'm not intimidated," one compatriot claims that newsmen have let criticism by Vice President Spiro Agnew turn them into crybabies. The issue, as he sees it, is that press people who can't stand the heat had better get out of the kitchen.

Then there is the fear expressed by a smattering of newsmen that Sen. Sam Ervin is going to kill the free press with kindness. Someone presumably worries that Ervin, from his vantage point as chairman of the Constitutional Rights Subcommittee, will get a law through Congress guaranteeing the freedom of the press; that one dark day some nasty Congress will repeal it; and that the press will thereafter be left to the mercies of the politicians.

Well, I think Old Senator Sam is doing one great service—for the press, yes, but more so for the country, by turning the spotlight on some ominous assaults on the freedom and independence of the press in recent years.

These hearings may also strengthen press liberties by helping the public to understand that it is *their* right to honest government, and *their* right to knowledge of the actions of the people who run that government that is at stake—and not some right of anyone with a press card to flout laws that ordinary citizens must obey.

The Ervin hearings have nothing to do with the oratorical assaults on the press by Agnew in the sense that any newsman is afraid Agnew can do him in. Most newsmen regard that as a joke. But the Senate hearings do flow out of the possibility that certain politicized and polarized Americans could decide that they like Agnew more than either the First Amendment or the press and thus applaud as the Justice Department chips away at the independence of the Fourth Estate.

Assorted denials to the contrary, this Justice Department has orchestrated a campaign to crush the Black Panthers. When efforts to do it by "legal" killings backfired in Chicago and elsewhere, a decision was made to "get" the Panthers through grand jury indictments.

That is bad enough, but Justice had the audacity to try to force reporter Earl Caldwell of the New York Times to be its accomplice.

Caldwell, a black man, had ingratiated himself with some of the Panthers, establishing contacts essential to his being able to report meaningfully on a group that is of both social and political significance. The government decided it would be easier to indict Panthers if it could force Caldwell to tell a grand jury everything he knew, including things journalistic ethics forbade him to write.

"No, you don't," the 9th Circuit Court of Appeals has told the government. It said freedom of the press is in jeopardy if the government can force reporters to testify in secret grand jury hearings about their sources of news.

If Ervin can get the Congress to pass a law telling the executive branch to leave the press alone, to stop trying to make reporters its agents; and telling the legislative branch that even it must not try to be a super-editor of TV news and documentaries, I say hooray for Ervin!

Passage of such a law would be a dramatic reaffirmation by this generation of Americans that our forefathers were wise when they envisioned a free press, full of faults and imperfections, as an absolutely essential bulwark against tyranny.

So some unlikely Congress does come along that is blind enough to repeal such a law? The press would not be left high-and-dry. It would still have that First Amendment protection.

Some say the First Amendment is all we need. Maybe. But that amendment is only as strong as the Supreme Court says it is. And in this era when nominees to the court must all fit the philosophy of the President, who knows how the "revamped" court might construe this constitutional safeguard on press freedom?

It will do no harm to the press or the nation to have the people say through the Congress that "strict construction" is not a license to invade these hallowed precincts.

[From the Washington Star, Oct. 10, 1971]

FREEDOM OF THE PRESS IS ALIVE AND HEALTHY

(By James J. Kilpatrick)

Sen. Sam Ervin sent me an invitation several weeks ago to testify before his subcommittee on freedom of the press. This was just before I was heading abroad, and I stalled: My return was uncertain; there wouldn't be time to make the required 75 copies of a statement; maybe a letter would suffice. . . .

The truth was that I didn't want to testify. For a working newspaperman to abandon the press table, and take to committee microphones instead, is an act against nature, like a lady wrestler or a horse on stilts. If we have something to say to senators, we ought to say it in print; and if senators want to talk to us, okay, let 'em put it in the Record.

At the same time, Senator Sam is the wisest man in the Senate; he is deeply concerned—just as all of us in the press are deeply concerned—about the survival of a free press. Perhaps a few observations would be useful.

Taking one thing with another, and looking back to the bad old days of John Adams, this much is clear: The patient is remarkably healthy. Freedom of the press has not merely survived, it has flourished. Americans today have access to more information and opinion than they have ever had. This material is presented far more readably and attractively than it was in the days of the "party press." It is timely. Most of it is objective.

Over the thirty-odd years of my own professional experience, First Amendment freedoms have expanded, not contracted. We no longer are "chilled," in the word of art, by the threat of ruinous libel suits. When I came on the scene, an editor could write gingerly of "planned parenthood" and "social diseases." Now even the girl reporters are writing of contraceptives and syphilis and nobody blinks.

Changes in law and in public attitudes have been accompanied by fantastic changes in the technology of communications. We have tools now—satellites, and computers, and high-speed Telex—that permit us to serve up more information than the ordinary reader can digest. We have network television, a tool of incalculable power. We have greater freedom, better equipment, and a more informed audience than journalists have ever known.

As the Senator proceeds with his examination, listening to the heartbeat, thumping on our lungs, he will discover that freedom of the press is in the good hands of a bunch of health nuts. We are obsessed—some of my colleagues are—to the point of hypochondria. When Spiro Agnew coughs, we tend to yell "TB." If Dean Burch mops his brow, up at the Federal Communications Commission, CBS runs a fever. Some over-zealous prosecutor demands a reporter's notes, and we cry that gangrene is setting in.

This jealous vigilance has its good aspects: As power increasingly is centralized in our society—in government, in labor, in industry, even in communications—it becomes all the more important that a free press maintain its freedom. But when vigilance turns into caterwauling, some of our spokesmen cease to be gladiators and come through as cry-babies. The public is not impressed by the notion that it is "free speech" when CBS belabors the government, but "intimidation" when the government snaps back.

We do have worries: television, mainly. Surely, it is said, TV is entitled to the "freedom of speech and of the press" entrenched in the First Amendment; but the matter is not so simple. In its technical limitations, its history of public licensing, and in the sheer magnitude of its potential audience, TV is significantly different from the printed media. It must be free; and it must be restrained. In a free society, such a problem is not unusual. Few such problems are perfectly solved, and the problem of TV will not be perfectly solved either.

We have other worries. Our magazines, starved for advertising revenue, are dying of malnutrition. Public broadcasting continues to grope uncertainly for an audience. Our craft desperately needs to attract young men and women who are literate, thoughtful, and curious; we are getting some, but not enough.

These are ailments that cannot be neglected, but they are minor aches and pains. I myself am just back from Brazil, and would say to anxious colleagues: Gentlemen, let us look to our troubles, of course; but let us count our blessings, too.

[From Time magazine, Oct. 11, 1971]

PROTECTING PRIVILEGE

Journalists cheered when the Supreme Court ruled last June that the New York *Times* and others could not be restrained from publishing the Pentagon papers under the First Amendment's guarantee of press freedom. Since then the initial euphoria has faded. The *Columbia Journalism Review* rates the decision as a "severely qualified victory," and most editors agree. After all, three of the Justices thought prior restraint of publication was called for in that case, and individual opinions showed that a majority might favor its use in other circumstances. With the death of Justice Hugo Black, who felt the First Amendment gave the press blanket protection, future court votes might go even farther in the direction of restriction.

BUREAUCRATIC MERCY

Editors are concerned at this possibility and so is the United States Senate's leading libertarian, Sam Ervin Jr. of North Carolina (TIME, March 8). A Southern conservative politically, Ervin has made a personal crusade of defending individual freedoms from Government encroachment. Last week, in the first of a series of Senate Judiciary Subcommittee hearings, Chairman Ervin and his colleagues heard the testimony of a parade of communications executives and experts.

New York *Times* Executive Vice President Harding Bancroft recalled that before the favorable Supreme Court decision on the Pentagon papers, the press was in fact restrained for 15 days until it was allowed to publish. Representative Ogden Reid, former publisher of the now-defunct New York *Herald-Tribune*, emphasized that "this is the first time . . . that prior restraint has been sought by the Federal Government." As for the broadcasting industry, Walter Cronkite of CBS charged that because it is beholden to the Government for its right to exist, "it is at the mercy of politicians and bureaucrats. Its freedom has been curtailed by fiat, by assumption and by intimidation and harassment." But perhaps the most eloquent plea for First Amendment freedoms came from Ervin himself.

MORTAL BLOW

Said he in an opening statement: "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. They appear to have lost sight of the central purpose of a free press in a free society." Noting that "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," Ervin charged 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."

Ervin is also concerned about the increasing use of false press credentials by Govern-

ment investigators and about the number of subpoenas on journalists by grand juries and congressional committees. He will watch closely how the Supreme Court rules on three pending subpoena cases in which the Justice Department is seeking to force reporters to reveal confidential sources for stories. *Times* Reporter Earl Caldwell and Newsman Paul Pappas of WTEV in New Bedford, Mass., refused to discuss Black Panther activities for grand juries, and Reporter Paul Branzburg of the Louisville *Courier-Journal* balked at identifying, for yet another grand jury, marijuana and hashish peddlers he had interviewed for a story on drugs.

Ervin's hearings are ostensibly to determine whether a Newsmen's Privilege Bill should be submitted to Congress. Its purpose would be to protect the reporter-informant confidential relationship. Ervin hopes its enactment will not be necessary and that the Supreme Court will provide a "ringing reaffirmation of First Amendment protection that will serve the same purpose.

[From the Alexandria (Va.) Gazette, Nov. 3, 1971]

THE PUBLIC'S RIGHT TO KNOW

Democratic Senator Sam Ervin of North Carolina made the following observation recently when he stated, "I am concerned that many Americans, including some government officials and members of the press, have forgotten the central issue. It sometimes appears that some government officials assume that the role of the press is to present news about government policies and actions only in the best possible light. And it sometimes appears that some members of the press unjustifiably interpret any official response to their criticism, other than acquiescence, as a threat to their freedom to criticize. It is my belief," he continued, "that robust criticism of government by the press and the consequent skepticism of the press on the part of government are the necessary ingredients of the relationship between the press and the government in a truly free society."

More recently, J. Irwin Miller, the president of Cummings Engine Company made the following observations at a new plant dedication of the Columbus (Ind.) Republic where he said the following: "There is little reason to believe that the groups who today have less than complete access to equal justice in our society will be less determined to obtain it than were those revolutionary ancestors whom we revere so greatly, or that they will in the end use less threatening methods, if all else seems to fail. Prudence would therefore seem to be on the side of radical overhaul of the machinery of justice to make the application of justice truly equal."

In Miller's remarks about newspapers, he said: "A newspaper is something a very great deal more than a profit-making institution. A newspaper, whether it likes it or not, is inescapably saddled with the proud and exciting responsibility of leading the thought, of influencing the goals, of determining the character and direction of the community it serves. If then it be true that we stand today as a rare and truly critical point in the history of the nation, each of its newspapers can dedicate itself to no higher service than that of bringing the citizens to a full awareness of the new forces in the society with which they must contend. How is this to be done? I suggest that it is to be done through the device of local issues. It is through a genuine grasp of each local issue of importance that a citizen gains his perception of the great concerns of the nation."

Both Ervin and Miller carry a most powerful message. Each in their own right state the conditions of local problems and great national issues as they exist today in our society.

We at this newspaper shall, as we have in the past, continue to weather recurrent challenges by reporting on our city government and its actions and how those actions directly affect the community it serves. Although press power is not absolute nor infinitely secure, it is our duty to constantly stress the need for Freedom of the Press by reporting the news as it happens and constructively exposing that which is wrong. The point which is sometimes ignored today is that the original demand for a guarantee of press freedom came not from those who were engaged in the business of publishing newspapers or other types of publications. The demand came from persons in all walks of life who knew from recent experience the threat to all individual liberties if there is no freedom of the press and no freedom of speech.

In this age of deception, the public's interest is always at stake. We shall continue to dedicate ourselves to do everything we can to support the public's right to know the truth.

THE PRESIDENT'S POLICY COURSE IS ON THE PLUS SIDE

Mr. SCOTT. Mr. President, the Nashville Banner of December 1 contains a noteworthy editorial entitled "Nixon's Policy Course on Nation's Plus Side." I invite the attention of Senators to the editorial and ask unanimous consent that it be printed in the RECORD.

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

MANSFIELD'S ANALYSIS—NIXON'S POLICY COURSE ON NATION'S PLUS SIDE

Political candor and intellectual honesty are becoming attributes for any in position of public responsibility, and in most of his utterances on public affairs—particularly those bearing on matters of vital national importance—Sen. Mike Mansfield, of Montana, has employed both. He does not let his role as Senate Majority Leadear outweigh that inclination of straight talk.

Thus it was that in an interview with the U.S. News & World Report he gave forthright answers to some pertinent questions:

Yes, President Nixon has increased his prestige because of his foreign policy—including the contemplated visits to Peking and Moscow; and on progress toward agreement in the strategic-arms-limitation talks.

Yes, he has changed the direction of the Vietnamese war, the Indo-China war, from in to out. Yes, he has substantially reduced the number of men in the armed forces, and is bringing these American sons home.

Yes, he is on the right track in the field of domestic policy, engaging in reasoned controls to combat inflation.

"So," said Senator Mansfield, "I think that, over-all, Mr. Nixon has done a good job, and it's made him stronger, and according to the latest polls, it appears that the people think so, too."

So they do. The Gallup Poll reported this week that "Nearly half of union members' families figures showed 42 per cent approval in that category, 45 per cent disapproval, with 13 per cent expressing no opinion.

For the total constituency the approval was wider than that—fifty per cent, an increase over last summer's 49 per cent. But the remarkable thing about the first statistics mentioned is not only that these are union member families, but that the approval percentage there has dropped only one point—an obvious indication that these union members have not followed the thinking of their top leaders who so bitterly assailed President Nixon in their Miami Beach convention.

Just as obviously, there are millions of American citizens—in and out of the organized labor movement, and on both sides of the political aisle—who believe, with Senator Mansfield, that partisanship should stop not only at the water's edge, where foreign policy is concerned; but at that precise point where the nation's security and welfare are at stake as in the war on inflation.

For the initiative and courage he has addressed to the problems thus directly involving the whole nation, President Nixon has earned the plaudits thus candidly bestowed.

STATISTICS ON UNEMPLOYED VIETNAM VETERANS DO NOT TELL THE HUMAN STORY

Mr. McINTYRE. Mr. President, I continue to read the periodic figures telling the story of unemployment in our Nation, particularly the lack of jobs for those who have served our Nation in Vietnam.

The latest figures I have seen indicate that unemployment among Vietnam veterans is still running many percentage points above the national unemployment rate.

I know how much is being done to try to alleviate this problem. Recently I had the privilege of attending a job fair for veterans in Manchester, N.H. Industry and business from throughout New Hampshire came to this fair and met with veterans to discuss job possibilities. Many veterans came away from the fair with chances for employment.

The American Legion, VFW, and other veterans groups are working hard to try to help find jobs for Vietnam veterans.

But the real nature of what is meant by unemployment among Vietnam veterans occurs when you face up to individual problems and what this means to the human being who served his Nation in Vietnam and is now home trying to find a job.

A case in point is a bright young man in New Hampshire. Without specifically naming him, I ask unanimous consent to have printed in the RECORD this young man's letter to me and a brief résumé he attached to his letter. I do this because I believe it so clearly and meaningfully goes beyond the statistics and brings home the need for us to act to help the Vietnam veterans.

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

Senator THOMAS MCINTYRE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MCINTYRE: It is with sincere regret that I find it necessary to write to you of my problems, but it seems one of my few remaining alternatives. To state the problem simply, I can not find employment.

In 1967, I left school and entered the Army, where I served three years, one of those in Vietnam. After being honorably discharged I returned to the University of New Hampshire under the GI Bill and received a Bachelor of Science degree this past June. Since that time I have filed at least thirty applications for employment in positions representing widely divergent areas of business. I have been completely unsuccessful in finding work.

I have been living on unemployment payments received from my military service and

soon these payments will conclude. I am at a loss as what steps to take next and am therefore writing this letter.

I would appreciate any help or suggestions you could give me. Enclosed is my résumé. I am sincerely hoping you can assist me in some way. Thank you very much.

Sincerely,

———— ————.

RÉSUMÉ

Personal: Engaged, 5'11", 175 pounds, 25 years old.

Education: B.S., 1971, University of New Hampshire. Major: Business Administration. General business courses with considerable work in Marketing and Economics. Some courses in Accounting.

Summer Work: Earned personal and clothing expenses by working summers and vacations as a retail clerk and in general delivery in a department store.

Military Service: United States Army, 1967 to 1970; Aircraft Parts Specialist. Enlisted in the service following third year of college. One year in Vietnam. Supervised large warehouse of aircraft parts upon return from overseas.

Background: Brought up in Southern New Hampshire area. Preparatory school at Mount Hermon in Western Massachusetts. Member of social fraternity in college. Have traveled throughout Eastern and Midwestern parts of the United States.

Interests: Primarily interested in outdoor activities, e.g. swimming and bicycling. Also enjoy listening to music, reading and tinkering with automobiles.

References: References will be furnished upon request.

RESUMPTION OF WEST COAST DOCK STRIKE MUST BE AVOIDED

Mr. JORDAN of Idaho. Mr. President, once again Idaho farmers, businessmen, and consumers are faced with the prospect of a devastating dock strike. It is quite likely that when the 80-day Taft-Hartley cooling off period expires on December 25, the West Coast longshoremen will again walk off the job.

As I stated on the floor of the Senate on August 6, the work stoppage in West Coast ports has had a disastrous effect on Idaho farmers and on American agricultural exports. Markets which the farmers of the Pacific Northwest have slowly built up over the years are now being supplied by Canada, Australia, and other countries. Foreign buyers are losing confidence in the ability of U.S. producers to deliver the goods.

Once more it becomes apparent that Congress must act on legislation to provide means for the settlement of disputes in the transportation industry before work stoppages occur. The harmful economic effect of such stoppages on the public is too great to allow. It is up to Congress to take action to insure that the public interest does not suffer at the expense of the private interests of the parties to such disputes.

I am pleased that the labor subcommittee has been conducting hearings on the legislation (S. 560) proposed by President Nixon to provide new means for dealing with such disputes. Hopefully, positive action on this legislation will be forthcoming in the near future.

Mr. President, I ask unanimous consent that a representative sample of the letters which I have received from my constituents and an article published in the Wheat Growers News regarding a resumption of the dock strike be printed in the RECORD.

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

DUMAS SEED COMPANY,
Moscow, Idaho, November 29, 1971.

Hon. LEN B. JORDAN,
United States Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR JORDAN: The alarming possibility that the West Coast dock strike is now expected to resume on December 26th would be a Christmas present that none of us want. I feel that a reasonable solution will not likely be reached under the present efforts for collective bargaining. In fact, informed sources report that the two sides of the table are further apart now than before the Taft-Hartley injunction was invoked.

I believe that the provisions of the Administration Bill (Senate No. 560–H.R. 8020) provides the needed changes to the Taft-Hartley Act to make the Transportation industry operative again. I support the passage of the amendments and I hope you will support it vigorously and bring it to a vote at the earliest possible opportunity.

There have been various estimates of the economic loss to the West Coast caused by this strike. No one knows the total nor do I. All that I can say is that the directly affected me so adversely that I sincerely request that you do something constructive about it. I will be closely attentive to the efforts put forth in Washington.

Sincerely,

E. A. DUMAS,
President.

IDAHO PEA AND LENTIL COMMISSION,
Moscow, Idaho, November 24, 1971.

Senator LEN B. JORDAN,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR JORDAN: The dry pea and lentil industry is fast approaching a critical point, which threatens to ruin the entire industry, as a result of the present dock strike situation. As you know, our industry depends to a great extent, on exports with most of our products being shipped during the first six months following harvest. With the West Coast Longshoremen going on strike July 1, we were unable to ship any of our products until the President invoked the Taft-Hartley law in early October.

Even after the ports opened, there was such a backlog at the ports that we have yet to catch up with shipping orders created by the last strike. Although the ports are working at this time, there is at present a slow down in effect by the Longshoremen which further complicates our problem. The price of dry peas has now dropped from $4.50 a hundredweight in June to $2.90 a hundredweight. This is largely because even if sales can be made, ship space is not available to ship our products. Buyers are also reluctant to buy because we cannot guarantee delivery.

The industry has spent five years developing markets in Japan and Europe, which are now being supplied by Australia, New Zealand, and other countries, strictly because we cannot deliver. These markets will be hard to regain even if we could ship our products today.

We have asked USDA to purchase dry peas and lentils for the school lunch program, which would help in keeping our industry alive. They responded by putting out an offer for 1,087,728 pounds of dry peas. With 300 million pounds being produced this past year, this is like throwing crumbs to a starving man.

Many of our processing plants have already notified their people that they will be forced to close their door if the Longshoremen resume the strike on December 26. There appears to be little chance of settlement at this time, as they are not even meeting to try to negotiate a settlement. No talks are going on now, and there are no indications that any are contemplated in the near future. As the situation stands, no one is winning, particularly the innocent pea and lentil farmer and processor.

One needs only to look at the last figures on our balance of payment deficit to understand what this strike is doing to our economy. Must we wait until a few individuals bring this country completely to its knees before Congress acts? Something has to be done now before it is too late.

Very truly yours,

HAROLD BLAIN,
Administrator.

NORTHWEST PEA & BEAN CO., INC.,
Spokane, Wash., November 23, 1971.

Hon. LEN B. JORDAN,
U.S. Senate
Washington, D.C.

DEAR SENATOR JORDAN: Enclosed is a clipping from yesterday's Spokesman-Revise concerning a severe cold wave hitting Europe. If this is the forerunner of a cold winter in Europe, then we can expect increased European demand for our Peas and Lentils.

Primarily because of the mild winter last year, the United Kingdom, for example, imported only 57.4 million pounds of Peas as compared to 80.9 million pounds in 1969–70. Weather has a tremendous effect on eating habits, and cold weather greatly increases consumption of our products.

Unfortunately, it seems to be the opinion of people in ocean shipping that at the end of the 80 day cooling off period, the longshoremen will again quit work. If this happens, our industry will again be hard hit, especially when one considers that on October 31, the stocks on hand of Peas was 345.5 million pounds against 254.9 million pounds on October 31, 1970.

Some constructive action is needed to forestall another long period of inactivity in shipping abroad.

Very truly yours,

H. J. ROFFLER.

[From the Wheat Growers News, Nov., 1971]

TAFT-HARTLEY INTERRUPTS 3-MONTH DOCK STRIKE—WEST COAST PORT TIE-UP COSTS GROWERS MILLIONS

An estimated $88 million worth of Pacific Northwest wheat that would normally have been exported to the Far East remained in storage or on the ground while longshoremen tied up West Coast ports from July 1 until President Nixon invoked the Taft-Hartley Act in early October.

With grower groups, Wheat Commissions and Western Wheat Associates standing by virtually powerless to do anything about the crippling walkout, export sales went to competitors in Canada, Australia and U.S. growers shipping from Gulf ports. The Idaho Wheat Commission and Idaho Transportation Council kept in close touch with the adversaries in strike negotiations and made an intensive effort to alert government officials and the public on damages being inflicted on wheat growers and the Idaho economy.

President Nixon moved to halt the West Coast strike when, on October 1, longshoremen on the East Coast and Gulf also walked out. After a few days of hesitation, the President invoked provisions of the Taft-Hartley Act to meet what was then considered a national emergency.

The Idaho State Wheat Growers Association board of directors, meeting in Boise on October 1, sent a telegram to the President, urging him to use the powers of government in bringing some relief to hard-pressed Western agriculture.

About this same time, news media in Idaho and other Northwest states began

recognizing the strike's impact on the inland economy, and editorials started appearing in support of the grower position.

A few days after the Taft-Hartley action began, Western Wheat Associates delegates met in Lewiston, and Executive Vice President Dick Baum reported the first WWA estimates of damages inflicted on Northwest wheat growers by the three-month-long port tie-up.

During the same three months of 1970, Baum explained, about $88 million in wheat exports went to buyers in Japan and other Far Eastern countries. This represented a total of 54.7 million bushels.

Baum guessed that 20 to 25 million bushels of the loss could be recovered, thus leaving total damages from the strike amounting to perhaps $48 million or more.

Idaho Wheat Commission Administrator Harold West added that growers will also be hit for losses as a result of depressed prices, carryover stocks and damages resulting from improper storage.

Western Wheat officials cautioned that West Coast ports are not operating yet under normal conditions and probably will not until a settlement is reached. Disgruntled longshoremen have so far made no effort to get port operations back to full capacity, so there is been no opportunity to make up for huge strike losses. There is also a danger of the walkout resuming at the end of the Taft-Hartley 80 days cooling off period.

Observers are now concerned about the strike's long-term effects on exports. Confidence built up with foreign buyers over the years has been undermined, and trade relationships have been further complicated by extended tariffs on goods imported by the U.S.

BILL TO EXEMPT THE BASKETBALL LEAGUES FROM ANTITRUST LAWS

Mr. ERVIN. Mr. President, during recent weeks I have presided over the hearings of the Antitrust and Monopoly Subcommittee of the Senate relating to the bill to exempt the basketball leagues from antitrust laws. I ask unanimous consent that the following articles and editorials related to these hearings be printed in the body of the RECORD:

First. An editorial entitled "ERVIN Eyes Professional Sports", which appeared in the Durham, N.C. Morning Herald for September 28, 1971.

Second. An article by John F. Steadman entitled "Senator ERVIN No Puppet for Pro Basketball," which appeared in a recent issue of the Baltimore, Md., News and other newspapers.

Third. An article entitled "ERVIN Terms Merger Plan Worthy of Racketeers' Envy," which appeared in the Washington Post for November 16, 1971.

Fourth. An article entitled "Congress vs. Sports," which appeared in the New York Times for November 22, 1971.

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

[From Durham (N.C.) Morning Herald, Sept. 28, 1971]

ERVIN EYES PROFESSIONAL SPORTS

Sen. Sam J. Ervin Jr., D-N.C., has given the professional sports organizations something to think about in his promise to try to put in an amendment to place major professional sports under federal control if legislation to relax antitrust laws for merger of the American and National Basketball Associations reaches the Senate floor.

The amendment would create a federal athletic commissioner to regulate baseball, football, basketball and hockey. Also, Senator Ervin has said he has in mind regulations dealing with the common draft and option clause which limit a player to negotiate with only one team and bind him to it. In addition, he would support legislation outlawing television blackouts of sold out games in cities where they are played.

Senator Ervin, a champion of individual rights, has charged that the basketball merger proposed would lead to the "economic enslavement" of the players. And he has argued that if Congress relaxes the antitrust laws to permit merger, "It should have the right to determine such things as rates of return, ticket prices, territories, and it should supervise the draft of new players."

Also, "If the owners of professional sports teams ask to be treated as a monopoly, they should expect government regulation. Otherwise, the federal government, without any strings, is giving a handful of extremely rich men millions of dollars and giving them the right to drop chains around the neck of every professional basketball player and potential player in the nation."

Senator Ervin has raised pertinent points concerning special privileges professional sports enjoy, as in baseball (granted immunity by the Supreme Court in 1922) and football (congressional approval of a merger in 1966), and as is now sought in the proposed basketball merger.

Professional sports are big business enterprises, he has pointed out, and numerous questions are to be asked about their operations, with what he has termed "modern peonage" for players at the forefront. It would be good to see a full-scale review of professional sports, to see the issues put in better perspective.

In the foreseeable future, however, federal control of professional sports would appear to be a highly unlikely prospect. Much valid argument against such a move could be presented. But Senator Ervin has spoken a warning not to be taken lightly by professional sports.

[From Baltimore (Md.) News]

SENATOR ERVIN NO PUPPET FOR PRO BASKETBALL

(By John F. Steadman)

If the other 49 states aren't careful, there's going to be a mad rush to North Carolina just so the citizens can brag on having a certain elected official who isn't the star of a trained-seal act.

They have a venerable and courageous senator from there by the name of Samuel J. Ervin, who may not be able to identify a basketball from a pumpkin but is showing he certainly ain't no country bumpkin when it comes to searching out the facts.

Senator Sam is acting chairman of the Antitrust and Monopoly Subcommittee and, thus, is sitting in judgment of the attempts by the two professional basketball leagues to bring about a merger.

In the past, some of our legislative trustees in government have been nothing more than bowing, obedient heroworshippers any time some smooth-talking linguist came in from the world of sports to ask for special legal exemptions as pertains to the laws of the land.

It got so you wondered if they had been promised free tickets, tips on the stock market, or were taken out to lunch, the way some sports writers can be handled when it comes to getting them to go along with opinions favorable to management.

But it's obvious at this point in the discussion that Senator Sam is not a company man. He's for the country and what's best for the masses.

Ervin has listened to the testimony from the basketball franchise owners. They are crying the blues, naturally, over losing money because the players have the right to use one league as a bargaining tool against the other.

The owners want to get Federal permission to merge so their game will be all the more accommodating in fulfilling their financial desires.

Professional management is contending that if it doesn't get the green light to bring the National Basketball Association and the American Basketball Association together that it will go broke.

So right now it's sending up distress signals. Crying towels are all over the place.

GREATER NEEDS ELSEWHERE

Ervin is listening but he's not too impressed. He knows all about poverty programs and believes there's more need for help in Appalachia than in major basketball arenas.

Since the basketball moguls have been asking for merger permission, Ervin has wanted to know why and his questioning has been more than superficial. He's putting an elbow in their ribs and blocking them off under the basket, so to speak.

Ervin has asked the 28 pro basketball owners to provide their personal income tax records so he can check on their claim that a merger is an economic necessity.

But the counsel for the opposition pointed out that in the past Congress only asked for such statements from racketeers . . . hoods . . . the element.

So what did Ervin next tell them?

"Attempting to hide behind the defense that Congress looks only at income-tax returns of racketeers is laughable and it is irrelevant when you consider that the basketball owners are asking for control over the lives of human beings that would make a racketeer green with envy that he hadn't thought of the scheme first."

Ervin said he keeps reminding his fellow members of the Senate that the owners are afraid of the truth.

"They feel they can come to Congress and pat us on the head like little boys and tell us any story they please," said the straight-talking, two-fisted Democrat who is certainly not a patsy.

The North Carolina lawmaker, who was one of this country's most decorated soldiers in World War I, had some other pertinent things to say.

"They (the owners) base their request, an antitrust exemption on economic necessity; that is they say their teams are losing money.

"I am not sure this is the legitimate concern of Congress because I don't believe that is our function to bail out every business that is losing money in this country."

OWNERS CREATED OWN PROBLEMS

Ervin is right on the target. The Congress didn't request the owners of franchises in the ABA and NBA to organize teams. They went in of their own volition.

Now that the players' salaries have gotten to astronomical heights they are begging for a merger. And who allowed the contracts to climb?

Why, the same owners who are asking for government relief. They played Santa Claus to the boy athletes and now they want Congress to come to their rescue.

Senator Sam Ervin likes sports. But he doesn't want to hear a lot of crying and pleading for a cause that to him has weak and questionable merits.

When it comes to oratory and sharp infighting, Ervin is no pushover. He knows that the basketball owners will "cop a plea" to get what they want.

Right now, Senator Sam ain't buying their story. That's why he suddenly slammed the gavel and postponed the hearings until next year for what he said was "pressing business in the Senate."

It's maybe only the end of the first half but Ervin has played strong defense. The

owners haven't even gotten within shooting distance of their goal.

[From the Washington Post, Nov. 16, 1971]

ERVIN TERMS MERGER PLAN WORTHY OF RACKETEER'S ENVY

(By Mark Asher)

Sen. Sam Ervin (D-N.C.), a staunch advocate of the bargaining rights of players opposing the pro basketball merger, declared yesterday that terms of the proposed merger "would make a racketeer green with envy that he hadn't thought of the scheme first."

Acting chairman of the Senate Antitrust and Monopoly subcommittee, Ervin resumed hearings on the proposed NBA-ABA merger with the owners proclaiming that the merger—and its resulting common draft—was "in the public interest."

"With the exception of the United States government, which can draft people to serve in the armed forces, there is no other business that can draft employees except professional sports," Ervin said.

ERVIN VS. OWNERS

"Now a man can get two bids—one from each league," the senator added. "You say you're doing this for the benefit of entertainment in the public interest. That's exactly what they said in Rome when they threw the Christians to the lions."

The day's testimony, starting at 10 a.m. and ending at 6:15 p.m. with five recesses for roll-call votes on the Senate floor, was mainly a standoff between Ervin and the owners. And Ervin, with intensive and repetitive cross-examination, left little doubt that he was perturbed with the owners' refusal to produce personal income-tax records for him.

Only three of yesterday's seven witnesses were heard. Today's scheduled hearings were postponed because the full Judiciary Committee has scheduled a meeting. The owners suffered a setback when Ervin said the hearings could not be reconvened before the first of the year.

Former Sen. Thomas Kuckel, counsel for the owners, called the postponement "a grave additional problem" as the owners seek passage of legislation that would enable them to merge in time to hold a common draft of college talent and avoid another bidding war for untested rookies. The draft is usually held in March.

As acting chairman of the subcommittee, Ervin has the power to schedule the next round of hearings and Capitol Hill sources noted it is up to the North Carolina senator when, or if, the subcommittee votes on the bill.

TAX RECORDS SOUGHT

Ervin wants the 28 pro-basketball owners to provide their personal income-tax records to back up their claim that a merger is a economic necessity. He has asked for them three times and been turned down on each occasion, Ervin said.

The owners claim that in the past only racketeers were asked by the Judiciary Committee for personal income tax records. Ervin produced examples of precedent.

Wendell Cherry, owner of the Kentucky Colonels, testified he would make his personal income-tax return available, but that he could not speak for others.

Cherry also produced a profit-loss statement for the Colonels that showed losses of $466,747 in fiscal 1970 and $526,104 in fiscal 1971, plus projected losses of $402,837 for fiscal 1972.

$20 MILLION LOSS CITED

If the merger is not allowed, "you've signed the death warrant of the ABA," Cherry said. Economist Robert Nathan, testifying in behalf of the owners, said the 11 ABA teams had lost more than $20 million cash in four years.

Commissioners Walter Kennedy of the NBA and Jack Dolph of the ABA and owner Abe Pollin of the Baltimore Bullets did not get to the witness chair, for the second straight set of hearings.

Nathan testified that Earl Foreman, owner of the ABA Virginia Squires, and Arnold Heft, an area builder, each made a profit of about $400,000 when they sold their one-third interest in the Bullets to Pollin in 1968. The three men bought the team in 1964.

[From the New York Times, Nov. 22, 1971]

CONGRESS VS. SPORTS: FIVE BASIC ISSUES ON ANTITRUST THEME, FACE LEGISLATORS AFTER LONG HEARINGS

So far during 1971, at least 18 bills have been introduced in Congress to deal with some anti-trust aspect of professional sports. When duplications and consolidations are worked out, five issues will remain to be considered:

Should baseball lose its special status as the only sport not subject to the Federal antitrust laws?

Should a merger of the National and American Basketball Association be permitted?

Should television practices now permitted, such as the local blackout, be continued?

Should all the traditional monopolistic privileges sports has enjoyed, including reserve-option control of players and player drafts, be made specifically legal?

Should there be a Federal boxing commissioner?

Of the five subjects in which Congress has shown interest, the first is under fire from two directions. The Curt Flood suit, accepted by the Supreme Court for consideration next year, is on exactly that question: Should the special exemption granted baseball by a Supreme Court ruling in 1922 be extended or removed?

Whatever the court rules, of course, a specific law passed by Congress will take precedence.

MORE HEARINGS NEXT YEAR

The second question, concerning the basketball merger, has received most attention. There have already been two rounds of hearings before a Senate subcommittee headed by Senator Sam J. Ervin, Democrat of North Carolina, and more are scheduled for early next year.

Considerable light has been shed in these hearings on the larger issues of sports-in-general and most illuminating of all is the particular road block the merger has run into.

The National and American basketball associations have made it their main argument that only a merger can save several teams from financial collapse, because competing for top players (especially rookies) is too costly.

Congress tends to be receptive to such a plea, because "the public interest" is served by having a big league sport continue to function in the largest possible number of cities.

But in trying to prove that they face financial hardship, the basketball club owners have put themselves into a box by making the figures they submitted too convincing: Taken at face value, their financial statements indicate that many teams can't survive even with a merger.

The figures show that for "rich" clubs, the increase in player costs over the last four years (since competition began) does not threaten their financial stability; but that the increase for "poor clubs" is not the determining factor either.

In other words, the financial picture given of "poor" clubs is such that they wouldn't be succeeding even if their player costs were drastically reduced.

And the only significant way "weak" members could gain from association with "strong" members would be if the total number of teams were smaller. With 28 teams, the "hot attractions" can't possibly visit the weak spots often enough to put them in the black; with 16 to 20 teams, there would be a better chance, since only the "weak" ones would have gone out of existence and the proprotion of "strong" teams left would be much greater.

But reducing the number of teams is exactly what Congress is against—and exactly what the merger is supposed to prevent. By the end of last week's hearing, the key questions being put by Senator Ervin and Senator John Tunney, Democrat of California, who is a co-sponsor of the bill to permit the merger, were:

If your financial plight is so bad, can you really be saved by being allowed to merge? And if the weak can't be saved, but only the strong made stronger, what justification is there for having the United States Government grant an antitrust exemption to one group (club owners) at the expense of another (players)?

HARD QUESTIONS TO ANSWER

The questions seem hard to answer. There are only two possible ways, even theoretically, that a merger could help "poor" clubs. One would be a really drastic—50 per cent or more—reduction in player salaries. The other would be increased income from association with "strong" teams. But the owners say that wouldn't do the first (and if they tried, they would merely provoke a players strike); and the second, to be meaningful, involves reducing the number of teams. Neither course is palatable to Congress.

What is true in basketball is true, in varying degrees, in all sports. The other two sports issues that generate heat in the halls of Congress—franchise shifts and television policies—are intimately related to the question being pressed hardest by Senator Ervin. He wants to know the real financial picture in major sports, as distinct from the self-selected statements of teams pleading for special consideration, and he is seeking income tax information to get that picture.

Here is a summary of the bills introduced this year:

House of Representatives—Four bills to include baseball specifically under the Sherman Antitrust Act; Two to forbid pro football telecasts on Friday night and Saturday in competition with high school and college games; four to permit the basketball merger; two to place all sports specifically under the Sherman act; one to put all sports under the Sherman act, but to specifically permit reserve-clause, exclusive franchise and other traditional arrangements; one to create a Federal Commissioner of Boxing.

Senate—Two bills to place baseball under the Sherman act; one to forbid local television blackouts for any event that is sold out at the gate; one to permit the basketball merger.

LEONARD KOPPETT.

THE COMMITTEE OF CONCERN

Mr. PACKWOOD. Mr. President, the Committee of Concern, presided over by Gen. Lucius D. Clay, U.S. Army, retired, is an organization held in high regard in this country whose credentials are beyond repute. Recently they have focused their attention on the plight of the Jewish Community in Syria. The Committee of Concern has issued a "Statement of Concern" detailing many of the problems faced by Syrian Jewry.

I ask unanimous consent that their "Statement of Concern" be printed in the RECORD.

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

COMMITTEE OF CONCERN

STATEMENT OF CONCERN

The distressing and increasingly alarming reports which we have received in recent days from most reliable sources concerning the threat to the survival of the remnants of Syrian Jewry prompts us once again to speak out. Following are details concerning the plight of the Jewish community in Syria:

1. The Syrian authorities are holding in jail twelve young Syrian Jews, charged with having attempted to flee the country. The names of eleven of them are: Isaac Hamra, Sheila Hamra, Misses Badio Dibbo, Boukehi, Melles and Yachar; Messrs. Abdo Saadia, Simon Bissou and Azur Blanga. The last named is 27 years old and was arrested with his wife (24) and his four year old son. The others are all believed to be in their late teens or early twenties.

2. The Syrian security police have interrogated the relatives of the twelve Jews and the relatives of others who have either succeeded in fleeing the country in the past or who were suspected of planning an escape and going to Israel. There are reports that they have been interrogated under torture and held under strict solitary confinement for periods up to three months.

3. All who have been released after confinement are, without exception, reported to be physically ill or bodily maimed or mentally deranged. Jews who did succeed in escaping to Israel or other countries in the free world report that those who have fallen into Syrian hands are being subjected to electrical torture, the ripping off of fingernails and cigarette burns on various extremities of the body. Jewish girls have been abducted, raped and thrown naked into the streets of the Jewish ghetto in Damascus. Recently, Jewish homes were set on fire in the Damascus Ghetto.

4. The desperate attempts of groups of Jews to flee the country are prompted by the cruel conditions to which the community has been subjected for years. Among the restrictions imposed upon the Jews of that country are:

a. A total ban on Jewish emigration. Jews are also forbidden to leave the country for visits to relatives or for medical treatment. Moslem Syrians are readily able to visit neighboring countries; and more than 500,000 Syrians have visited Lebanon thus far this year. Moreover, the property and assets of Jews who succeed in fleeing Syria are automatically confiscated.

b. Even within Syria itself, travel by Jews is restricted to three kilometers from one's home address. Further movement requires a special permit which is generally not granted.

c. Distinctive Jewish identity cards are marked with a red stamp, "Member of the Mosaic faith."

d. Prohibition for employment in government offices, public bodies or banks. Except for doctors and pharmacists, Jewish professionals are banned from practice.

e. Other restrictions on the normal conduct of their personal lives, such as non-installation of telephones and non-issuance of new driving permits.

f. The authorities have turned over houses in the Jewish quarter to occupation by Palestinian Arabs who harass the remaining Jewish residents in the section.

g. A Higher Committee for Jewish Affairs (composed of representatives of the Interior Ministry and the security services) maintains a constant surveillance over the Jewish community and carries out frequent arrests interrogations and sudden house searches invariably at night.

h. Jews are prohibited from selling their houses or other real estate. Also, army personnel and government employees may not make purchases in Jewish owned stores.

i. When a Jew dies, his property is transferred to a Government authority for Palestinian Affairs. His family must then pay rent for the continued use of the home or business property.

j. Jews have become convinced of the futility of bringing petitions against Moslems to the law courts, since the rulings are always in favor of the latter.

k. Most Jews who worked for Moslems have been dismissed without compensation. Most Jewish vendors have had their licenses revoked. The majority of the community has been reduced to abject poverty.

l. Jewish schools have been taken over by the state. Moslem principals have been appointed and Jewish religious studies have been drastically reduced. General school examinations are now always held on Saturday, the Jewish sabbath. Only a very few Jews are permitted to pursue university studies.

m. The Jewish cemetery in Damascus has been almost entirely destroyed and a highway has been built through it. The petition for a new cemetery has been turned down and in the small area that remains, graves have to be opened to accommodate new burials.

We call on the Syrian authorities to cease their persecution of the Jewish minority, to free those unjustly imprisoned and to permit those Jews who wish to emigrate to do so.

Mr. PACKWOOD. Mr. President, for too long the Jews of this world have been discriminated against by almost every other major religion. The history of man's inhumanity to man throughout the world can be seen in microcosm in the history of the treatment of the Jews. If the "Statement of Concern" that I have placed in the RECORD accurately describes the unconscionable treatment of a small minority in Syria, then we have indeed learned nothing from the history leading up to World War II. For how long must a relatively small religion be made to suffer in this world because of imagined wrongs by the rest of us in which the Jews have had no hand in creating. I pray that we do not replay in Syria the same scenario of discrimination the world has watched too often.

In fulsome disgust we justifiably declaim the discrimination against blacks by whites in Africa, against Bengalis on the Indian subcontinent. The least we can do in this litany of wailing is to extend our protection to the Jews of Syria who ask nothing more than to live and let live.

PROTECTION OF AMERICAN SHIPPING

Mr. McGOVERN. Mr. President, I note with some concern and consternation that last week the House passed a bill, H.R. 11589, which would authorize the sale of five U.S. passenger ships to foreign buyers. I believe that this was a hasty action and I urge my colleagues in the Senate to give serious consideration to some of the adverse implications to our own merchant marine and to the economy in general if the sale as authorized by H.R. 11589 is consumated.

The disposal of these five ships at cut-rate prices will have an unfavorable effect on American citizens in two ways. First, it would dissipate their tax dollar commitment in the ships. Second, it would replace American seamen with foreign seamen and contribute all fares from American passengers to foreign economies, thereby adversely effecting our balance of payments. This does a disservice to the American taxpayer and to American seamen.

A portion of the American shipping industry has unfortunately given up on making the cruise business a paying proposition. But there is no reason why American ingenuity and enterprise could not devise an effective course of action which would result in our merchant fleet recapturing a fair share of the seagoing vacation trade.

I hope that every effort will be made to find American buyers for these ships and that diversified uses for them will be explored. Let us not foreclose an alternative until all possibilities to keep the five merchant marine ships flying under the American flag are exhausted.

REHABILITATION OF PRISONERS

Mr. MATHIAS. Mr. President, earlier today it was my privilege to attend the National Conference on Corrections now in session in Williamsburg, Va. This is the first time that we have attempted to bring together representatives of all the public agencies that relate to prisons and the rehabilitation of prisoners. The fact that over 40 percent of all crimes are committed by second offenders is clear warning that our present penal system suffers from a high rate of failure. The fact that over 98 percent of all prisoners return to society makes it imperative that our correctional system be improved to save society from this biggest single source of crime as well as for the sake of the prisoners themselves.

A comprehensive program initiated by President Nixon should bring early and substantial help. That plan was both explained and expanded by the Attorney General in addressing the Corrections Conference. The problem is so urgent, the solutions advocated by Mr. Mitchell so promising, and the necessity of public understanding so great that I ask unanimous consent to have printed in the RECORD the speech made today in Williamsburg by the Honorable John N. Mitchell.

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

NEW DOORS, NOT OLD WALLS

(An address by John N. Mitchell, Attorney General of the United States)

Let me join the others in welcoming you to this National Conference on Corrections. As many of you know, this conference stems from the continuing concern over prison reform by the President of the United States, and is a part of the national corrections program that he set in motion two years ago.

In 1969 President Nixon directed his Administration to pursue correctional reform along 13 specific avenues. He also appointed a Task Force on Prisoner Rehabilitation, which made a number of significant recommendations in April 1970.

Together, these directives and recommendations represent the most determined and comprehensive approach to corrections ever made in this country. I refer not only to Federal corrections, but insofar as the Federal Government can provide funds, training

and leadership, this approach is a Magna Carta of prison reform for all levels of government.

We are here to review how far we have come in implementing the reforms already proposed by the President and others, and to chart a course over the vast sea of problems remaining.

Until the last two years, it could be said of prison reform what Mark Twain is supposed to have said about the weather: "Everybody talks about it, but nobody ever does anything about it."

Some of the talking was done at a National Congress on Penitentiary and Reformatory Discipline, meeting in Cincinnati. Among other things, it recommended that:

The prime goal of prisons is not to punish, but to reform.

Prison personnel should be much better trained and developed to professional status.

Prisoners should be classified and treated appropriately and separately.

They should be handled with incentives and moral suasion, not physical punishment.

They should be given hope of reduced sentence and parole for good behavior.

Their academic education and vocational training should receive primary emphasis.

They should be helped to find their way in society after release.

When were these enlightened ideas proposed? Not last month or last year, but in 1870—more than a century ago.

Forty years ago a National Commission on Law Observance and Enforcement, known as the Wickersham Commission, devoted an entire volume of its report to the subject of corrections. Among its recommendations were the very same ones that had already been recommended in 1870.

Nearly five years ago a President's Commission on Law Enforcement and Administration of Justice devoted a chapter of its final report to corrections. Among its recommendations were ones previously made in 1870 and 1931.

What was the result of this century of recommendations?

In state after state, most of the prisons have no programs for correcting the prisoner. Only a fraction of inmates in the country are exposed to such programs.

Only from 10 to 20 percent of all prison system budgets in this country is spent on actual programs to correct the inmate; the rest is spent on custody and administration.

Only 20 percent of institutional personnel are assigned to correctional-type programs.

In many states, first offenders are mingled with hardened criminals; in many cases, juveniles are mingled with adults.

In any other profession this kind of neglect would be unthinkable. How would we react if a hospital put accident victims in the Communicable Diseases Ward—and at that, a ward in which the patient received a bed, but no treatment? We should be just as appalled at the situation in many of our prisons today. Little wonder that, in sounding the call for prison reform, President Nixon declared, "The American system for correcting and rehabilitating criminals presents a convincing case of failure."

There are, of course, some outstanding exceptions. But in characterizing most American prisons I need only use the same language that the Wickersham Commission used 40 years ago:

"We conclude that the present prison system is antiquated and inefficient. It does not reform the criminal. It fails to protect society. There is reason to believe that it contributes to the increase of crime by hardening the prisoner."

Today we have figures to confirm that belief. According to the FBI, those arrested on Federal criminal charges in 1970 had an average of four prior criminal arrests and an average of nearly 1½ convictions at the local, state or Federal level. The nearly 38,000 arrested on Federal charges in 1970 had a total of more than 22,000 prior imprisonments of six months or longer in one type of institution or another.

These and many other studies with similar results should not surprise us. It is as simple as the words of the novelist, Dostoyevsky: ". . . neither convict prisons, nor prison ships, nor any system of hard labor ever cured a criminal."

The fact is that other trends in American life are going to make this corrections problem even more pressing in the future. The trend toward improved law enforcement systems will not only deter crime in the long run, but in the near term one of its effects should be to increase the arrest rate. Moreover, if the court reform movement proceeds as we hope, it will speed the prosecution of more defendants. Together, these two factors will send many more offenders through the criminal justice system, thus putting added strain on the corrections program.

We must be prepared for this new wave of offenders coming into the prison system—ready not just with added beds and benches, but ready to make the most of an opportunity to reach a larger number of offenders with modern corrections techniques.

At the same time, the rising level of education in the United States is leaving a bigger gap between the undereducated offender and society at large. So our job training and educational programs in the prisons must be pushed even harder to keep up with successes in other aspects of society.

Recognizing that there are many successful corrections programs by various jurisdictions, I would like to examine briefly the particular program developed in response to President Nixon's directions two years ago.

First, the President's program has received growing financial support from Congress, thanks to some dedicated leaders in the corrections crusade such as Senator Roman L. Hruska of Nebraska. Funds specifically earmarked for corrections, over and above the other corrections grants, have been added to the program of the Law Enforcement Assistant Administration, part of the Department of Justice.

Second, in 1970 the Inter-agency Council on Corrections was created to focus the work of all relevant Federal agencies on prisoner rehabilitation. This consists of representatives from a dozen agencies within the Departments of Justice, Labor, Defense, and Health, Education, and Welfare, as well as from the Department of Housing and Urban Development, the Office of Economic Opportunity, and the U.S. Civil Service Commission.

Third, the United States Board of Parole was reorganized in 1969 to enable Parole Hearing Examiners to conduct many of the hearings in correctional institutions across the country. This permits the Board members to devote more time to the decision-making process and to hold more appellate reviews.

Fourth, the Federal Bureau of Prisons within the Department of Justice developed a comprehensive 10-year master plan to improve the effectiveness of the Federal Prison System and hopefully to make it a model of correctional endeavor for other agencies in this country to follow. This plan emphasizes individualized treatment and community orientation. The Bureau has already made a good start in achieving these goals, particularly in two vital areas—personnel training and new facilities.

The first regional staff training center was opened last January. It provides professional training to develop the correctional officer as an agent for change rather than as primarily a custodian or keeper. The second regional training center will be opened the first of this coming year, and three more are planned for the future. As soon as possible, these facilities will also be made available to state and local correctional personnel.

This month the Bureau plans to break ground for its first Metropolitan Correctional Center in New York City. This multipurpose facility will provide pre-sentence and post-sentence short-term detention, diagnostic service to the courts, pre-release services to offenders returning to the city from other institutions, and correctional services for parolees and probationers. Construction will begin on a similar center in Chicago in June 1972, and six other centers are scheduled for urban areas where the need is most acute.

Construction will begin early next year on a facility unique in correctional practice. This is the Behavioral Research Center at Butner, North Carolina, which will provide treatment for and research on special groups of offenders, including the mentally disturbed. And in the fiscal 1972 budget, Congress provided for construction of a West Coast complex of facilities in four metropolitan areas to provide better correctional techniques for youthful offenders.

Fifth, the Law Enforcement Assistance Administration has greatly increased its funding for correctional aid to the states and localities. In fiscal 1971 this reached $178,000,000, which included more than $47 million in Part E funds that Congress, for the first time, especially earmarked for corrections, at the urging of President Nixon. This Part E funding has been more than doubled in the current 1972 fiscal year, bringing the total LEAA funding for corrections in this current year to nearly a quarter of a billion dollars. For the first time, substantial funds are available for a coordinated program to bring American penology into the 20th Century.

From its inception, the entire LEAA corrections program has had a common theme—preparing the offender for assimilation into society. One reason is that community-based programs are within the financial reach of the Federal assistance program and of the states and localities. If these correctional programs are as successful as we hope, we may not need to build all the new facilities that now seem to be required by the antiquated condition of most penal institutions. Some funds are being used for construction, but on a very selective basis which emphasizes corrections, not just detention. Already, as a result of LEAA funding, we can see some visible areas of progress. To cite only a few:

Kentucky has begun its first organized pre-release program for prison inmates.

Arizona has begun treatment programs in county jails.

Michigan is developing a million-dollar model program to treat young offenders in community-based programs.

Missouri is opening 12 new community treatment centers for offenders and ex-offenders and 36 group homes for juveniles.

Louisiana is building a state institution for women and two regional centers for offenders.

Indiana has opened two new regional centers for juveniles in the past two years and will open four more.

Florida is implementing a major probation program for juveniles directed by the state.

New York is launching a massive series of professional training programs for existing correctional personnal at all levels.

Those programs are only a fraction of the whole picture.

Last fiscal year LEAA put over $2 million into job training and placement programs operated by private industry.

LEAA has also made direct grants to cities and counties to finance community treatment centers, narcotics and drug treatment, job placement, juvenile probation, work release, group homes, rehabilitation of alcoholics, halfway houses, volunteer aid programs, psychiatric care, and a host of other offender rehabilitation efforts.

We are also aware that many states need technical advice on how their facilities need improving, and even on how their new build-

ings should be designed to make maximum use of modern correctional methods. I am able to announce that, to meet this need, LEAA has funded a National Clearinghouse for Criminal Justice Architecture at the University of Illinois.

Professional assistance in planning and implementing education programs for inmates is also a need of many states and localities. For this purpose I am today directing LEAA to establish a National Clearinghouse for Correctional Education, using such funds as are now available for its initial phase of development. This Clearinghouse will give technical help, including curriculum planning and classroom and correspondence course materials, to correctional agencies establishing education programs for primary through college level.

These are only a few highlights, and they do not include numerous research programs to advance the science of corrections.

Already, because this large LEAA funding is now available, state and local correctional administrators have begun to press for change. They are documenting their needs, with new confidence that those needs will be met. No longer are they voices in the wilderness.

In addition, other Federal agencies are providing strong support. At three Federal institutions, the Office of Economic Opportunity has funded programs to prepare selected inmates for advanced educational opportunities. A number of vocational training courses for handicapped inmates have been sponsored by the Rehabilitation Services Administration of HEW. The Manpower Administration of the Department of Labor has made numerous grants to provide occupational training for inmates of Federal, state and local institutions. And the Manpower Administration is also participating with United States Attorneys and the Federal Courts in a program to provide jobs and correctional guidance to selected defendants, without trial.

Recently, steps have been taken to bring even closer coordination of Federal and state corrections programs.

A National Advisory Commission on Criminal Justice Standards and Goals, chaired by Governor Russell Peterson of Delaware, has been established by LEAA. Among the standards it will consider and establish are those for corrections. I trust that when these are forthcoming, correctional institutions at all levels will give them the most serious consideration, to the end that all such American institutions can work toward the same goals.

In addition, the cabinet heads of the Departments of Justice, Labor, and HEW last week joined in sending a letter to the governors of all states and territories, offering fresh technical and financial assistance in a coordinated Federal-state program for correction of offenders. Grants for preparation of plans will be made to all participating states before the end of this fiscal year. Some time in February the representatives designated by the Governors will meet with Federal officials in Washington to agree upon guidelines for the program plans. The result will be that the states can make comprehensive plans with the assurance that they will receive substantial Federal financial support starting in fiscal 1973.

So we have here the first major step in articulating and implementing a national program—Federal, state and local—on the correction of offenders. I hope that your deliberations here will provide a body of professional recommendations that will guide state and Federal planners.

In short, a number of factors have combined to give us the best opportunity in this century to bring some genuine reform to the most neglected aspect of our society.

We have concerned and enlightened leadership—a President who has made prison reform one of the priorities of his Administration.

We have significant funds available and a viable program for allocating them.

We have some outstanding examples of progress in both state and Federal prison institutions.

We have a higher level of public support than ever before.

For the first time, we can mount a national corrections program that does not simply repair old buildings, and is not based only on old concepts of restraint and deterrence. Instead we can make use of the imaginative corrections principles that have been advocated for at least a century.

More than this, we can be bold enough to consider new ideas. Let me close by sharing just a few with you.

First, as you know, the need for better training and common performance standards among correctional officials is shared by all government levels. In this connection I am today directing the Federal Bureau of Prisons and the LEAA to work with the States and localities in establishing a National Corrections Academy. This would serve as a national center for correctional learning, research, executive seminars, and development of correctional policy recommendations. It would cover the whole range of correctional disciplines, from the new employee to the management level. Besides giving professional training of the highest quality, it would provide a continuing meeting ground for the exchange of advanced ideas on corrections. I believe it will be the most effective single means of upgrading the profession and assuring that correction is more than a euphemism for detention. I hope that the members of this Conference will give us the benefit of their ideas on implementing this Academy in the most effective way.

Second, I call upon all agencies to increase minority employment among professional correctional personnel. In my opinion this would greatly increase the effectiveness of counseling and guidance at all stages of the corrections process. Practically all prison systems, including the Federal system, have a long way to go in this record. I am pleased to report that the Director of the Federal Bureau of Prisons has directed all 28 Federal institutions to work toward a goal of one-third minority employment in all new hiring. I urge corrections institutions at all levels to make an extraordinary effort to find and recruit minority personnel—not only because it is the law, not only because it is fair, but because it can genuinely benefit the corrections process. LEAA is already funding a program to aid police departments in increasing their proportion of minority officers, and I am today directing LEAA to expand this program to include the same aid for correctional systems.

Third, let us recognize that correction should begin, not with the prisons, but with the courts. Let us ask whether in every case we need to achieve "the object so sublime" of the *Mikado's* Lord High Executioner—"To make the punishment fit the crime." In many cases, society can best be served by diverting the accused to a voluntary community-oriented correctional program instead of bringing him to trial. The federal criminal justice system has already used this formula in many juvenile cases—the so-called Brooklyn plan. I believe this program could be expanded to include certain offenders beyond the juvenile age, without losing the general deterrent effect of the criminal justice system. I am therefore directing the Executive Office of United States Attorneys and the Criminal Division of the Justice Department to study the feasibility of enlarging the area of criminal cases in which the prosecutor might be justified in deferring prosecution in favor of an immediate community-oriented correctional program.

Finally, I propose for your consideration a more general problem—the need to elevate public attitudes toward the releasee. Studies have shown an appalling resistance to hiring ex-offenders, even by many governmental agencies at different levels, thus frustrating other efforts at correction. Some state laws prohibit the hiring of ex-offenders by government agencies, however well adjusted or corrected they may be. When such a releasee is thus denied the means of making an honest living, every sentence becomes a life sentence. The attitude of each citizen toward salvaging offenders as valuable human beings is one of the obvious cases covered by the popular saying, "If you're not part of the solution, you're part of the problem."

It is my hope that as the rehabilitation approach to penology begins to work, the public will begin to change its archaic feeling about ex-offenders. The public's predominant impression of penology will be, not of old walls, but of new doors. And this in turn can be the final breakthrough in the centuries-old battle to reclaim and assimilate the ex-offender.

Winston Churchill once said that attitudes toward the treatment of criminals are "one of the unfailing tests of the civilization of any country." Let us do all in our power to assure that our country may yet be able to meet this test, not in shame, but with pride.

Ladies and gentlemen, I wish to thank you for your participation in this Conference. We are counting on your counsel as we enter a new phase in a national correctional program, and I trust that your dedication to this cause will produce some truly inspired guidance that is equal to the challenge.

CONFERENCE ON CAMPAIGN REFORM LEGISLATION

Mr. SYMINGTON. Mr. President, Congress has made a valiant effort this year to reform our campaign laws, and I hope that effort will not be wasted in legislation that offers less than the promise of meaningful reform.

The Senate and the House have approved somewhat different versions of the Federal Elections Campaign Act of 1971, and these bills are now in conference.

To a considerable degree the campaign reform measure approved by the Senate relies on publicity to accompany the disclosure of campaign finances as an indirect but a potentially effective means to counter the influence of money and to reduce the pressures on candidates to obtain and spend heavy amounts of money.

A central element in that Senate concept is the creation of a Federal Elections Commission to administer and enforce the proposed new requirements for disclosure of campaign finances. By placing the responsibility in an independent bipartisan commission, the Senate legislation offers needed assurance that a fresh start will be made and that the old "business as usual" filing of statements will be abandoned. The Senate bill also provides for the required financial statements to be filed not only in Washington with the Federal Elections Commission but also in Federal district courts in the home States of the candidates where such statements would be readily available to local newsmen on the scene actually reporting on campaigns. Under the provisions of the House bill financial statements would continue to be filed, as now they are, with the Clerk of the House

of Representatives and the Secretary of the Senate. The House also does not provide for filing copies of these statements in home areas of the candidates.

If the tightened requirements for disclosure of campaign funds proposed by both Houses are to receive the respectful attention of all candidates and thereby command the needed confidence of the American people that the facts are being made available to them, it would be highly beneficial to rely on an independent commission separate from Congress to administer the campaign reporting system. I also believe that some provision should be included to require the filing of copies of financial statements of the candidates in their home areas so that they will be readily available for the local media.

Therefore as they consider all the differences in the two measures, I would respectfully urge the conferees not to lose sight of the important purposes of these two elements in the Senate legislation and to retain such or similar provisions in the legislation they recommend to the House and Senate.

FEDERAL AID TO EDUCATION PROGRAMS

Mr. TUNNEY. Mr. President, as we approach the third year of the new decade, we should look ahead to July 4, 1976, the 200th anniversary of the Nation's founding, and ask:

What progress have we made toward those ideals for which the Nation was founded? And more importantly, what should we do to make those inspiring ideals into living realities?

No American ideal has inspired our own people and the people of the world more than the ideal of equal opportunity. No greater testament of the Nation's commitment to equal opportunity exists than our educational system. Although greatly needing reform and revitalization, it still represents an unparalleled commitment to the achievement of equal opportunity through the establishment of equal educational opportunity.

We must continue our quest to provide equal educational opportunity. But we must do so in light of future needs, striving to reform and revitalize our educational system by July 4, 1976, as a major goal of public policy.

Despite today's overwhelming crises in American education, I believe this goal is attainable, and that the future greatness of the Nation depends upon the Federal Government making a substantial investment in our Nation's greatest resource: the desire and ability of our people to learn.

I know that many of my colleagues who voted for the higher figures of the Senate version of the fiscal year 1972 education appropriations bill, share my regret that the higher Senate figures were not enacted into the final form of the bill. That is why I feel deeply that next year the President must budget and the Congress must appropriate the necessary funds to meet full authorizations for existing programs, while initiating new measures to shape our system to the needs of the 1970's and beyond.

It is time for the Congress to end its overdependence on the Executive for educational leadership, which, all too often, has not been leadership at all. It is time for the Congress to sharpen the cutting edge of its historic imperatives and enact the foundations of an educational system that will sustain us during the knowledge explosion and the computer and communications revolution. Such a system requires a built-in sensitivity and flexibility for adaptation to change, a quality sorely lacking in American education today. Before Congress is legislation of the kind that is needed, and I urge its swift enactment.

PRESCHOOL EDUCATION

Preschool education programs are vital if we are to equalize educational opportunity. It frees children of their present deficiencies and equips them for their futures with basic learning skills that have broad application. I support preschool education programs, and I was delighted when the Senate this year adopted an amendment to increase the fiscal 1972 appropriations for Headstart to $398 million.

However, many of the best features of the Headstart program have been incorporated into Senator MONDALE'S Comprehensive Child Development Act. I have cosponsored this legislation, which provides for more adequate educational, nutritional, health and other developmental services to children during their preschool years. S. 1512 also provides day-care and after-school services to communities to meet the needs of older children up to age 14, if their mothers are working. This bill provides the additional advantage of parental involvement in its programs, a revival of an older feature of American education, blending with present needs as an investment in our Nation's future. I am pleased that the basic provisions of S. 1512 were included in the OEO conference report which I voted for last week.

ELEMENTARY AND SECONDARY EDUCATION

The California Supreme Court recently called dramatic attention to the archaic way that our public schools are financed. Clearly, when education is so crucial to our Nation's future we can no longer afford outmoded financing methods for our public schools.

It is said that the administration is delaying adequate budgeting for existing educational programs in the hope that more effective programs will emerge through research and pilot projects. I share that hope and I support such research and projects. But we can apply known learning methods now, while continuing to find effective ones. The Federal Government should immediately begin to play a role in developing and funding new forms of financing for our public school systems so that the quality of education offered low and middle income districts will be comparable with those offered in an affluent one.

Unfortunately, the administration's budget request for elementary and secondary schools for fiscal 1972 was only $1.85 billion. The Senate, however, had the foresight to increase this amount by $290 million, and I am proud to have supported the Senate version of the bill. But next year Congress must look neither to the Courts nor to the administration, but should appropriate the full authorization for elementary and secondary schools and enact new legislation to close the educational gap between poor and rich school districts.

FEDERAL AID TO IMPACTED AREAS

The Federal Government wisely assists in the construction, maintenance and operations of schools in areas where Federal activities affect school enrollment. The Senate recognized the Government's obligation to assist schools in such areas by appropriating $237 million more than the Administration's request for the impacted aid program. The full funding of this program would demonstrate the willingness of the Federal Government to carry its fair share of the expenses for educating our children.

The supplemental appropriations bill which we enacted last week provides $200,000,000 for construction of school facilities under Public Law 81–815 and $65,000,000 for the initial funding of the low-income housing provision authorized under Public Law 81–874. Appropriations for these programs are needed and should be enacted by the Congress.

However, I also believe that additional funds are desperately needed under Public Law 81–874 for A and B category students. Local school districts are presently receiving much less than full entitlement and the quality of their education programs has suffered greatly. I feel that the Congress should fund these programs so that each school district can receive up to its full entitlement and when the fiscal year 1973 budget comes to the Congress we should provide full funding for these programs.

LIBRARIES

During the next few years, we must also provide for greater use of our libraries. The Senate recognized this by appropriating $70 million more than the administration's budget request for libraries and educational communications, including $7 million more for college libraries. A strong library system increases flexibility in education.

HIGHER EDUCATION

The administration has failed to adequately budget funds for important student assistance programs such as NDEA title III, EOP, and work study. I have long supported these programs. We not only need to expand existing forms of student aid. We also need to establish a flexible program that will meet a broad range of situations during the next decade.

Such flexibility is offered by S. 1161, which I cosponsored. This bill, introduced by Senator MONDALE, would assist higher education in a number of ways. It provides for special efforts to identify and encourage disadvantaged youths. It establishes a higher education loan bank, and it creates a new program of Federal fellowships for graduate students of exceptional ability and demonstrated financial need.

Finally, it moves in the direction of providing more student educational grants rather than depending on a burdensome loan program.

The administration's view of higher education also fails to see that, without institutional support for operating expenses, student aid will only aggravate the problems of our colleges.

Consequently, I have cosponsored S. 659, which was reported by the Senate Labor and Public Welfare Committee and has passed the Senate in substantially the same form. This bill incorporates some of the features of S. 1161 and offers a promising formula for channeling Federal dollars to where they will be most effectively used in higher education. Succeeding again where the administration fails, S. 659 authorizes assistance to strengthen developing institutions by increasing their academic and administrative capacities and the quality of their student services.

VOCATIONAL AND ADULT EDUCATION

Sections of S. 659 also provide assistance for vocational and adult education, a vital area of education, for which the Senate wisely appropriated more than $45 million more than the administration's budget request for fiscal 1972. These funds go for special programs to attack youth employment, for work-study programs, and for research to upgrade vocational education. Interest in vocational schools is at a new high. Enrollment is expected to jump 9 percent next year. Congress must help to meet the economy's need for skilled craftsmen, technicians, and paraprofessionals in industry, medicine, law enforcement, and other fields. It is my hope that an effective higher education bill will come out of conference as quickly as possible.

NATIONAL SCIENCE FOUNDATION: STUDENT SCIENCE TRAINING PROGRAM

The contributions of science education were apparently overlooked earlier this year when the administration shortsightedly announced cancellation of the National Science Foundation's student science training program.

I wrote to Senator JOHN PASTORE, chairman of the Appropriations Subcommittee dealing with the NSF budget. I urged him to insure the student science training program would be reinstated and funded. The subcommittee wisely increased funding for the NSF to provide for this needed program, which contributes to the Nation's leadership in the advance of science.

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

To some, the disciplines of science must constantly be at war with the arts and humanities. That viewpoint may have served educational advancement in the past. But today, and in the future, it is outmoded. The educational system for the future must embrace knowledge as a whole. That is why I strongly supported the request of the National Foundation for the Arts and Humanities for the more than $63 million it needs for grants to assist artistic endeavors and to support innovative approaches to humanistic learning.

Mr. President, I have touched upon a number of current programs and new legislation that I believe are vital toward revitalizing and reforming our educational system. They are aimed at providing equal educational opportunity in a system that must be responsive to diverse educational needs of our people. The past seedings of Congress in the fields of learning have resulted in a bumper crop of new knowledge. And we would be unwise indeed, if at a time when knowledge is flourishing, we did not provide all our people with the tools of education to harvest and distribute that knowledge to where it can nourish our every endeavor.

SENATE NEEDS FREEDOM OF SPEECH

Mr. ERVIN. Mr. President, the Washington Star of October 9, 1971, contains an article entitled "Senate Needs Freedom of Speech," written by Milton Viorst, which constitutes a thoughtful discussion concerning the recent action of the Department of Justice in attemping to have a Federal grand jury sit in the U.S. District Court in Boston to investigate Senator MIKE GRAVEL's exercise of his constitutional right of freedom of speech under the debate clause of the Constitution. Inasmuch as I have considered this effort a serious affront to the constitutional rights and duties of Members of the Congress, I ask unanimous consent that the article be printed in the RECORD.

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

[From the Washington Star, Oct. 9, 1971]

SENATE NEEDS FREEDOM OF SPEECH

(By Milton Viorst)

The Senate won an important, but incomplete, free-speech victory on Monday when a federal judge in Boston rebuked the administration for its continued campaign of retribution against those involved in publishing the "Pentagon Papers."

U.S. District Judge Arthur Garrity ruled that the Justice Department could not call either Sen. Mike Gravel or his assistant, Dr. Leonard Rodberg, before a grand jury to discuss Gravel's reading of the papers into the public record on June 29.

He did, however, say that Rodberg had to appear to answer any such other questions—including those related to the impending publication of the papers by a private, nonprofit publisher.

Gravel, a bitter opponent of the Vietnam war, provoked the episode while the Supreme Court was deciding whether the New York Times and the Washington Post had a right to print the papers. He called a one-man subcommittee meeting and laid out a portion of the papers for the world to see.

The Justice Department then brought a legal action, claiming the power to proceed against Gravel, though the Constitution unequivocally forbids the executive to challenge a senator or congressman for official statements.

In fact, the Supreme Court in 1966 said the executive could not even prosecute a congressman for a floor statement made in return for a bribe—though it might, and did, uphold the conviction of a congressman on a bribery charge alone.

The administration ignored its ruling and asserted that Gravel, in his committee speech, was guilty of a common crime. But it actually zeroed in with a subpoena on Rodberg, presumably because an assistant is an easier target.

Oddly, the Senate seemed to be oblivious to this threat to its prerogatives of free speech, perhaps because Gravel is not only a junior member but an iconoclast whose irreverent ways may keep him indefinitely out of the "club."

Gravel, after all, had taken it upon himself to conduct minifilibusters against the Cambodian invasion, the proposed Aleutian nuclear test and the extension of the draft. Many senators, furthermore, disapproved of his all-night subcommittee session to get out the Pentagon Papers.

Only Sen. Sam Ervin, a Southern conservative who has become the most consistent constitutionalist in the body, bothered to speak out against the administration attack.

"The administration's motives in pressing this action," said Ervin, who is counted among the Senate hawks, "are aimed at a senator who dared oppose it on the war, and who had the effrontery to use information the administration desired to keep from the people.

"If the administration were to have its way, we must remain in total ignorance of what has transpired in Vietnam, and anything else the government does, unless it chooses to tell us. By suppressing this information, the executive branch has tried to keep the Congress and the nation in total ignorance.

"Now it tries to dictate what the scope of a senator's business is, and where and when and how he may conduct it.

"The tendency, if not the intent, of this effort is to harass the senator from Alaska, and thereby to silence him and other critics in this body, along with those who are outside these halls."

But Gravel, though gratified by the partial victory that Judge Garrity handed to him, does not think he has won enough. He is going to appeal the ruling.

He argues that if the administration can go after a senator's speechwriter, it is intimidating the senator himself and influencing what he will say. As his brief puts it:

"No member of Congress who fears retaliation against himself or his staff can represent his constituents in a manner intended by the framers (of the Constitution)."

As for Judge Garrity's ruling on Rodberg, he says that publication is an integral part of a senator's right of free speech. He argues that if a staff assistant cannot be questioned about the preparation of a speech, the assistant cannot be challenged for a role in getting it published.

In backing Gravel, Ervin has pointed out that the Senate's right of free speech is fundamental to its independence. If it is denied to Senate aides, he said, it is "stripped of its value."

What is really at stake is the constitutional right of dissent. Ervin says he has "considerable doubts" about whether the administration appreciates that.

PRACTICAL SPINOFFS FROM OUR SPACE PROGRAM

Mr. HATFIELD. Mr. President, I have spoken several times about the practical spinoffs from our space program. As a member of the Aeronautical and Space Committee here in the Senate for 4 years, I know from first-hand discussions the many ways in which all our lives have been enriched by the activities connected with our space program.

In the Parade section of yesterday's Washington Post, Dr. Wernher von Braun addressed some very lucid comments on some of the spinoffs. His thoughts should be of interest to all of us, and I know I read the article at home yesterday with great interest. Much of what is said about our space program is concentrated in the few days immediately before certain amendments having to do with our space program.

Mr. President, I certainly enjoyed

reading Mr. von Braun's article. I call it to the attention of Senators and ask unanimous consent that it be printed in the RECORD.

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

HOW THE SPACE PROGRAM IS HELPING YOU

(By Wernher von Braun)

(EDITOR'S NOTE.—Some Americans question the wisdom of our multibillion-dollar space program. They ask: What do we get out of it? Here is the opinion of NASA's associate administrator, former director of the Marshall Space Center at Huntsville, Ala.)

Space flight is expensive. Thus you may not believe me when I say that the benefits have already far exceeded the costs. And much more is yet to come. Let me give a few examples.

Until about 10 years ago, a favorite target of comedians was the weatherman. Today he is usually right. Why? Because satellites in the sky look down at the whole earth and tell him what the weather will be.

Hundreds of thousands of lives have been saved by accurate predictions of the course of hurricanes. For example, the U.S. National Oceanic and Atmospheric Administration has estimated that 50,000 people would have died when Hurricane Camille hit the Gulf Coast in 1969 if they had not been evacuated. The warning was possible because of satellite pictures. How do you put a price tag on that?

Projected experiments give promise of weather forecasts accurate for up to two weeks. A National Academy of Sciences report estimates the U.S. will benefit by billions of dollars a year in farming, construction, transportation and preventing flood and storm loss. A bit farther in the future is the exciting concept of tests in weather modification and control.

Or how about communications? Today satellites carry about half the world's international telephone, telegraph and television load. The prospects are so good that many companies and government agencies here and abroad are trying to get into the satellite communications business.

COMPUTERS BOOM

Or take computers. The demands of space flight pushed computer technology forward so fast that it is an $8-billion-a-year industry that employs more than 800,000 people.

Thousands of new products and industrial processes have been introduced as the result of the space program. They include long-wearing paints, metal alloys, electronic components and industrial tools as well as devices and techniques useful in medicine and in our daily lives. Coming into use are instruments developed for space research and adapted to combat pollution and to protect the consumer.

What is yet to come? With the help of special reflectors for laser beams placed on the moon by our astronauts, astronomers all over the world are measuring the distance to the earth to accuracies of inches. With these measurements they can detect wobbles in the earth's rotation. The knowledge of when these wobbles occur may help to predict earthquakes. Such warnings would reduce the toll in lives from earthquakes just as they have from hurricanes.

PROBLEM SOLVING

In 1969, a group of leading scientists reported to the National Academy of Sciences that there are a number of ways that space technology can contribute to human welfare and solve some of the world's problems.

Let me tell you about some of these things. One is navigation. The U.S. Navy already uses satellites to pinpoint the location of its ships and submarines. They provide a considerable improvement over the time-honored method of navigation by the stars, which cannot be followed when the sky is overcast. U.S. and European government agencies are now considering the use of navigation satellites to increase the safety of flight in the crowded air lanes over the Atlantic.

Potentially, the most useful of all the applications of space flight is to observe and measure the resources of the earth, to help manage them properly and to deal with the problems of the environment.

For example, aerial observations in New York City have shown it is possible to detect, measure, and map water pollution. An instrument developed by NASA can detect and determine the size of oil slicks at sea. And with slight modification, weather satellites can report worldwide air pollution.

Scientists at Purdue University measured from the air the widespread infestation of Midwestern crops by a rare fungus blight. Off the coast of Iceland, airborne infrared sensors found the new location of the Gulf Stream, which had meandered a considerable distance. This enabled fishermen to continue hauling good catches.

Photographs of the Saudi Arabian desert from Gemini spacecraft identified hills of the type that often indicate the presence of large reserves of oil and natural gas. Similar indications were found in pictures of Australia taken from Mercury spacecraft.

SATELLITE USES

By the end of the decade, we can expect satellite systems to:

Monitor the results of international efforts to protect the environment.

Support the planning and allocation of world food supplies from agriculture and the oceans.

Aid the search for oil and mineral reserves.

Track glaciers and ice floes.

Keep track of the distribution of wildlife as well as human habitation.

Support disaster warning systems and search and rescue operations.

But all of the uses of space flight depend, of course, on the cost. In 1958, the first U.S. satellite, Explorer I, cost more than $100,000 a pound to place in orbit. When we use the largest present launch vehicles, the cost now is less than $1000 a pound. But we can do much better than that.

Technology now makes it possible to return entire space vehicles from orbit and use them again. As a result, U.S. industry and government are working on a vehicle that can be flown 100 times or more before it wears out. It is called the Space Shuttle, and it should cut the cost to about $100 a pound. It will take off vertically like a rocket and land horizontally on a runway like an airplane, avoiding the cost of recovery at sea by ships, aircraft, helicopters and frogmen.

SERVICE IN SPACE

Even larger savings will result in the satellites themselves. At present, most of the expense of building satellites is for repeated tests to make sure they will work properly in space. There are no service stations up there. As a result, we pay around $20,000 a pound to manufacture and test them. Some are even more expensive. With the Space Shuttle, we will return them to earth for periodic maintenance, repair and reconditioning and eliminate most of these costs.

The Space Shuttle will have a large cargo bay that can be converted to a passenger compartment. The acceleration forces will be limited to three times earth gravity, so that passengers in ordinary good health can be carried. They will include scientists, technicians, television crews, journalists, and many other kinds of people who have business in space.

DOCTOR GOES, TOO

On the 1973 flights in the Skylab experimental space station, a medical doctor will go into space with the astronauts. He will carry out a comprehensive program of experiments. The aim will be to establish how well men live and work in weightless conditions in an enclosed space as big as a three-bedroom house. The first flight is planned to last four weeks. Later flights will extend this to eight weeks.

As I have indicated earlier in this article, people on earth can realize many benefits from the use of space flight in the years to come. With low costs and detailed knowledge ow how human beings go about their daily business in the space environment, we can achieve these benefits in a few years and make them available to people everywhere.

NATIONAL HEALTH INSURANCE

Mr. BROCK. Mr. President, Congress recognizes that there is already a health-care crisis in our Nation and has set upon an enormous task in trying to create a national health-care system that is sufficient for the times. The House Ways and Means Committee is heading up the legislative consideration and hearings were just recently concluded. Although the committee plans to begin drafting a bill early in the new year, no one at this point seems to have the remotest idea of just what shape the bill will take. I am fearful. I am fearful that in our anxiety to alleviate this crisis, we may turn to a totally Government-controlled, nonresponsive program which will destroy the third largest industry in America and leave the health consumer helpless.

We have seen an appalling rise in medical care expenditures in the United States—Americans are now spending about $70 billion per year, or some 7 percent of the gross national product, on health and health care. This is a larger commitment to health than made by any other nation in the world. And yet, too often the average American citizen cannot afford the prohibitive price of quality health care—particularly in catastrophic situations.

This is what prompted President Nixon to declare that the Nation faces a crisis in medical care. To many, his plea simply means that all-inclusive legislation must be passed overnight, covering the entire population under one governmental program, and virtually eliminating private health insurance. Such action would surely be a disaster.

One need not look too far into the past to note a similar parallel in the instance of medicaid. Literally rammed through Congress, with inadequate consideration of long-term effect and implications, medicaid has, to be charitable, not measured up to the claims of its advocates. To pursue a similar course in national health legislation affecting every citizen would be the height of folly.

A plethora of proposals has been introduced in the Congress and now pend before the House Ways and Means Committee and the Senate Finance Committee, and these bills embody every conceivable approach to our current problems. But not one bill in its entirety meets the goals I seek and which I feel are critical to a comprehensive national health strategy. And it follows that I have not sponsored or endorsed any one bill. The fundamental aim of our health strategy must be to improve the health status of all citizens in this Nation by

expanding and improving the quantity, quality, and distribution of health-care services, as we vigorously seek to reduce this cost to the American family.

Of the 13 approaches before the Congress, there are four major ones—and each fails in one or more critical areas: reduction of costs, incentives to do so, adequate coverage, broader availability, such as in the field of mental health, and so forth.

First, National Health Insurance Partnership Act—S. 1623, H.R. 7741—proposed by President Nixon and introduced by the Senator from Utah (Mr. BENNETT) and Representative BYRNES.

The bill has two parts. First, the National Health Insurance Standards Act—NHISA—would require employers to make group health insurance available to their employees and to contribute to its cost. The House bill provides for limited subsidies to some employers. Second, the family health insurance plan—FHIP—subsidizes health insurance premiums and provides for lower copayments and deductibles for most low-income families. The administration estimates the Federal cost of the proposal at about $3.7 billion to the Federal Government. Increased expenditure on health insurance by employees and employers is estimated at $7 billion. Both estimates, in my opinion, are low.

CRITIQUE

The administration plan contains some desirable features. In its present form, however, there are serious shortcomings. First, it contains a work disincentive in that employed persons and unemployed persons would be eligible for different benefits at different costs. The principal difference is that the unemployed would be subject to the lower FHIP premiums, copayments, and deductibles, while the employed, under NHISA, would receive greater coverage for catastrophic expenses. It is probably true that, for many low-income individuals, the expected value of the FHIP benefits would be greater than the expected value of the NHISA benefits. Since the cost of FHIP to the individual is less than the cost of NHISA, there would be a definte incentive to become or remain unemployed. We have seen enough of this "work disincentive" in our current welfare system.

Second, and perhaps more important, will employers really pay the "employer's share" of NHISA or will they shift the burden of the tax to someone else? Every profit-maximizing employer will try to shift the tax either to his employees or to his customers. If he can increase his prices by the amount of the tax, then the tax is shifted to consumers. If he reduces his worker's wages below what they otherwise might be by the amount of the tax, then the tax is shifted to the workers.

I am also disturbed at coverage exemptions under this plan including persons married or single without children who are poor or indigent, students, self-employed individuals, and persons working less than 25 hours a week. As a result, overuse by higher income families would probably be encouraged, while lower income families would receive little protection against losses which, for them, may be catastrophic.

Second. Health Security Act—S. 3, H.R. 22—introduced by the Senator from Massachusetts (Mr. KENNEDY) and Representative MARTHA GRIFFITHS and supported, among others, by the Committee of One Hundred for National Health Insurance—United Auto Workers—and the AFL–CIO.

This proposal would repeal medicare and provide a program of compulsory national health insurance covering almost all medical expenses, without limitations, copayments or deductibles, for all Americans. It would be financed out of payroll taxes and general revenues. The plan also calls for a Health Resources Development fund to be used to develop health manpower. The sponsors estimate program costs at $67 billion in fiscal 1974 when it is fully operational.

CRITIQUE

While no one can argue that changes are long overdue in the delivery of health care in this country, to judge from this Nation's previous experience with the far less comprehensive medicare and medicaid program, the objectives of the bill can never be achieved. Certainly the Federal Government cannot be expected to keep costs down.

Simultaneously with the implementation of medicaid and medicare in 1966, the rate of inflation in medical prices, which had consistently been higher than that of the general price index, began to increase at an even greater rate. With the Government acting as a major purchaser of medical care, higher unit prices meant higher tax costs for the public programs, or more simply, higher taxes for everyone.

To some extent, an attempt to offset these rising costs was made by benefit reductions, but to reduce benefits once they have been offered is never very popular and can only result in considerable controversy and criticism. Nevertheless, the costs of medicare and medicaid continued to rise and continued to be underestimated, and now Congress finds itself facing the laborious task of seeking the solution. I hardly think it lies in simply enlarging upon errors of the past.

One of the most absurd aspects of the bill is that it encourages people to believe that, just 2 years after passage of this bill, complete health care for all will become a reality.

This is just not going to happen in 2 years—medical manpower cannot be trained and relocated in so short a period. And it is obvious that enough physical facilities could not be constructed in a 2-year period to meet the demands of the entire Nation. In fact, the overload on the system could cause its complete breakdown.

One of the cosponsors of Senator KENNEDY's bill, Senator ALAN CRANSTON, of California, has recently stated his reservations about a totally governmental controlled program:

> Our experience with medicare and medicaid warns us to beware of untried national health care programs. And we must avoid building a demand for care that far outstrips the capacity of our medical personnel and institutions.

I agree.

Most disconcerting is the fact that consumers would have no incentive to seek less costly arrangements, because there are no deductibles or coinsurance, and, therefore, no interest in cost control.

This program would not only add $18 billion to the Government's budget deficit, it would triple the average American's tax bill. Secretary Richardson of the Department of Health, Education, and Welfare has said the approach taken in the Health Security Act would increase the average tax bill for a family of four from $405 to $1,271 per year. Such a taxload is intolerable.

Third, Health Care Insurance Assistance Act, the "medicredit" plan—S. 987, H.R. 4960—introduced by the Senator from Wyoming (Mr. HANSEN) and Representative FULTON and supported by the American Medical Association—AMA.

Medicredit would provide for 60 days hospitalization subject to $50 deductible, other medical services subject to 20 percent copayment with certain stipulations and limitations, and catastrophic coverage of additional hospitalization subject to an income-conditioned deductible. It would be financed out of general revenue for those with no income tax liability and by means of tax credits for others. The AMA estimates annual costs at $14.5 billion when the program is fully operational.

CRITIQUE

Although the medicredit plan scores highly in providing incentives to participants to choose the most efficient form of organization, the AMA approach envisions no change in the way in which producers of care are reimbursed. Hospitals would continue to be paid on the basis of realized costs of charges, and physicians on the basis of charges. Again, this system precludes cost control.

Fourth National Health Care Act—S. 1490—introduced by the Senator from New Hampshire (Mr. MCINTYRE) and Representative BURLESON, and supported by the Health Insurance Asssociation of America.

Under this plan, medicaid would be repealed, and the poor, near-poor, and uninsurable would be covered by State health plans, others by private insurance. Minimum standards are set which include copayments and deductibles. Welfare recipients would receive their insurance free, the near-poor and uninsurables would receive insurance subsidies financed from State and Federal general revenues, and others would be entitled to a greater income tax deduction if they purchase a policy meeting the minimum standards. The Health Insurance Association of America estimates the program would cost $2.4 billion in the first year. The estimate includes medicaid cost offsets but not government revenue loss from tax deductions.

CRITIQUE

The HIAA approach is a very comprehensive plan and I am impressed with its attempt to affect the availability and financing of health care as well as the

methods of delivery of health care. However, I do feel that it would be difficult to administer in that each State would set up a State agency designed to approve annual budgets for the health care institutions. There is no indication of the cost of setting up and operating these rate-setting commissions complete with the staffs necessary to review the annual budgets of qualified providers.

The program would be administered by private carriers with minimal control over the insurance industry and no guidelines for employer-employer cost sharing. Because the plan is completely voluntary, I fear that not everyone would be covered—only the larger employers would be likely to provide adequate coverage for their employees.

Let me add one final critique to be levied against each of these bills. There is simply no proposal today which incorporates sufficient incentives to deal with the cost root of our health crisis. Medicredit sponsors, among others, rightly call for new means to encourage more efficient, and more logical, utilization of available facilities and health delivery personnel. This is obviously a first and critical step in cost reduction. Even so, no one takes that step.

Rather than dealing with the disease, most suggest the symptomatic treatment of a mass infusion of Federal dollars so that the consumer, or patient, does not feel the pain. It is fair to ask, will the crisis be cured or choked by such a process? It is my firm conviction that a bill which fails to deal with cost control may prove worse than no bill at all.

The issue of NHI is complex and sensitive, and the proposed solutions can have a pervasive impact not only on our entire system of medical care, but also on the relationship of the private sector and the individual—both physicians and patients—to our Government. The last thing we need now is dogmatic adherence to a specific scheme that could stifle the resiliency needed by the health care industry and government in order to work cohesively.

One of my great fears about the whole prospect of Congress taking on the responsibility of legislating the system into being more responsive to the needs of the health consumer is that few legislators have the experience or expertise in this highly technical area to judge the merits of one proposal as opposed to another. In an attempt to educate myself for the upcoming senatorial deliberations on NHI, I arranged several meetings with over 30 representatives from all areas of the health care industry. I learned not only a great deal about our existing system—its shortcomings and its tremendous accomplishments—but I was thoroughly convinced as to the overwhelming complexity and importance of this problem. There is no magic solution, no panacea.

Congress must hold exhaustive hearings on these proposals. And, most importantly, Congress must rely on the views and expertise of all those affected by the plan during the hearing and drafting process.

Too, priorities must be established. In my opinion, we should focus on a program which meets the following objectives:

First, protect all Americans from catastrophic costs of illness;

Second, help those who cannot pay for their health needs; and

Third, control costs of care to both government and the consumer.

How?

First, we must develop a program for catastrophic illness coverage, one which I hope would reflect a sliding scale insurance plan based on a percentage of a family's income. The medicredit proposal, for instance, contains such a provision based on taxable income. The deductibles would be 10 percent of the first $4,000; 15 percent of income between $4,000 and $7,000; and 20 percent of income above $7,000. The formula is designed to insure that a family of four with an adjusted gross income of $3,000 or less would not be required to make any expenditure before receiving catastrophic benefits. A family of four with an adjusted gross income of $10,000, on the other hand, would have to pay $775 before receiving catastrophic benefits. The deductible and copayment expenses incurred in securing basic benefits could be credited toward the catastrophic deductible. I strongly believe the health consumer, whenever possible, should bear some fraction of the cost, regardless of income. If he has a stake in the matter, he is more likely to seek ways of holding down expenses and will be discouraged from overusing the system at a time when it is straining under current levels of demand.

Second, in addition, I favor a broader definition of catastrophic illness to include illness-related costs, such as prescription drugs, skilled nursing care, and outpatient and inpatient psychiatric treatment. Once the dollar limitation or deductible under the catastrophic part of the plan has been met, all illness-related care should be covered. This, I believe, would go a long way toward providing truly comprehensive medical care.

Along these lines, the bills presently under consideration, in my opinion, fall far short of basic coverage needed for mental illness, which in too many cases deals a catastrophic blow. Because mental illness is one of our greatest and most costly health problems and because it afflicts far more Americans than any other single illness, I support the inclusion of psychiatric/psychological services in any national health insurance plan. The use of these vital services should also be viewed as a necessary component of preventive medicine.

Third, to control costs we must stimulate competition, and the hospital segment of the health industry—as well as other segments such as insurers—should operate within a competitive system. For example, I believe institutional providers should be reimbursed on the basis of competitive charges or costs determined by classification by size and scope of service in the area. This would stimulate competition among providers, whereas reimbursement based on individual budgets results in competition against oneself. The use of the "reasonable cost" and "reasonable charge" approaches to reimbursement have failed to control costs as illustrated by our experience with medicare and medicaid. To hold down hospital costs we should move toward prospective reimbursement—a target rate which encourges competition and rewards efficiency.

Other ways of effectively curbing skyrocketing medical costs would be NHI coverage of outpatient care; that is, the service of a doctor in his office rather than hospital/inpatient care. We must encourage the use of ambulatory and recuperative care facilities, designed to care for the patient recovering from illness or surgery, who no longer needs all the specialized facilities among hospitals withfree a bed in a general hospital for an acutely ill patient while cutting the recuperative patient's cost per day almost in half.

We must employ the use of other cost-cutting techniques such as centralized purchasing, better coordination, and specialized facilities among hospitals within the same community; more efficient utilization of professional staffs and facilities. We need to encourage more doctors, especially more paramedical personnel, and importantly, we need to provide incentives to channel these medical personnel and facilities into our rural areas, where oftentimes health care is nonexistent.

Fourth, to meet our objectives we need to limit government bureaucracy and its administration of NHI, and get away from the current governmental maze of redtape. Again, this can only be done by encouraging a pluralistic, competitive system. A monolithic approach must be avoided at all cost, and I plan to work vigorously for legislation that will encourage innovation and competition among health care providers in both the nonprofit and the proprietary sector.

Fifth, we must stress the importance of health maintenance and disease prevention. A good example of this exists in my own State of Tennessee with TVA's automated system of disease detection, termed the Medical Information System. It became operational in 1967 and today, most employee medical data including history, diagnoses, laboratory data, and work restriction information is recorded and stored on magnetic tape. The system is programed to provide immediate information to user medical offices by teletype, to automatically schedule medical follow-up and periodic examinations, and to provide special and routine reports about medical service activities, and status of employee health. This automated laboratory operating out of Chattanooga has demonstrated the practicability of using a centrally located facility to process laboratory specimens from a wide geographical area. Centralization such as this has made possible the maximum utilization of automated laboratory equipment and reduced the unit cost of the service.

Congress should take a look at TVA's system and other sophisticated health screening techniques. Often referred to as multiphasic health testing, this approach can help separate the entry mix of patients into the well, asymptomatic sick, and the sick. This separation makes

possible optimum use of physician services, which can be devoted to the area where they are most needed—the care and the cure of the sick.

In this same area, I feel that the development of health maintenance organizations as well as other delivery systems should be encouraged. HMO's—as they have been labeled by users of governmental alphabetese—are public or private organizations which provide health services to enrollees on a per capita prepayment basis.

HMO's are supposed to play a major role in the administration's program, and I do feel that their use could serve as a valuable competitive stimulus as well as an important tool for providing comprehensive health care services. Loans and grants made available for the development of HMO's should be awarded to any organization, whether it be nonprofit or investor oriented, which can effectively do the job and demonstrate its ability, both from a medical proficiency point of view as well as an economic point of view. There is inadequate evidence, however, to the effect that a capitation plan is less costly in terms of services rendered, or that it lessens morbidity or mortality, and Congress should thoroughly experiment with the concept before financing a network of HMO's.

I hasten to add that I believe each patient should be free to select the setting in which he receives his care. If he prefers a capitation plan or a hospital outpatient clinic to a solo practitioner or a group of physicians, that should be his choice to make.

Legislation is certainly one method for eliminating some of our current problems, but alone it will be woefully inadequate. We must strive to solve the problem of education of the consumer as to good health habits in his everyday life. I seriously doubt that a Federal law will keep people from overeating or overdrinking, and it is obvious that no combination of Federal, State, and local legislation has prevented Americans from making accidents the No. 1 killer of people under 40 in this country.

In conclusion, while our goals are many, I believe we unanimously strive for improvement for every citizen. To reach our goals will require action by every facet of our society. The role of Congress will be a vital one—but it also must be a limited one, and one based upon exhaustive study, complete with a commitment to expanding the choice and the coverage of a health plan for the individual.

Certainly improved health insurance is an idea whose time has come, but to be the least bit effective, it must be done in an orderly, efficient, economical, and reasonable manner.

In the coming year, I urge Members of the House and Senate to divorce themselves from emotion and partisanship, to view the whole concept of national health insurance with integrity, discretion, and responsibility—and in the context of a free society with free choice.

BREAKING DOWN THE ZONING BARRIER

Mr. HARTKE. Mr. President, the problems of the urban poor are legion. Various agencies of government have time and time again announced panaceas, but they have failed. Instead of curing the problems of the city, they have only added to the bitterness and frustration of all Americans.

We search for the answers, but ignore the basic problem. There is no escape from the ghetto. We have seen how the ghetto feeds upon itself, and becomes a self-fulfilling prophecy for its inhabitants. Yet we do nothing. Inner-city residents cannot leave the ghetto because of the exclusionary zoning laws of the suburbs. Corporations flee the city, searching for a lower tax rate, and more peaceful surroundings. In their flight, they leave a wake of unemployed, and a dearth of tax revenue—revenue that our cities desperately need.

The poor cannot follow the jobs; suburban zoning laws will not let them. If they have no jobs, they must turn to welfare programs which are financed by taxes. To avoid ever-increasing taxes, the remaining corporations leave the city—and so it goes. Unless something is done, this vicious circle cannot end in anything but disaster.

Mr. President, recent articles from the New York Times magazine and from the Christian Science Monitor explain the full implications of exclusionary zoning laws, and offer some possible solutions. I ask unanimous consent that the text of these articles be printed in the RECORD.

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

THE SUBURBS HAVE TO OPEN THEIR GATES

(By Linda and Paul Davidoff and Neil N. Gold)

A few years ago, socially conscious residents of the New York suburbs joined in a project that occupied several spring weekends: they chose blocks in the East Harlem and Bedford-Stuyvesant ghettos and traveled to them in teams, equipped with paint, brushes, buckets and mops, for cooperative clean-up, fix-up sessions with the residents. This was a way for middle-class people to experience and, at the same time, try to help solve the neighborhood problems of the ghettos.

A few weekends and some paint had little effect on the crumbling structures and festering economic and social problems of the ghetto neighborhoods. But these efforts, worthy enough in themselves, skirted the reality: that it is the exclusionary practices of the suburbs themselves that help create the poverty and ugliness of the slums, and that well-motivated suburbanites could do more for poor and working-class people trapped in the inner cities by opening up their land, job markets and tax resources to them.

The 1970 Census revealed what had begun to dawn on urbanists in the nineteen-sixties: that the suburbs contain the largest share of America's population. In 1970, 36 per cent of the people lived in suburban parts of metropolitan regions, 30 per cent in the central cities and 34 per cent in rural areas. Some time in the current decade, more people will be employed in the suburbs than in either the cities or rural areas. And according to all predictions, the suburbs will continue to have the largest number of Americans for a long time.

Although the suburbs have provided housing and jobs for millions of new families since 1950, many suburban communities have maintained controls over the kinds of families who can live in them. Suburban values have been formed by reaction against crowded, harassed city life and fear of threatening, alien city people. As the population, the taxable income and the jobs have left the cities for the suburbs, the "urban crisis" of substandard housing, declining levels of education and public services, and dried-up employment opportunities has been created. The crisis is not urban at all, but national, and in part a product of the walls that have been built by the suburbs to discourage outward movement by the poor and blacks in the cities.

Opening the suburbs will not only reduce race and class tensions in our society but bring economic gains to all our people—through better use of the resources these communities have to offer: *land* for housing (and with it the opportunity for a decent public education), *jobs* and *tax revenues*. To bring this about, we need *action* to convince the communities—as well as Federal and state courts and legislators—that change must come, plus imaginative *planning* for an era of housing construction that will meet the needs of an expanding suburban population.

LAND

The new ecological consciousness in America and the cityward movement of our population have led to a widespread belief that we are exhausting our most precious resource: the land. Nothing could be further from the truth. America is land rich. "Megalopolis," the concentration of population along the Eastern seaboard from Boston south to Washington, consists largely of unbroken expanses of open space. Settlements along the Boston-Washington corridor are mostly thin strips along major roads and railroads; off the beaten path, woods and farms predominate. Outside the great metropolitan complexes, the land is open and unused, and places that once were farm land or villages are losing their populations and returning to the wilds. Out of 3,000 counties in the U.S., 1,000 have had a net loss in population during the last 30 years; the move from country to city, and the mechanization of agricultural production, are leaving larger and larger portinos of the continent's land to open space.

Within metropolitan areas, population growth has exhausted the supply of developable open land only within the older inner cities. Vacant land is plentiful within 20 to 30 miles of the centers of every major city in the nation. Without restrictive laws, it would be possible to develop commercial and industrial properties at relatively low land costs in the outer suburbs of metropolitan regions. Moreover, only restrictive zoning, building codes and other antidevelopment legislation prevent the construction of a large number of housing units in these same areas.

The zoning laws cover a large proportion of vacant developable land in the suburbs. In the New York region, 90 per cent of all such land is zoned for single-family residential use; in eight counties of New Jersey, 82 per cent of it is zoned for lots of a half-acre or more; in the portion of Connecticut closest to New York City, three-fourths of the open residential land is zoned for an acre or more. While many older suburban towns either have no significant tracts of vacant land or already have a large population of working-class and minority families, the communities that control the bulk of the vacant land have enacted exclusionary laws.

If housing could be built in an open-market situation in the suburbs, the structure of the housing market in metropolitan America would change sharply. It would be possible to build many more houses on quarter- and half-acre lots, the accepted pattern of construction in the nation since World War II. And it would be possible to build row houses and garden apartments, the least expensive form of housing for families of moderate means.

The land supply in metropolitan areas is being kept off the market not by private

acts, but by public enactment. In creating private preserves for the wealthy, law has become the instrument of those who want to keep out moderate- and low-income families. This leads to a paradox that has been called "Ivy League Socialism": excessive government intervention, on behalf of not the poor but the rich. The protected property owners are precisely those most able to protect themselves from undesired neighbors by their own wealth. They can buy large tracts of land, build high fences around them and put their houses in the middle of their estates at the end of long driveways. They do not need the help of the law.

The exclusionary laws are not completely explicit: there are no zoning maps divided into racially or economically restricted areas, so labeled. But there are thousands of zoning maps which say, in effect: "Upper Income Here"; "Middle-to-Upper Income Here"; "No Lower-Income Permitted Except as Household Employes"; "No Blacks Permitted." The practical effect of the maps and codes is to prohibit all but the most costly forms of housing development.

Why do we call the result *de jure* segregation? Because the racial consequences have been understood for a decade or more by anyone familiar with patterns of population movement. It is a certainty that the planners and public officials who draft and enact zoning ordinances restricting land development to single-family, detached structures on plots of an acre or more do so in full awareness that, as a consequence, almost all blacks will be excluded from such zones.

In many areas, acreage zoning is the preferred exclusionary device. The bulk of the land in a municipality is held off the market except for purchasers who are able to afford a house on a tract of one, two, three or more acres of land. Since a single-family home on an acre or more of land cannot be constructed in most suburban areas for less than $35,000, including the lot, families with incomes under $17,000 cannot afford to buy a house built on this land (under the generally accepted rule of thumb that a family can afford to buy a house that costs twice the annual household income). Thus the housing market in the community is effectively closed to the 80 per cent of the population which earns under $17,000—and to the 90 per cent of the blacks.

In other areas—and in some communities that also have acreage-zoning regulations—housing-construction codes have been devised which require extremely expensive forms of residential development: wide lot frontages, costly materials and equipment, square-footage requirements for house interiors—all beyond what is needed for health and safety.

In almost all suburban municipalities tax laws undergird the structure of land-use controls and provide a rationale for exclusion. The real-property tax pays the bulk of local costs for public education, the biggest item in the budget and a major factor in maintaining the status of the community. If a dozen houses are built at costs within the reach of low-income or moderate-income families, the entire community suffers because the taxes realized from the new houses will tend to be below the additional expense to the school system of educating the children from the new families.

(In New Castle, a Northern Westchester community, a 1968 League of Women Voters study showed that local school costs were so high that a new house would have to cost $58,500 in order to yield enough taxes to educate the average number of children per household—$1,688 in taxes for 1.6 children.)

As expenses for education have become the last straw on the suburban taxpayer's back, the impetus toward ever-higher barriers to moderate-cost housing construction has been almost irresistible. Even if motivated by the best and most democratic public instincts, a community must finance its schools; and the easiest way to make the burden bearable is to keep the community costly and exclusive.

What would happen if the exclusionary land-use controls were eliminated? In the private market, the effect would be to dramatically increase the supply of building lots, both for single-family homes and for garden apartments and row houses. The increase in supply would lower the price per lot; the result would be a sharp reduction in the cost of a new home and an increase in the number of families that could afford one. The construction industry would boom, and lower-cost housing could be produced as the market demands.

Putting aside for the moment the moral questions raised by suburban exclusion, another argument against the regulations adopted over the past decade or more by suburban communities is that they have stifled the natural development of the home-building industry. Today, most of the vacant residential land around New York and in other metropolitan areas is zoned for homes on lots 5 to 10 times larger than Levittown's. Zoning has operated to slow down and spread out development. In a nation that has highly valued growth, it is strange to find growth disdained as a matter of policy. Particularly at a time of recession, the multiplier effect of a sustained form of new community development—which would require large capital investment—cannot be ignored. A reinvigorated residential building industry would not only create jobs for unemployed construction workers but lead to enlarged investment in all industries required to serve new suburban developments—and to other urgently needed jobs.

Even if a construction boom produced mostly middle-class or luxury housing, it would help to ease the pressures throughout the housing market that keep moderate-income housing consumers bottled up in city neighborhoods. This is because the "filtering" process—lower-income consumers moving into housing left behind by more affluent consumers moving into bigger and better homes—could begin to operate again. The result would be some improvement in the housing situation for low-income families. The favorite argument of real-estate operators against Government housing subsidies to the poor used to be that "filtering" would satisfy this group's needs. In fact, filtering alone will never provide enough used housing to meet the needs of the lowest-income families. But the current virtual halt in the construction of new, moderately priced housing in suburbia has made the absence of a normal used-house, or "filtered," market acutely noticeable to moderate-income families who would normally be able to afford such homes.

When, in the late nineteen-forties and fifties, it was possible for a family earning a moderate income to buy a new small house in Levittown or its equivalent, the houses and apartments these families vacated went on the market at reduced prices to families earning below the median level. Now that no Levittowns are being built, mobility in the housing market has been sharply reduced and families that should have been able to move are staying put. Obsolescent housing that should have been torn down decades ago is still in use, often at exorbitant prices; city neighborhoods that should have been torn down for urban renewal are still desperately needed for families that have nowhere else to go. It is as true as it ever was that the private market in housing, whether in new or used units, cannot provide housing for the families at the bottom of the income ladder. Subsidies, either in the form of cash to families or Government outlays for housing construction, must be provided. But the costs of such programs has become exorbitant because the private construction market for new housing has been closed off in the suburbs by artificial means.

Since the Industrial Revolution began dumping rural families into big-city slums, housing planners have recognized that public subsidy is needed to enable working-class families to live decently. Every industrial nation provides some form of subsidy for workers' housing; the United States has been in the housing business on a large scale since the thirties.

The 19th-century English garden-city movement laid down the principle that the cheapest—and most wholesome—form of housing for working-class families was the attached cottage, or row house, built so that each unit would have access to common open space. But in America, housing built for low-income and moderate-income families has generally been "projects" in the central cities: massive apartment towers built on the sites of destroyed ghettos, on land that is close to the city's hub and therefore so expensive that building at lower densities is not possible. In the nineteen-thirties the housing pioneers Henry Wright and Lewis Mumford decried the trend to housing for the poor in the inner cities; they pointed out that cheap housing at livable densities requires cheap land, and they urged public-housing authorities to build at the city's fringes. Urban-Renewal experts in the Federal Government and city authorities ignored the experts. Suburban land was locked up, and housing for the poor built at choking densities on the sites of the old ghettos.

Opening up suburban land would mean that Federal money, rather than being used to build absurdly expensive high-rise structures in inner cities, could be spread to a far larger number of units. In New York City, it costs more than $30,000 per unit in Federal and local funds to build public housing. Row houses and garden apartments could be built in the suburbs for well under $20,000 per dwelling unit, if the land costs were reasonable and if lot-size and square-footage requirements were not excessive. Not the least of the savings in time and money would come from working through the manageable governments of the towns, instead of the tangled and near-paralyzed bureaucracies of the cities.

JOBS

If the growth of the suburbs in sheer numbers of people has not yet been fully recognized as a fact of national life, suburban dominance of the metropolitan—and national—job markets has been barely noticed. Yet in "bedroom" suburbs like Westchester County in New York, as many workers now commute into the county each day as travel to the city in the customary pattern.

The service sectors of the job market—the shopping centers and colleges, for instance—have followed the roads and the population. One example is the Cherry Hill Mall shopping center in Philadelphia, which employs 2,000 workers and occupies 80 acres of land about eight miles from the center of the city (accessible via three major highway bridges).

The demand for cheaper land for single-floor assembly-line and warehousing operations has brought more companies—and jobs—to the suburbs. The long, low building requires land; parking lots for employes' cars and for truck storage require land; and land that is far from the streets of the central city costs less. In Mahwah, N.J., for example, the Ford Motor Company purchased about 200 acres just off a New York State Thruway interchange, about 25 miles from the center of New York City and about the same distance from downtown Newark, for a plant which now employs 4,200 workers.

Traditionally, companies that are prestige-conscious or need a communications network near their headquarters have occupied space in downtown skyscrapers. Increasingly, however, they have been able to enhance their

prestige and satisfy the residential preferences of their executives by moves to long, low buildings in parklike settings in far-out suburbia. For instance, Pepsico, Inc., has just completed a corporate headquarters in Purchase, N.Y., which employs 1,250 people on a 112-acre site.

The decentralization of the metropolitan job market means that the working population must be permitted to decentralize too, if workers are to be matched with jobs. The unemployment rate in this recession period may be hovering around 6 per cent for the society at large, but inside the urban ghettos it has been at the Depression level of 12 per cent for years. To end the acute problem of unemployment and underemployment, ghetto workers must be permitted to follow the blue-collar jobs out of the central cities.

The remoteness of the job market for relatively low-skilled workers from the ghetto areas aggravates the employment problem. So does the lack of coordination between job-finding agencies in the cities and the suburbs, which makes it difficult for the low-skilled worker living in the ghettos to find out about and apply for low-skilled but decently paid jobs in suburban manufacturing plants. The United States Employment Service and other job-finding agencies must be reorganized along metropolitan lines, so that information about openings can be transmitted to the unemployed in the ghettos. But this will not be enough. Workers must be able to travel to the jobs, which means in the case of blue-collar jobs that they must be permitted to find homes near enough to the jobs so that commuting does not take an excessive bite out of their incomes.

If the ghettos are viewed as underdeveloped areas—an approach that became fashionable in the sixties—the need for movement of workers to jobs in suburbia is even more sharply evident. Economists who were once captivated by the notion of pouring capital investment into depressed regions in order to create new factory jobs are now beginning to recognize that by far the cheapest solution to the problem is to give unemployed workers information about jobs in thriving industrial areas, help them to learn about the unfamiliar customs and housing patterns of the new area, pay them resettlement allowances and get them moved. Only in rare cases does it pay to invest heavily in declining areas rather than help families left behind by changing patterns of industrialization to move into the economic mainstream.

TAXES

Of the 4,200 workers employed at the Ford plant in Mahwah, many live in Newark and New York, and only 88, or 2 percent, in the town where they work. Despite the important role that this factory plays in the metropolitan economy, the local property taxes paid by Ford benefit only Mahwah residents. Taxes on industrial and commercial property that are paid to suburban communities are another example of a metropolitan resource that could be—but is not—used to help solve inner-city problems.

The tax rate on business property reflects the needs only of the suburban jurisdiction that levies it. If the suburb has a relatively small public-school enrollment, and few low- and moderate-income families, its local tax rate will be much lower than the rate that would be necesary if the business property were situated in a poverty-ridden central city. The tax rate is further reduced when, as in the case of Mahwah, the suburb uses its zoning powers to keep out children and to exclude low- and moderate-income households, including those whose breadwinners work in the plant.

Mahwah's successful effort to lure new companies and to exclude the companies' employes has resulted in a 1970 tax rate on industrial and commercial property of 1.55 per cent of full value. By comparison, the city of Newark, which houses and educates nearly 1,000 of Ford's black workers and their families, is compelled to tax business property at the rate of 7.14 per cent of full value.

Mahwah's tax base included $104,000,000 of business property and yielded $1,612,000 in revenues. If this $104,000,000 were taxed at the rate levied on similar property in Newark, it would bring $7,426,000 in added funds to the city. The comparison, of course, is a rough one, since a bigger tax base in Newark might permit the city to lower its rate somewhat. But it does demonstrate the fiscal gains that induce corporations to relocate from poverty-ridden central cities to restrictively zoned suburbs.

Suburban towns and cities use the taxes generated by the coming of large new business properties to reduce residential property taxes or to increase the quality of public services, or both. On the other side of the coin, the movement of industry to the suburbs weakens the tax bases of central cities, requires an increase in their tax rate and cripples their capacity to respond to the social and educational needs of the disadvantaged groups, many of whose members are forced to commute at great cost in money and time to the very suburban plants which are no longer on the city's tax rolls.

ACTION

The movement to open the suburbs has begun. The thorny legal, financial and moral questions will be settled not only by debate but by legislative and court action and by economic pressure.

The first step may well be the establishment of a clear connection, in the public mind and in public law, between jobs and housing for workers. The decentralization of the job market is, as we have noted, one of the least appreciated phenomena of metropolitan life; it is time that voters and public officials became aware of it and acted accordingly. Rather than assuming that a corporation moving its plant or offices from the central city to the suburbs is a tax bonanza for the lucky municipality that succeeds in attracting it, we must require that the company have a clear policy of relating jobs to workers' housing and commuting patterns. The rule must therefore be: no corporation hiring a significant number of workers can move to a location in a suburban community where the housing market is closed to families earning what the workers in the plant will earn.

In effect, this will mean that the tax benefits to a town which welcomes new industry will be balanced by the costs to that community of educating the workers' children, policing their neighborhoods, providing them with municipal services. If a community has all its vacant land zoned for single-family houses on five acres of land, then if it permits a zoning variance for the construction of Jones Corporation's new international headquarters, it must also rezone land for sufficient new garden apartments to house Jones's 300 janitorial, service and lower-level clerical workers; create sufficient quarter-acre plots so that Jones's 250 executive secretaries and junior managerial personnel have a chance of buying homes, and make sure that land and construction costs do not make housing prohibitively expensive in the five-acre zones for its 100 middle-management people.

Both state and Federal action will be needed to promote the rule. In Washington, Senator Abraham Ribicoff is working for just such an approach by reintroducing the proposed Government Facilities Location Act of 1970, which provides that no Federal installation may move to a community which refuses to provide land for workers' housing. Though it does not cover private industry, the bill would have significant impact on communities bidding for Federal largess in the form of shipyards, research facilities and other economic jackpots. (The bill did not emerge from committee last year; this year hearings are scheduled for late fall.)

If a community enforces zoning laws which in effect keep out blacks, can the Federal Government continue to provide water and sewer grants, open-space acquisition loans and other forms of aid to them? Does not such aid violate the antidiscrimination guidelines imposed by the Civil Rights Act of 1964? The clamor against suburban exclusion has led to sharp questioning of the President on this point, and a now-famous statement issued by the Administration last June was meant to answer the questions by establishing a distinction between economic and racial discrimination. A community cannot be punished, in the Administration's view, for keeping out the poor, only for overtly keeping out the black. This distinction is, to say the least, far from firmly established; and lawsuits will soon be brought to challenge the point. The suits will argue that the racial discrimination in the suburbs is the direct and calculated result of zoning laws.

In New York State, Assemblyman Franz Leichter has introduced a package of anti-exclusionary bills which include a prohibition against establishing state facilities in exclusionary communities. Such a prohibition would affect the location plans of state university branches, hospitals, state schools and other major service installations, as well as—under some interpretations of the bill—state-assisted elementary and secondary schools (meaning all schools, now that the barriers to state aid to parochial schools have largely fallen).

Massachusetts enacted in 1969 its "anti-snob zoning law," which provided that at least 0.3 per cent of every community's vacant land must be made available for the construction of low- and moderate-cost housing in each of five years. Other states, including New York, New Jersey and Connecticut, are considering similar legislation to exempt at least a portion of suburban land from the exclusionary regulations.

Our own organization, Suburban Action Institute, is seeking to induce Federal regulatory agencies to act against corporations planning moves to exclusionary suburbs. We have filed complaints with three agencies—the Federal Equal Employment Opportunity Commission, the Federal Communications Commission and the Office of Federal Contract Compliance—against R.C.A., American Telephone and Telegraph and General Electric, for taking steps to relocate to the acreage-zoned communities of New Canaan, Conn., Bernards Township, N.J., and Fairfield, Conn.

By moving to communities within which their minority-group employes cannot find housing, we charge, these corporations are creating conditions of employment discrimination. We believe that they are not simply acquiescing in a discriminatory situation, but affirmatively aiding the creation of segregated employment. (Because of the complaint against RCA before the Equal Employment Opportunity Commission, the company has temporarily withdraw its proposal to build offices in New Canaan for 1,000 people.)

Making laws to restrict corporations from moving jobs to exclusionary communities will not remove the basic incentive for such moves: the tax laws. As long as the costs of educating suburban children are borne by the local real property tax, a community will try to enhance its tax base by luring industry, and will try to keep out housing developments that attract families with children. A radical restructuring of the tax system for financing education is needed, both to end exclusion and to assure every child, whether born in a rich or a poor community, equal educational opportunity.

A statewide income tax for education is the remedy now advocated by the Regional

Plan Association of New York, by the Lindsay administration, and even by suburban taxpayers who can no longer pay educational costs in newly developing communities. Gov. William G. Milliken of Michigan, a Republican, moved to establish a statewide tax for education. New York's State's Fleischman Commission is about to conclude a study of school financing by calling for "full state assumption" of the cost of educating children. Political pressure to relieve local property owners of the burden of school costs is building up around the country as record numbers of local school budgets are defeated.

A recent decision in the California Supreme Court may signal the beginning of the end of the present system of financing local schools. In *Serrano* v. *Priest*, the court said that the local property tax "invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. Recognizing, as we must, that the right to an education in our public schools is a fundamental interest which cannot be conditioned on wealth, we can discern no compelling state purpose necessitating the present method of financing."

The Supreme Court has not ruled on the fundamental issues raised by the zoning since 1926 when, in the case of *Euclid v. Ambler*, it declared that comprehensive zoning ordinances are a reasonable and constitutional method of controlling land use. But the lower courts have begun to rule on the contention that the zoning frequently denies racial minorities the equal protection of the law guaranteed by the 14th amendment. In one recent Pennsylvania Supreme Court case, the justices declared:

"We fully realize that the over-all solution to [housing and growth] problems lies with greater regional planning; but until the time comes that we have such a system, we must confront the situation as it is. The power currently resides in the hands of each local governing unit, and we will not tolerate their abusing that power in attempting to zone out growth at the expense of neighboring communities."

The Justice Department and the American Civil Liberties Union have raised questions of suburban-exclusion with their suit against Black Jack, Mo., on behalf of a group of black residents in St. Louis who wanted to build housing in the town. The group charged that Black Jack incorporated itself into a municipality for the purpose of denying the needed zoning change.

Court cases challenging exclusionary laws are in preparation against a number of suburban communities around the nation and the biggest initial victory has just been won in New Jersey. Judge David Furman of the Middlesex County Supreme Court 10 days ago declared invalid an ordinance in Madison Township, N.J., that called for one- and two-acre lots, required a minimum floor-area that was excessive and placed limitations on multifamily dwellings. The ordinance, the judge said, had the effect of preventing 90 per cent of the people in the area from living in the township and directly contributed to the ghettoization of neighboring cities. (The suit was brought in behalf of a group of black and Spanish-speaking residents of Elizabeth, Plainfield and New Brunswick.)

The judge did not reach the constitutional questions, basing his ruling instead on the state zoning law, which says that localities must zone for the public welfare. Under this law he said, a community when it passes land-use regulations must in the future take into account not only its own needs but those of the region.

The direction the U.S. Supreme Court may take has been hinted at in recent rulings on the need for school busing to achieve integration. Despite the negative decision in the recent Valtierra case in California, which dealt with a referendum that was designed to prevent construction of housing for an *economic* minority, the record of the court on matters relating to *racial* discrimination has been quite uncompromising. It is fair to expect that proof of the racially discriminatory effects of exclusionary zoning will carry great weight with the court.

PLANNING

The massive spurt in suburban housing construction which followed World War II occurred at a time when new young families were desperate for homes—in a full-employment economy and following the end of war-related restraints on building. The decade of the seventies has brought the beginnings of another market of this kind (as those born in the postwar baby boom come into their own child-rearing years), but without the economic conditions which made the housing surge possible after the war.

Housing construction is now at a low ebb. Even if the vise of exclusionary zoning is removed, government subsidies and controls will be required to see to it that the combined public-private housing market actually produces the needed housing. The Kaiser Commission has called for the construction of 600,000 units of Federally-assisted housing each year for the next decade, at a cost of $2.8-billion per year. Aid to the housing market of this magnitude, *combined with* the opening up of vast acreages of suburban land, can insure the construction of the housing that is needed to eliminate the slums and ghettos of the central cities and to permit rebuilding on their land at decent densities.

If suburban land resources do become available, new residential development can be of a far higher quality than that of the nineteen-fifties, which gave rise to fears about "urban sprawl," Levittowns and endless identical rows of shoddily built bungalows. Critics of America's suburbs have led us to fear the terrible sterility of look-alike suburbs. But the suburbs have offered a very satisfactory form of life to those who live in developments that do look alike in many respects. Suburbanites in Levittown and Scarsdale have found that despite the similarities of dwellings and ways of life in their communities, they still like to live there. Of course, suburbs have many problems; what form of human community does not.

We should not prohibit development because it may have some undesirable aspects, unless we develop alternatives that provide suitable housing for all classes of the population.

The garden-city movement and the new towns of Europe as well as the best examples of new development in this country—Columbia, Md., and Reston, Va.—have demonstrated that amenable communities open to all classes can be constructed at far higher standards than those of today's expensive suburban developments, in which each house sits on a plot of one, two or more acres. Present acreage development saves no open space for the public. It calls for cookie-cutter development writ large. It demands that every inch of space be devoted to a private lot—even land not suitable for development.

But if new housing in the suburbs need not follow the pattern of Levittown, it also need not conform entirely to the rules of the garden-city movement in Europe and America. Housing can be built in small developments in existing towns, or in new towns, or in larger developments around highway interchanges and commercial projects. Towns, moreover, can assure the preservation of large amounts of open space through such devices as "cluster zoning" and "planned-unit development," which permit higher densities on portions of a tract if a certain amount of acreage is set aside for public recreational use. Nor would elimination of suburban exclusion prevent those who wish to own large amounts of land from doing so—a privilege guaranteed them by our economic system.

As the prospect of intensified development of the suburbs comes closer, private groups, sniffing profits, are investing in land for eventual massive building. One hopes that these developers will be guided by the principles of balancing industrial and commercial growth with new housing, and of a wide mixture of housing types and costs in open neighborhoods.

Nonprofit groups and public agencies should also be preparing for the future by negotiating for tracts of suburban land, on the theory that when the exclusionary laws are struck down, they had better be ready with plans for construction of low- and moderate-cost housing, or they will risk leaving the whole ball game to the private developers.

ZONING: AMERICA'S HIGH WALL "RIGHTS" BATTLE SHAPES IN CITIES

(By Richard L. Strout)

WASHINGTON.—The next big battle on the civil-rights front will be not busing, but zoning. The problem deals with economic, not racial, segregation.

Politicians here watch preliminary engagements already under way in dozens of communities. Cases are coming to the Supreme Court.

Action of the House of Representatives last week forbidding the use of emergency desegregation funds for school busing will, it is believed, if upheld in the Senate, increase the internal pressure in the big cities to break through the zoning barricade that walls them from the suburbs.

The issue was raised in the House debate on bussing.

INSTABILITY SEEN

Big-city pressure is growing and is compounded of these factors:

While the United States is the wealthiest nation on earth, 24 million Americans are below the poverty line, or about one in nine. About one out of 11 Americans is black. Mechanized agriculture in the last century drive blacks into the big cities in one of the biggest migrations of the world, and there today the unemployment rate is about twice that of the 5.8 percent national average. It rises to 20 percent or more for teenage blacks.

The social instability of this division is typified by the separation of city ghettos from leafy suburbs. The agency for maintaining this explosive separation is zoning, some city planners now declare; ordinances that make it impossible for city dwellers of medium or low income to buy homes out in the country near the migrating city factories.

The deeply emotional issue of bussing would be mitigated if the city dwellers could move out into the country when, obviously, say advocates, it would not be necessary to bus a black child 15 miles from the heart of Detroit—if she lived out in the suburbs already.

The California Supreme Court ruled last August that state schools must be financed by some fairer method than varying property taxes, and the revolutionary case, Serrano v. Priest, has sent shock waves over the country. Statistics noted that poor neighborhoods with low valuations had to pay more proportionately for poorer schools, than rich suburbs did for better schools where a relatively modest tax easily raised more money. Minnesota's high court now has followed California's.

Now comes another move to open the suburbs in Sen. Abraham A. Ribicoff's bill, "government facilities location act," originally introduced last year and reintroduced this year. It would forbid a federal installation to move to a suburb which refused to provide land for houses for workers.

TESTS EXPECTED

Tests in federal courts are expected, too. The Civil Rights Guidelines Act of 1964 forbade discrimination; but is it discrimination where a factory moves from city slums into suburbs if the town continues to enforce zoning restrictions that make it impossible for workers to follow, save by daily busing?

A recent vivid example involved the Ford Motor Company, which bought 200 acres in Mahwah, N.J., a town of 10,500 where it proposed to move its Newark facility, with 4,200 workers. But the workers found exclusionary zoning ordinances requiring them to buy lots of half an acre or more which only a few could afford. This case is now in the courts.

Two years ago Massachusetts required that three-tenths of 1 percent of a community's vacant land must be made available for medium- and low-cost housing in each of five years. Other states propose similar measures.

An organization, Suburban Action Institute, offers legislation to encourage federal regulatory agencies to act against corporations proposing to move into so-called exclusionary suburbs.

Last month a New Jersey state court threw out exclusionary zoning laws in Madison Township, N.J. A similar celebrated struggle is going on over the area known as Black Jack, Mo., where the federal government has intervened actively in a test case.

Presently America divides up like this:

City enclaves, 59 millions.

Suburbs, 76 millions.

Rural, 71 millions.

More people live in the suburbs than anywhere else, and the proportion is growing. Great social, moral, and historical forces make almost irresistible pressure for a breakdown of barriers between city and suburban areas. The busing controversy seems to many to be only the first round.

IMMIGRATION PROBLEMS IN THE COMMONWEALTH OF MASSACHUSETTS

Mr. BROOKE. Mr. President, I have today forwarded to Senator McCLELLAN, chairman of the Subcommittee on State, Justice, Commerce, and the Judiciary Appropriations, of the Committee on Appropriations, a report of my findings on immigration problems in the Commonwealth of Massachusetts.

The problems revealed in my report may well be typical of the problems in other States and it is my hope that this report will lead to effective remedies to what appears to be a national problem. To provide my colleagues with an opportunity to review this report, and I ask unanimous consent that it be printed in the RECORD.

There being objection, the items were ordered to be printed in the RECORD, as follows:

REPORT OF SENATOR EDWARD W. BROOKE, THE SUBCOMMITTEE ON STATE, JUSTICE, COMMERCE, THE JUDICIARY OF THE COMMITTEE ON APPROPRIATIONS ON IMMIGRATION PROBLEMS IN THE COMMONWEALTH OF MASSACHUSETTS, DECEMBER 6, 1971

I. PURPOSE

The purpose of the two-day hearings was to review the budget and operating procedures of the Boston District Office of the Immigration and Naturalization Service and to evaluate their impact on the Commonwealth of Massachusetts. It was our further purpose to investigate special problem areas related thereto.

The first day of hearings was held on May 27, 1971 in Room 2003A, John F. Kennedy Federal Building in Boston, Massachusetts. The second day of hearings was held on May 28, 1971 in Room 252, Post Office Building, New Bedford, Massachusetts.

Testimony was received from a total of 27 witnesses, 25 of whom appeared at the hearings. The remaining two submitted their statements for the record subsequent to the hearings.

II. BACKGROUND

The Commonwealth of Massachusetts presently ranks fourth among the 50 states in the total number of registered aliens residing therein. And during fiscal year 1970, about 15,477 aliens were admitted through Boston for permanent residence. This brought the total number of registered aliens residing in Massachusetts to 172,454. It is also worth noting that 10,208 temporary visitors entered through Boston during the fiscal year ending June 30, 1970.

During my service in the Senate, I have received hundreds of complaints from citizens and aliens alike on a wide range of immigration matters. However, during the past year my office experienced a tremendous upsurge in the number of complaints. After confering with other Senators, I concluded that the practical application of the Immigration Naturalization Act of 1965, as amended, was causing similar problems in other states. While it would be impossible to conduct a complete review of the multi-faceted application of our immigration and naturalization laws in two days, the hearings held by the Subcommittee were able to highlight some of the most critical problem areas.

III. BUDGET AND OPERATING PROCEDURES OF THE BOSTON DISTRICT OFFICE OF THE IMMIGRATION AND NATURALIZATION SERVICE

The testimony during the hearings revealed that the current operating budget of the Boston District Office for FY '70 was approximately $1,575,000. Of that amount, $1,450,000 was expended on a staff of 106 people located in two offices. The second office, regional in nature, is located in Springfield and employs only three people. In reviewing the staff breakdown, two specific areas deserve special attention.

In the first instance, it should be noted that there is only one special inquiry officer in the Boston and Springfield offices. It should be further noted that at present there are no plans to assign additional personnel in this area. During FY 69, the last year for which figures are available, the Boston District Office conducted 682 deportation hearings, which resulted in 115 deportations. During the same period, the Boston District Office handled 33 exclusion hearings. This latter procedure is invoked when a person applies for admission to the United States and the primary officer rules him or her inadmissable. The case is then referred to the special inquiry officer for a hearing to determine the admissability of the applicant. In sum, we had a situation where one special inquiry officer conducted over 700 hearings on merits in one year. Consequently, it appears that at least one, if not two, more special inquiry officers are needed so that each case can be fully developed to insure a fair and accurate adjudication. We must remember that the initial decision of the special inquiry officer will affect the opportunity of individuals and families to participate in our American democratic process. This is particularly true in the case of an exclusion hearing. It is my understanding that after an exclusion hearing there is an appellate review by the appropriate Federal Circuit Court as is the case in a deportation hearing. In other words, the administrative decision reached by the Board of Immigration Appeals stands as final.

In the second instance, it should be noted that of 106 people in the two offices, only 16 field investigators and they have one supervisor. It should be further noted that the geographical area expected to be covered by these field investigators extends beyond the boundaries of Massachusetts and include Rhode Island and portions of New Hampshire and Vermont. Without going into a detailed job description of field investigators, the hearings were, nevertheless, able to highlight to some degree the heavy caseloads that these men are expected to carry. In addition to the some six-hundred odd deportation cases that required an investigation, it was brought out that the Boston District Office receives anywhere from 100–125 complaints a month from residents concerning aliens alleged to be here illegally. Each complaint requires a comprehensive investigation. Testimony revealed that there is a current backlog of several hundred such investigations.

Moreover, the District Director indicated that, at one time, the Service was divided into specific geographic areas, and field investigators were sent out to check places where aliens, alleged to be here illegally, were known to be employed. This included, among other places, restaurants, construction work sites, and fishing vessels. At the present time, however, he indicated that the field investigators were limited to working only on the basis of leads or complaints that are sent into the Office. In essence, they have been placed in a position merely of responding to complaints rather than conducting their own investigative work.

The problems in this area do not stem solely from an inadequate number of field investigators. The testimony developed that as unemployment increases, complaints are centered around employment; many U.S. citizens or resident aliens feel that they have been displaced in their jobs by individuals who may be here illegally. Another area of complaint centered around the housing shortage; many individuals likewise feel that they have been displaced from their housing by aliens alleged to be here illegally.

The testimony also indicated that the Immigration and Nationality Act of 1965, as amended, has itself contributed to the increase of complaints over aliens alleged to be here illegally. Prior to the 1965 Act, there were no numerical restrictions placed on Western Hemisphere immigrants. The 1965 Act placed a limitation of 120,000 on those immigrants coming from independent countries of the Western Hemisphere. This has apparently caused a significant backlog of applications. Testimony indicated that there is presently a waiting period of approximately 13 months for persons applying from the Western Hemisphere. An additional responsibility is placed on immigrants coming from Western Hemisphere nations. Unless they are joining immediate relatives, they are required to obtain labor clearances before entering the United States. The District Director testified that with our present unemployment situation, a large number of the Western Hemisphere people find it difficult to obtain job clearances within the United States, yet they find it relatively easy to get temporary visitors' visas. Thus, many are able to come here and lose themselves in the population, where they can find work and remain here in an illegal status.

As the testimony continued, it became apparent that though staffing shortages may be contributing to the problems we are facing in Massachusetts, other factors such as the unemployment situation, and the impact of the 1965 Act, are interrelated and make it difficult to measure accurately the impact of budgetary restrictions. While the officials from the Immigration and Naturalization Service were unable to accurately predict how many aliens may be illegally residing in the Commonwealth, their testimony indicated that the number may well be in the thousands.

Aside from the heavy caseloads that field investigators are expected to carry, it is worth noting some of the procedural aspects

of their jobs. The testimony indicated that a field investigator has a considerable amount of discretion in the conduct of a routine investigation. Upon the receipt of a complaint, the investigator is assigned to the case by the supervisor. The investigator must then go into the field to gather sufficient information, which he reports back to the supervisor. At this point he is called upon to make a recommendation one way or another as to the status of the alien in question. In this regard, there was testimony to the effect that deportation is always considered as the last resort.

It is encouraging to learn that the policy of the field investigators is to exhaust every opportunity for adjustment before considering the option of the alien's voluntary departure. Even with voluntary departure, a visiting alien who has overstayed can return at some future time without prejudice. We were told that only after it becomes apparent that voluntary departure will not take place, does the Service move toward invoking the deportation process.

The testimony also indicated that illegal aliens are most often found in occupations which are either low-paying or where the physical strain of the job diminishes its appeal.

In a related area, we heard testimony on the proper role of attorneys in immigration cases and the proper role of voluntary social agencies. The Subcommittee heard from Mrs. Esther Kaufman, President of the Association of Immigration and Nationality Lawyers, who was accompanied by Mr. Robert Juceam, Co-Chairman of that Association's Ethics Committee, and Mr. Marshall Medoff, Chairman of the Boston Chapter of the Association. In preliminary questioning, it was revealed that the Immigration and Naturalization Service issues standards for practice before that body and these are contained in the Code of Federal Regulations. It was also brought out that the Code of Professional Responsibility of the American Bar Association has preliminary rules in draft form pertaining to this particular area. Mr. Juceam informed the Subcommittee that the Ethics Committee of the Association of Immigration and Nationality Lawyers has now focused on whether it is possible to develop a specialized code of ethics that relates to an immigration or naturalization practice. The President of the Association further informed the Subcommittee that they are now setting up a national network of attorneys, perhaps not entirely manned by Association members, but at least under the authority and supervision of the Association, so that if an alien in any outlying district wishes to have counsel, he will be able to find counsel or representation at no cost to himself. Mrs. Kaufman pointed out that without legal counsel, mistakes and/or misstatements on the part of an alien acting on his own behalf can create perhaps lifetime ineligibility or general problems that will impede his entry into the United States.

It is important to contrast the role of the attorney with that of the contact representatives supplied by the Immigration and Naturalization Service. The Subcommittee heard testimony indicating that the contact representatives are supplied by the Service for the purpose of assisting aliens who have questions with respect to particular forms to be filled out and submitted by the alien. The large majority of cases are processed in this manner and with this form of assistance. Mr. Juceam pointed out two problem areas for the Subcommittee's consideration. The first is the amount of time that the immigration contact representative can give to any alien. The second is the alternative problem that may be presented, not of any immigration nature, by an alien or an employer who is paying for an alien's application. He went on to cite an illustration:

If an employer is interested in having an alien come to the United States to take training with his company so that the alien may return at the end of the year to head up the operation of the foreign subsidiary, it would appear straightforward that he could use one classification and one form supplied by the Immigration Service to accomplish that end. However, if the employer then indicates that he wants the alien here in a shorter period of time, perhaps because something important is happening in his business, then a different form for a different type of training program will be filled out on behalf of the alien. The difference in this case might be that there is a tax consequence to the alien or that there is a selective service consequence or even a corporate problem that affects the decision as to which of these approaches should be utilized. Mr. Juceam indicated that if the employer were to go to the immigration contact representative, he would learn that there are three types of forms to be used and he would be given assistance in filling out the form he chose. He would not, however, be given assistance in analyzing the collateral problems raised by the use of the different forms.

It is here that the association feels an attorney is needed. While the testimony did not offer any criticism of contact representatives of Immigration and Naturalization, it was pointed out that they are generally employed at the GS–7 level. It was further pointed out that while these contact representatives are given some "in-house" training, they do not participate in the same training course conducted for field investigators in which immigration and nationality law is extensively reviewed. In essence, the contact representative was described as an individual who does not give advice to an alien on a case-by-case basis but rather hands out forms, inspects completed forms, and assists in answering specific questions only when raised. Further, it is possible that a representative of the Immigration and Naturalization Service might not have the alien's best interests at heart since his primary allegiance is to the Service. What is needed in addition to more training is some assurance that aliens with special problems will have the benefit of the true spirit of advocacy.

All of the testimony seemed to indicate a need to provide more extensive training of the contact representatives and/or more stringent requirements for those who wish to serve in that capacity. Even though the Service has a lawyer referral list, they do not provide any legal advice for aliens who may need consultation at an early stage in their application. Mrs. Kaufman in her testimony, suggested that one approach might be to set up a program whereby attorneys could serve in rotation and undertake to spend a specified period of time, one day a month, for example, at the clinic. That way, an alien would know that by going to a specific address at a specific time he would be able to obtain competent legal counsel. Other alternatives were suggested. Notably, the expanded use of legal aid societies and the like.

In another area, Mrs. Kaufman commented on her experience in a voluntary social agency. She indicated that, in all but a few cases, the people in these agencies, no matter how good their intentions, do not have the necessary legal expertise. This testimony was in sharp contrast to that heard later from Mrs. George S. Tattan, Supervisor of Social Services, of the Division of Immigration and Americanization of the Commonwealth of Massachusetts, who indicated that the case workers in her agency are well versed in immigration law. However, it should be poined out that there are no staff attorneys employed by her agency nor do they have a list of lawyers available for referral. The division which she represents was established in 1917. Its original purpose was to protect in-coming immigrants who had difficulty with the English language. The Division's primary purpose was, and is, to assist immigrants in their adjustment to the American way of life. In her testimony, Mrs. Tattan indicated that her agency last year assisted over 21,000 persons with special immigration problems. Mrs. Tattan also indicated that five of the 17 members of her agency serve as representatives of the social service. In that capacity they accompany aliens to the Boston District Office of the Immigration and Naturalization Service to assist them in their dealings with the Service. However, she indicated that they do not go to Washington and appear before the Board of Immigration Appeals, though her agency has assisted aliens in the preparation of forms and the appeals themselves, which have ultimately been sent to Washington to be reviewed by the Board of Immigration Appeals.

It is interesting to note that this particular voluntary social agency has a total of five offices throughout the Commonwealth whereas the Immigration and Naturalization Service itself has only two.

The sum of Mrs. Tattan's testimony suggests the strong feeling that voluntary social agencies play a vital role in the handling of special immigration problems. Nevertheless, it is worth mentioning that we are dealing with a very technical area of the law. Accordingly, it seems that somewhere along the line our procedures should provide adequate provision for aliens to obtain competent legal counsel when the need presents itself. Whether this should come from the Immigration and Naturalization Service, some voluntary social agency, or from some independent source, is a question that needs more attention. Insofar as it affects the practices and procedures of the Immigration and Naturalization Service, it is the proper concern of this Subcommittee.

IV. SPECIAL PROBLEM AREAS

A. Attorneys and private bills

There has been considerable discussion in recent years, both in and out of Congress, about the proper role of an attorney when a private bill is sought on behalf of an alien. Many persons firmly believe that an attorney is not necessary for this purpose. Those who hold this view place their confidence in the professional competence of Congressional staffs, feeling that each office is able to evaluate properly the facts that are brought to its attention by the alien seeking this extraordinary relief. As was developed in the hearings, it is obvious that the record of abuses committed by attorneys in this area has no doubt contributed support for this position. Mrs. Kaufman and the Association of Immigration and Nationality Lawyers believe otherwise. Mrs. Kaufman, in her testimony, indicated that an attorney is not necessary in every instance where private legislation might be sought. Nevertheless, she indicated that the standard by which most members of Congress begin to consider the introduction of a private bill is whether any administrative relief is available. She stressed that this is something that an attorney is especially qualified to evaluate. She went on to testify that an attorney can and should interview a client on every aspect, every fact, every facet of the alien's case to determine whether there exist alternatives to pressing for the introduction of a private bill. If, after such an investigation and consideration of the facts, it is determined that there is no remedy, and the attorney feels that this is a situation in which a private bill can properly be sought, then the attorney's function is to present the case so that the member of Congress to whom it is presented fully understands: why the private bill is being sought; what the merits of the case are; and that no other administrative route can be pursued. This was the sum of Mrs. Kaufman's testimony on this point.

This appears in theory to be the proper role of the attorney. However, Congressional experience has shown that many requests for private immigration legislation are not ac-

companied by the detailed legal analysis suggested by Mrs. Kaufman. Apparently, many attorneys handling immigration cases have failed to present a fully documented case. A collateral issue to this point is whether an attorney has the right to sell his services based in part on his understanding of the governmental process and perhaps his friendship with people who presently are serving in various governmental posts. As was pointed out by Mr. Juceam of the Association of Immigration and Nationality Lawyers, the United States Court of Appeals for the Fifth Circuit recently addressed this point in a case entitled *Troutman, Jr.* v. *The Southern Railway Company*. The thrust of the Court's decision is that it is not against public policy for a lawyer to utilize personal influence to gain an audience with a member of government, provided that in doing so he does not obtain or seek to obtain relief based on that influence, but that he does present something on the merits of the case. This is a vague area of the law and one in which it is difficult to distinguish what constitutes an attorney's use of personal friendship to obtain a hearing on the merits. Mr. Juceam, in his testimony, indicated that the Ethics Committee of the Association of Immigration and Nationality Lawyers is concerned with this area of the law and is presently reviewing alternative approaches to dealing with it. Their initiative is to be applauded and encouraged. It is clear that the Bar has responsibility for keeping its own house in good order.

Very briefly, it is worth stressing again that this is another problem area stemming from the need for an adequate system of available assistance for aliens upon their entry into our country.

B. TRAVEL AGENCIES AND VISA CONSULTANTS

The background of another special problem area was explained by Mr. Juceam in his testimony. He focused our attention on the role that travel agencies and visa consultants have been and are playing in the area of immigration law. By way of illustration, he produced a newspaper advertisement that had appeared in a newspaper on a Caribbean Island, announcing the availability of employment in the United States and the way to obtain appropriate visas. The announcement listed a number of job categories which at the time were certifiable by the U.S. Department of Labor. The ad gave an address on that island where aliens could go to seek more information. No doubt to make the ad more attractive, a connection was suggested between the office on the island and a New York, English or Canadian corporation. According to Mr. Juceam, the services rendered by this firm and others consist primarily of processing the papers required for labor certification and entry into the United States. Presumably, this work is done by non-attorneys. We were told that evidence suggests that similar firms are cropping up all along the East Coast. We should be concerned as to whether these visa consultants firms or travel agencies are performing a legitimate and useful function with regard to the administration of the 1965 Immigration and Nationality Act, or whether they have been established for the purpose of circumventing the spirit, if not the letter, of our immigration statutes solely to profit from many non-English speaking aliens who may be seeking legitimate entry into the United States. Aside from the potential abuse that may be emerging in this area, it is important for us to understand the role which these firms can and do play with respect to the services presently offered by the Immigration and Naturalization Service and those functions which the Service could conceivably fulfill in the future.

By way of illustration, the Committee heard testimony from Mrs. Joyce Walshaw, a young housewife who, along with her husband, was induced to come into the United States by one of these so-called "visa-consultant" firms. In outlining the facts of her case, Mrs. Walshaw indicated that she and her husband responded to an advertisement in an English newspaper. The article suggested that persons interested in obtaining employment as a "ship fitter" in the United States should arrange for an interview to learn more about the particulars. When Mr. Walshaw went for his interview he was told that, at no cost to him, he would be provided with the following through use of the consulting service.

The husband was promised a job as a "ship fitter." They were told of suitable housing for the entire family in the $125.00 per month range; they were promised permanent residence status and a roundtrip ticket for the husband back to England as well as a one-way ticket for his wife plus $300.00 in cash, after the husband was employed for one year. According to Mrs. Walshaw's testimony, she and her two children did not wish to remain separated from Mr. Walshaw for the one-year period and, since they were financially able to do so, made arrangements for their children to follow them to the United States shortly after their own arrival. Mrs. Walshaw testified that the consultant firm that she and Mr. Walshaw dealt with was one called Penn Consultants of Philadelphia. From their testimony as to the relationship between her husband, his employer and Penn Consultants, what happened is this.

The employer, located in Massachusetts, entered into a contractual relationship with Penn Consultants, located in Philadelphia, whereby the latter agreed to supply foreign-born manpower on a per-head fee basis. Mrs. Walshaw testified as to her belief that approximately three-hundred men came over from England alone at the inducement of the advertisement. She indicated that, to her knowledge, only a handful of these three-hundred men are presently employed here in the United States. The remainder have, to her knowledge, returned to England. Each of the men in question apparently entered the United States on a temporary six-month working permit. Many of these men no doubt left when they failed to either achieve permanent residence status or obtain extensions on their temporary working permits from the U.S. Department of Labor.

According to her testimony, the largest problem facing Mrs. Walshaw and the others from England was housing. They were told that the housing in the United States and in the particular area where her husband would be employed was more than adequate and was reasonably inexpensive. They were told that for a family of four it would be possible to obtain suitable housing for approximately $125.00 per month. After they arrived, she told us that she and her husband were unable to find housing to accommodate their family for a sum even close to $125.00. She felt that this problem alone no doubt prompted many of the families to return to England.

Mr. Walshaw has been employed since his arrival here in the United States, but because of the restrictions placed on Mrs. Walshaw by our immigration statutes, she is legally unable to accept any employment and thus unable to contribute to the family income.

Many of the other men from England ran into a troublesome tax consequence as well. According to Mrs. Walshaw, many of these men were required to pay taxes as single men if they were from Britain. In other words, the married men from England were unable to claim tax relief for their families. In further testimony, Mrs. Walshaw indicated that her husband's take home pay was in the neighborhood of $125.00 per week. With many of the other men placed in this similar pay range, one can easily see why the increased tax burden made it difficult for many of them to pay rent for suitable housing and to live comfortably.

Mrs. Walshaw was queried as to what had been done on her behalf and/or her husband's behalf relative to obtaining permanent visas. She indicated that when the first six-month temporary permit had expired, Penn Consultants applied for an extension. The extension was granted. While the second permit was active, the consultant firm put through or filed on Mr. Walshaw's behalf an application with the U.S. Department of Labor for labor certification. Subsequently, labor certification was granted. Thus eligible to apply for permanent residence status, Mr. and Mrs. Walshaw prepared to do so. They were then advised by the consulting firm not to do so at the particular time for the alleged reason that there were no quota numbers presently available. Acting on the advice offered by the consulting firm, Mr. and Mrs. Walshaw proceeded no further on their application for permanent residence status. At a much later date, Mrs. Walshaw testified; it occurred to them that they should go ahead and file anyway, contrary to the advice given to them by the firm. The day before Mrs. Walshaw testified before the Subcommittee, she was informed by mail that her application for permanent residence had been rejected. The basis of the rejection, she told us, was that her husband entered the U.S. on a temporary basis to work temporarily and was now applying for permanency at the same job. It appears that Mr. and Mrs. Walshaw will have to leave the country.

Mrs. Walshaw indicated by her testimony that the total cost incurred by her and her husband in coming to the United States, relocating their family, and undergoing the hardships forced upon them, exceeded $3,000.

It is worth pointing out that the Subcommittee heard testimony with respect to only one of these consultant firms and involving only one employer here in the United States and employees from only one country. If we give any credence to the claim that there are literally hundreds of these consultant firms presently in operation involving many countries, the dimensions of this problem could be far-reaching.

C. LABOR CERTIFICATION

Another special problem area that was brought to our attention prior to the hearings was the issue of labor certification. The question we focused upon was whether the requirement of labor certification is contributing to the burden of illegal entries into the U.S. Mr. Lawrence W. Rogers, New England Regional Manpower Administrator, the U.S. Department of Labor, testified on this point along with his deputy, Mr. William M. White.

By way of background, Mr. Rogers testified that when the U.S. immigration statutes were overhauled in 1965, preferences were set up within the law specifically for people to come to the United States to work. As a part of the establishment of these preferences, the labor certification provision was installed in its present form to prevent adverse effects on our labor market through lower wages and/or working conditions by a competitive labor force willing to come to this country and willing to work in substandard conditions for lower wages. Certification by the Department of Labor, in essence, means that the immigrant entering the U.S. seeking employment will not displace an American worker who could conceivably be a candidate for the same job.

Mr. Rogers testified that for the period from January 1, 1970 to the middle of May, 1971, a total of 16 and a half months, the New England Regional Office acted on 6,550 applications for labor certification. Of the 6,550 applications received, the Regional Manpower Office approved 3,496 for labor certification. Accordingly, they disapproved 3,054.

To put this in its proper pretext, the 3,496

approved applications represent less than one-tenth of one percent of the average work force in New England. This latter figure, according to Mr. Rogers' testimony, is in the neighborhood of 5,200,000 persons.

In a further breakdown, Mr. Rogers testified that during the same 16-month period, the Department of Labor approved 1,592 applications for aliens in Massachusetts alone. During this same period of time, his department disapproved 1,236 applications. The total number of applications in Massachusetts during this time period came to 2,828. The 1,592 applications approved in Massachusetts should be contrasted with the Massachusetts work force which, in March of 1971, was 2,555,000 persons.

Mr. Rogers also indicated in his testimony that the cost of administering the labor certification requirement comes to approximately $2 million annually.

In later testimony, Mr. Rogers pointed out that the law only requires the Department of Labor to certify the availability of U.S. workers and possible adverse effects on our domestic labor market. From a practical standpoint, this means that an alien can be in the U.S. illegally and apply for and receive labor certification. As a matter of policy, however, we were told that when a labor certification request comes in, if the labor officials ascertain that the applicant is either working illegally or is here in the U.S. illegally, they forward such information to the Immigration and Naturalization Service. The point was made, nevertheless, that the fact that an alien is here working illegally is not by itself cause for denial.

Mr. Rogers went on to point out that the labor certificate, as such, is not recognized by most employers as a formal type of working document as it might be in a country such as England. Of greater significance, he testified, is the fact that anyone can obtain a social security card. U.S. citizenship is not a requirement for social security benefits. The result of this is that an English-speaking alien, armed with either a labor certificate or social security card, will have little or no difficulty in obtaining employment in the U.S. Under the present application of our immigration statutes, an alien is able to enter this country on a temporary 30-day visitor's visa.

According to the earlier testimony of Mr. Coomey, the District Director of the Boston District Office of the Immigration and Naturalization Service, 3,645,328 non-immigrants were admitted into the U.S. in fiscal year 1970. The bulk of these were temporary visitors. This figure, according to Mr. Coomey's testimony, is increasing at the rate of approximately 12 percent each year. Mr. Coomey also indicated that the Service is fairly liberal in the number of extensions that they will grant to temporary visitors. On the average, a temporary visitor can probably remain in the U.S. for a period of approximately six months. During his visit, he can obtain a social security card and present himself for employment at a job site where the need for workers has been indicated. The point to be made here is that with millions of aliens entering the U.S. yearly as visitors, we presently have no accurate measure of the number who choose to remain here illegally and risk the consequences of deportation.

The question at this point is whether the intent of the labor certification requirement is being circumvented by the practical application of our immigration statutes. It would seem that the effectiveness of the labor certification requirement is being compromised by the practical application of our immigration statutes. It would appear that the effectiveness of the labor certification requirement can be measured presently only by the number of aliens who are seeking legitimate entry into our domestic work force.

Mr. Rogers went on to testify that as the unemployment rates have risen in New England the rate of labor certification approvals have decreased correspondingly. In the last four and a half months, he told us that his department has approved only 374 cases. This would, if projected ahead, amount to 1,200 cases on an annual basis or approximately 32 percent of those approved in the past period.

It is at least arguable that this present backlog is encouraging more and more Western Hemisphere immigrants to enter the U.S. as temporary visitors and to remain here working contrary to the labor certification requirement.

One additional factor worth considering. Under our present statutes, there is no way of checking as to whether a labor certified alien remains on the job for which he has been certified. It is conceivable that an alien can be certified for one job and, having obtained the necessary certification, move into another area for which he has not been, nor could be, labor certified. One possible answer to this problem was suggested by Mrs. Kaufman, the President of the Association of Immigration and Nationality Lawyers. In essence, she suggested that a system should be developed whereby aliens can enter the country to seek employment based on estimates of the Department of Labor as to how many can be absorbed. They should then come randomly and without any requirement for a particular job. Mr. Rogers, in his testimony, was in general supportive of this concept, based on his own personal experiences. However, he deferred final judgment on this matter to his superiors in the national office in Washington. Mrs. Kaufman told us that it is her information that the national office of the Department of Labor is, in fact, considering a change in this area along the lines she suggested.

On one final point, it is my understanding that the labor certification requirement does not take into account the seasonal influx of great numbers of people across the border. The present system may be creating hardships for immigrants who are not generally threatening our domestic labor market.

The last special problem area on which we heard testimony in Boston involved the case of Mr. Alphonso Reisgo. The facts in this particular case are fairly representative of a number of allegations which have been brought to my attention reflecting unethical and, perhaps in some cases, illegal conduct on the part of the attorneys.

According to Mr. Reisgo, the following transpired: Mr. Reisgo entered the United States in June, 1968 on a temporary visitor's visa. He was traveling from Spain and was on his way to Canada where he intended to permanently reside. His intention upon entering the U.S. was not to seek permanent residence here. Shortly after he arrived, however, Mr. Reisgo met a friend who told him that he knew a lawyer who could get him permanent residence status. Thereafter, and on the advice of his "friend," Mr. Reisgo went to see the attorney. Mr. Reisgo testified that the lawyer told him that for $1,500 the attorney could obtain permanent residence status for Mr. Reisgo. On this first visit, Mr. Reisgo gave the attorney $200.00 in cash for which Mr. Reisgo did not get a receipt. In October, 1970, approximately four months later, Mr. Reisgo paid an additional $800. At this time, the attorney gave him a receipt for $1,000. The attorney assured Mr. Reisgo that everything would be taken care of within the next six months. Unsure of the progress of his application with the Immigration and Naturalization Service, Mr. Reisgo went by himself to the Boston District Office of the Service. This was on or about November 15, 1970. At that time, he was told by Immigration officials that no papers had been filed in his behalf. He then returned to the attorney and requested an explanation. The attorney responded that his papers were over in "the social security office" and everything was being taken care of. Mr. Reisgo has not seen the attorney in question since November of 1970 nor does he have any evidence that services were performed in his behalf by the attorney either prior to or subsequent to November of last year.

This case represents what may be a common situation in which an alien comes to the U.S. with little or no understanding of our immigration statutes and is taken advantage of by those in whom he has placed his trust. This is clearly an area that is deserving of more attention on the part of the respective bar associations. In this particular case, there may be further evidence that will support an indictment.

E. NEW BEDFORD

As the hearings shifted to New Bedford on the second day, we focused our attention on two major areas. First we heard testimony bearing on fraud and unethical conduct on the part of at least one attorney. Second, we received information outlining the impact of aliens on the economy, housing, health care, and other social services in the Commonwealth. This latter area is directed to the problem of allocating available resources in the most efficient manner.

As to the first issue, my office began to receive an increasing number of complaints in the early spring of this year (1971) from aliens in New Bedford and Fall River who felt that they had been taken advantage of by at least one attorney. On one occasion, the designated representatives of many of these aliens, accompanied by a representative of Governor Francis W. Sargent, came to Washington to meet with my staff. As time went on more and more complaints came to my attention and the needs for some sort of action became evident. While the total number of aliens involved with one attorney in particular has yet to be determined, the testimony supported the contention that well over 200 have been involved.

The first witness was Mr. Paul Andrade, who is presently employed at WGCY Radio Station. Prior to his employment at the radio station, Mr. Andrade was employed at the Migrant Education Project of the Commonwealth of Massachusetts. While so employed, a number of aliens came to him with their own complaints. Though the stories varied somewhat, a common theme was outlined by Mr. Andrade in his testimony. The following is a typical account: A foreign national who visited the United States and expressed a desire to immigrate as a permanent resident would be referred to one particular attorney by friends or relatives, and, it was suggested, possibly paid runners. The attorney would assure the new client that he could arrange to have him remain in the U.S. permanently and legally. The attorney, the testimony indicated, often represented himself to be a member of the U.S. Department of Immigration staff as well as "Consul General of the United Nations" with administrative authority superseding all other attorneys in the United States. The attorney would request in cash a $500 retainer fee from each client. It was further stated that, upon payment, the alien was taken to the Post Office or some other appropriate place, either by the attorney in question or one of his staff, for the purpose of obtaining a social security card. Each client, the testimony indicated, was informed that this card was evidence of his right to work in the United States and that the alien could now find a job, purchase a car, or buy property. Each applicant whose family was not in the U.S. was advised by the attorney to dispose of his possessions in his country of origin and to send for his family as they could now reside in the U.S. permanently and legally, once they were admitted as visitors.

It was suggested by Mr. Andrade that the attorney was often dealing with unsophisticated and often uneducated people awed by his apparent position of influence and prestige. On such occasions as the attorney accompanied them to the offices of the Immigration and Naturalization Service, the courtesy and deference tended to corroborate his claims in their eyes.

When in the course of time, communications of any nature came from the Immigration and Naturalization Service, the clients immediately took them to the attorney in question. Their testimony indicated that the attorney almost invariably advised them that he was handling the whole matter and that they need not take any action to comply. Even when third parties translated the notices and advised the aliens of the seriousness of their situation, and in some cases of their imminent deportation, the attorney would assure them that this was just an administrative mix-up in the large governmental machinery and that they could pursue their normal lives without any fear or hindrance. Their testimony indicated that a number of aliens stated to the attorney in question that they would rather leave the country than be a party to any illegal act. On these occasions, testimony indicated that they were reassured by the attorney that all of his actions in their behalf were completely legal and that they were not violating any law of the United States. One witness testified that, on at least one occasion, the attorney in question acted angered and hurt by the implications that any of his actions were outside the law. This particular witness did not pursue the question any further since she felt intimidated by the sight of the attorney who happened at the time to be armed with two pistols. Her testimony indicated that when the attorney took his jacket off she saw him carrying one gun on his hip and the other lodged in a shoulder holster.

In the fall of 1970, the attorney introduced a new tactic. On October 16, 1970, over 100 of his clients were summoned to his New Bedford office and told, in essence, that there was now a legal mechanism available that would allow them to be not only bona fide immigrants and permanent residents of the United States but American citizens as well. The testimony indicated that he presented each client with a mimeographed form in the nature of an affadavit, the purported effect of which was to enable the aliens to renounce their citizenship in their native land and to declare themselves to be stateless persons. Their forms were witnessed and notarized. The testimony indicated that the fee for this service was $300 and would, according to the attorney, entitle his clients to American citizenship within six to eight months. Some of the people who were presented with this "opportunity" had already paid the attorney amounts ranging from $500 to more than $1,000, but, on this particular day (October 16) we were told that 104 of them paid an additional $300 in cash, for a total of $31,200.

Some time later, the aliens' visitor's visas began to expire, the Immigration and Naturalization Service began to institute deportation procedures against a number of this attorney's clients. The strength of their reliance on the advice of this attorney was highlighted in the testimony of Mr. Antonio Gomes Cruz. Mr. Andrade was kind enough to act as the interpreter for Mr. Cruz and a number of the other witnesses who are unable to speak English. Mr. Cruz testified that in May of 1970 he received his first deportation notice. He had been instructed that any time he received correspondence from the Immigration and Naturalization Service, he was to take it to a particular woman who had been acting as an intermediary between him and the attorney. Upon receipt of the deportation notice, as instructed, Mr. Cruz took the notice to the woman and was informed by her of its nature, but was told not to worry and to go out to sea (Mr. Cruz was employed as a fisherman) as scheduled. When Mr. Cruz returned from his fishing trip, he returned to the woman. He testified that she said she had talked with the attorney and that he had said that everything was running along very well and not to worry.

Approximately two months later, he received a second notice from the Immigration and Naturalization Service notifying the entire Cruz family, which included his wife and two children, to appear at the Boston District Office of the Immigration and Naturalization Service. When Mr. Cruz and his family appeared at the Boston District Office with their attorney, he testified that there was a conversation between the Immigration officials and his attorney which he could not understand. He was instructed by the attorney that everything was all right and that he was to go back home. The attorney further indicated that if the officials were to call him again, he (the attorney) would be available to take care of it. In August, Mr. Cruz received another notice from the Immigration and Naturalization Service requesting that he appear on a given date at the Boston District Office. The same thing happened again and again. There was a conversation between the attorney and the immigration officials which Mr. Cruz did not understand, and again the attorney instructed him to return home and not to worry. Mr. Cruz testified that he went through this routine approximately five times.

Mr. Cruz went on to testify that on or about November 14, 1970, he was arrested by immigration officials as he was about to board a fishing boat to go out to sea. He was handcuffed and taken to the New Bedford House of Corrections. He was held there for four days and then transferred to the Charles Street Jail in Boston. Mr. Cruz spent five days at the Charles Street Jail until he was released on bail pursuant to a restraining order issued from the U.S. District Court in Boston. Mr. Cruz testified that he saw the attorney in question when he was released from the Charles Street Jail, but that he only saw him at a distance and when the attorney saw Mr. Cruz coming he turned his back to him and did not speak. At the conclusion of Mr. Cruz's testimony, I asked Mr. Andrade if he would be kind enough to ask in Portuguese how many people in the hearing room had the same or similar testimony to give with regard to their involvement with the same attorney. 56 people stood and raised their hands, indicating a factual pattern (excluding the arrest sequence) similar to that outlined by Mr. Andrade and Mr. Cruz. While the total number of aliens similarly situated has yet to be determined, it is clear that we are dealing with a number in the hundreds.

It is worth pointing out that many of the witnesses who testified at the hearing indicated openly and willingly that their present status in the U.S. was illegal. They were not obligated in any way to step forward and present their evidence for the record. Nevertheless, they did so without attempting to avoid any of my questions. It seemed evident that these people had acted in good faith and had not knowingly sought to circumvent our immigration statutes. At another point, Mr. Andrade was asked if he would request a show of hands so that we could determine what sums of money had been paid by the people present in the hearing room to this one attorney. We were then able to determine that one had paid $1,100; two had paid $1,000; one had paid $900; 17 had paid $800; 5 had paid $700; one had paid $600; 14 had paid $500; 4 had paid $400; 4 had paid $300; one had paid $200; and 3 had paid $100.

Again asking the entire group how many had received a permanent resident visa card, no one raised his hand. On the question of how many had received labor certification through the efforts of the attorney, the answer again was none. Finally, as to how many had signed the renunciation of citizenship form that had been described in the earlier testimony of both Mr. Andrade and Mr. Cruz, 52 people present in the hearing room raised their hands to indicate that they had done so. Many of the people present had receipts to show the amounts that they had paid to the attorney and/or his secretary.

Midway through the afternoon session, we heard testimony from Attorney Murray H. Rittenberg, of 11 Beacon Street, Boston. Mr. Rittenberg appeared at the hearing voluntarily and testified on his own free will. While his testimony at times was at variance with the facts outlined by the witnesses who had preceded him, the substance of his comments generally supported the earlier testimony.

There are two or three areas that are worth looking at more closely insofar as Mr. Rittenberg's testimony is concerned.

In a discussion of the procedures that Attorney Rittenberg employed to keep aliens in this country, the following testimony transpired:

Senator BROOKE. Now, what procedure did you adopt?

Mr. RITTENBERG. I looked around. People—they came to me. Most of them came to me, their time had run out. Now, I had talked this over with Immigration—I'm trying to think who the men's names are. I'll tell you in private, not now.

And I was told the people came in and the time is up on their I-94's, that I could let them go to work because actually, it's the same thing with the card. That don't make any difference anyway: it makes no difference anyway; it makes no difference at all, because they already broke the law by staying beyond their time period.

So I advised them all to go to work and get social security cards. To get a social security card—does not mean they are going to work. Everyone who works has the right to it.

Senator BROOKE. Stop, if you will, right there. You are very well familiar with immigration law (earlier in his testimony Attorney Rittenberg testified that he considered himself to be a specialist in immigration law). Don't you know that if a person comes in here on a visitor's visa that he is in violation of the law if he goes to work?

Mr. RITTENBERG. Certainly.

Senator BROOKE. Well, how could you advise someone to break the law?

Mr. RITTENBERG. After their time is over.

Senator BROOKE. It doesn't make any difference. You are a member of the Bar. If I went out and advised someone to commit larceny, I would be advising them to commit a crime, would I not? As a member of the Bar, I would be in violation of the law myself?

Mr. RITTENBERG. Maybe so.

Senator BROOKE. What prompted you, as a member of the Bar, number one, fully familiar with immigration law, to advise your clients to go out and get a job in violation of the law you are sworn to uphold as a member of the Bar?

Mr. RITTENBERG. They were already in violation of the law.

In further testimony, related to the use of renunciation of citizenship forms, Attorney Rittenberg outlined the legal theory upon which he acted. His belief was, and apparently is, that the United States is a signatory to some treaty which in effect would permit an alien to renounce his citizenship in his native country and thereby become stateless. Then, the United States would not be able to deport him and would in fact be obligated, if not compelled, to grant him residency. Mr. Rittenberg indicated in his testimony that he did not know or was not informed until much later by an

assistant U.S. attorney in Boston that the United States is not a signatory to the treaty upon which he based his legal claim.

On the question of advising his clients to ignore deportation orders, it is worth nothing more of the testimony.

Senator BROOKE. When a client came to you and showed you a deportation notice, why did you tell him to ignore the notice?

Mr. RITTENBERG. Why? Because I wanted to talk to Immigrations to see if I could get it changed. Very simple. No matter what anybody says to me, that is the answer.

At another point, the dialogue went as follows:

Senator BROOKE. Have you ever represented a client that jumped ship?

You understand jumping ship?

Mr. RITTENBERG. Ya.

Senator BROOKE. You couldn't be in the immigration business and not understand that. Now, a person jumps ship and you advise them to get a job and not worry about anything, you'll take care of it. Do you know that jumping ship in this country is a violation of law?

Mr. RITTENBERG. I imagine it is.

Senator BROOKE. You don't need to imagine. You are an expert on immigration law.

Mr. RITTENBERG. Of course it's a violation.

Senator BROOKE. Number one, to jump ship is a violation of law and number two, to work after you enter the country by jumping ship is another violation of law, is it not?

Mr. RITTENBERG. Uh huh.

Senator BROOKE. Then, why would you advise the client to go to work?

Mr. RITTENBERG. Probably at the moment I just thought that way.

At another point in his testimony, Mr. Rittenberg offered evidence supporting the contentions raised in the Boston segment of the hearings with regard to the need for more investigative personnel in the Boston District Office of the Immigration and Naturalization Service.

The testimony on that point went as follows:

Senator BROOKE. Is that within the law, for example, when a visitor's visa expires, say, in June, 1969, and nothing is ever received by the alien, say, for a year, a year and a half, until 1970, or even still longer?

Mr. RITTENBERG. It's the system. The system, that's all it is.

Senator BROOKE. What is wrong with the system?

Mr. RITTENBERG. The system. In other words, when these people's time comes up they have the I–94, they have a record of it. But there is no way for the Immigration really to know each day what people should be approached and told to leave if they haven't left.

Senator BROOKE. Even after a year?

Mr. RITTENBERG. Oh, ya. There is no way. They have no work force. The only way they can do it is somebody—and they are doing a lot of that—calls up and reports the facts that so and so is working in this place or living here over his time. They they go out and they get him and they do get him.

Senator BROOKE. People come here as visitors and stay in this country forever, is that right?

Mr. RITTENBERG. I know one case, a man's been here for eight years.

At the conclusion of Mr. Rittenberg's testimony, the presence of Mr. Marshall Medoff, Chairman of the Boston Chapter of the Association of Immigration and Nationality Lawyers, was noted. Mr. Medoff was asked if he and members of his association would agree to review all of the cases involving aliens from the New Bedford-Fall River area who felt that they had been disadvantaged by their association with Attorney Rittenberg. Mr. Medoff agreed to provide such a review and to furnish us reports thereon. As immigration proceedings continue, Mr. Medoff will be providing reports, and it is my hope that these reports will assure us that a full review has been conducted and that no one is being deported who has not exhausted every administrative remedy available.

F. IMPACT OF ALIENS ON ECONOMY

The second area on which we focused our attention in the New Bedford portion of the hearings involved the impact of aliens on the economy of Massachusetts and on the range of social services that are available. In this area we heard testimony from Mr. William R. Lapre, Supervising Manager, State Division of Employment Security.

Mr. Lapre testified that unemployment in New Bedford amounted to 12.3 percent in January; in February it was 12.2 percent; and in March it was 12.0. He indicated that New Bedford had not previously had a 12 percent rate for more than 10 years. He went on to testify that he took a survey for the last quarter of 1970 which showed 17,707 new and reopened cases. In essence, his testimony indicated that 24 percent of the unemployed in New Bedford in the last quarter of 1970 were either aliens or immigrants. Geographically, he was discussing the Standard Metropolitan Statistical Area which includes the communities of Dartmouth, Acushnet, Fairhaven, and the city of New Bedford itself. He went on to testify that this 24 percent figure amounts to a substantial increase over previous years. To handle the increase, he hired four Portuguese-speaking claims clerks, and one Spanish-speaking claims clerk. Additionally, he was forced to use two of his regular junior clerks, who are Portuguese, and one supervisor as interpreters during this period.

When queried on the number of complaints that he has received so far in 1971 with regard to aliens taking over the jobs of permanent residents and U.S. citizens. Mr. Lapre indicated that they had received some 100, perhaps 110, complaints. By way of comparison, Mr. Lapre indicated that his office, during the 1970 period, received no more than a dozen.

In further testimony relating to the impact of alien labor on the work force, Mr. Lapre indicated that his office administered the 6th preference part of the Alien Employment Certification Act to the extent that they certified whether there were skilled people available. Since the Act went into effect in December 1965, his office has processed 574 cases. Of those, the Department of Labor has certified 347; they rejected or did not certify 210 and there are now 18 pending.

We also heard testimony from Mr. George N. Maravell of the New Bedford Welfare Service Office, Department of Public Welfare. When queried as to what, if any, impact aliens in the New Bedford area had on the public welfare roles, Mr. Maravell testified that during the period of February 16, 1971 to May 7, 1971, the specialized family unit received a total of 475 family applications for general relief and aid to families with dependent children. Of this total, 71 were families who had emigrated to the United States from Portugal during the past year. Of the 475 applications, 266 were for aid to families with dependent children, and 209 were for general relief. That means that some families were technically eligible for one category; they weren't eligible for another category.

Of the 209 general relief applications taken during that period of time, 50 were immigrants who had come to this country within the last year.

In another breakdown, Mr. Maravell testified that one out of every six families that applied for public assistance between the dates of January 14, 1971 and February 12, 1971 were Portuguese immigrants. In terms of actual figures, 40 of the 240 applicants were non-English-Speaking people from Portugal who had arrived in the city in the past year, and who, because of poor economic conditions in New Bedford, were dependent upon public assistance.

Mr. Maravell testified that his report may appear to be overly critical of the immigrants but it was not intended to be so. The thrust of his testimony, he said, was to point out that the city of New Bedford is only geared toward referring immigrants to the Welfare Department; and the Welfare Department is not geared for such problems without adequate manpower, funds and community resources to deal with the increased case loads that they are expected to handle.

In another part of his testimony, Mr. Maravell indicated that there is a tremendous housing shortage in New Bedford at the present time. A look at his testimony tells the story.

Mr. MARAVELL. When a family—we have had reports from our workers that—is on the way over, some friend or relative has a home or tenement waiting for him. The reason that it is waiting is someone who did live there was evicted.

And it is impossible to find another place to live. And that thing is going on continuously. We have reports, even last night, that people were sleeping in automobiles. They didn't have a house to sleep in.

Senator BROOKE. The situation is that bad?

Mr. MARAVELL. It is.

Mr. Maravell indicated that his agency has no way of determining whether an alien is here in a legal or illegal status. He indicated that the policy is to assist anyone who is needy, regardless of their status.

It is clear that his heavy caseload has overtaxed the agency tremendously.

Mr. Maravell testified that, although they have a fairly large agency, he could estimate that they are understaffed by about 30 people at the present time. His present staff amounts to 126 people. In round figures, he testified, his agency is expected to deal with 10,000 families, or 20 percent of the population. His agency spent close to $24,000,000 each year in New Bedford, Acushnet and Dartmouth.

While Alphege Landreville, Director of Public Health, attended the hearings in New Bedford, he was unable to remain to testify. Thereafter, he submitted his comments in writing and requested that they be included in the hearing record.

Director Landreville indicated that the City of New Bedford provides not only a tuberculosis control program for New Bedford but for six of the surrounding communities as well; namely, Acushnet, Dartmouth, Fairhaven, Freetown, Mattapoisett, and Rochester, comprising a total population of approximately 150,000 people.

In tuberculin testing of the non-English-speaking children from the public and private schools, he found that 15 percent of this group had a positive reaction, denoting that either they or their families in the countries from which they came had, without any doubt, been in contact with cases of active tuberculosis. The entire families of those children who reacted were then tuberculin tested and all persons showing reaction were then X-rayed and put on medication which was provided by the State Department of Public Health. This meant that in 1970, more than 1,000 persons were receiving medication.

Director Landreville also indicated that public health nurses as well as the nurses in the public school system have found a large number of these immigrant children with intestinal parasites causing serious malnutrition. He went on to assert the belief of the Department of Public Health that immigration authorities in Portugal are not adequately screening the people who are coming to this country from the point of view of determining whether they are suffering from any contagious disease or determining what their health problems may be. On a practical level, Director Landreville told

us that the public health nurses who are traveling in the field find they are barred from many of the homes of immigrants who are illegally within this country because many of these people, knowing that they may be deported, fear officials of any kind. This fear makes the work of the field nurses doubly difficult, particularly when there is also a language barrier that is not easy to overcome.

In the related area of education, I received a subsequent communication from the New Bedford Superintendent of Schools, Mr. James R. Hayden. In describing the impact of immigrants on the New Bedford School System, he indicated that in 1965, prior to the enactment of our present immigration statutes, the public school system had 29 immigrant children enrolled. Thereafter and every year since, over 300 children have been enrolled.

What has emerged in essence is a bleak picture of inadequate resources being overtaxed. The people who suffer as a result are not only immigrants but also citizens of the Commonwealth. At the present, we have no accurate measure of the number of illegal aliens in the Commonwealth. We can, however, measure their impact by the burden they add to presently available social services. To this extent, we must begin to supplement existing resources while we continue to search for ways to stem the flow of illegal aliens into the United States.

The aliens who are here illegally have been drawn to our land by the freedoms and opportunities which abound. They came not to thwart the law but to live within its promise of justice. Owing to the fact that they have been generally unfamiliar with our complicated immigration statutes, they have all too often fallen victim to employers and attorneys eager to profit from their ignorance of the law.

They entered this country not only in the wrong way but at the wrong time—during a recession when unemployment was high and social services were severely over-taxed. Their plight cannot be ignored. While the Nation's laws must be upheld, our compassionate tradition must be continued. In response to their illegal status, we must be firm in the application of our laws and understanding as to the individual needs of each alien.

V. CONCLUSIONS AND RECOMMENDATIONS

1. *Conclusion:* In the face of the responsibilities that the Boston District Office of INS is expected to handle, the office is very much understaffed in key areas.

Recommendation: For a beginning, the budgetary authority for the staff positions of field investigators be at least doubled for the Boston District Office for the next fiscal year. This would provide 32 field investigators and two supervisors where there are now only 16 investigators and one supervisor.

2. *Conclusion:* The "contact representatives" with the Immigration and Naturalization Service play an important role assisting aliens in selecting and filling out the appropriate INS forms. To the extent that "contact representatives" offer limited and/or inadequate services, many non-English speaking aliens are left subject to the prey of the unscrupulous.

Recommendation: That the job of "contact representative" in the Immigration and Naturalization Service be upgraded and coupled with a more vigorous training program to include extensive training in immigration law.

3. *Conclusion:* An English-speaking alien who enters the United States on a temporary visitor's visa and thereafter decides to remain in an illegal status, has little or no difficulty in securing a social security card for the purpose of violating other Federal laws relative to alien employment.

Recommendation: I have asked the Commissioner of the Social Security Administration, Robert M. Ball, to determine if it is administratively possible to modify the social security application form in such a way as to obtain from it sufficient information for a cross-check with immigration officials. If this cannot be done administratively, I shall seek to amend the Social Security Act to provide for such an alteration of the application form and to establish the necessary administrative machinery.

4. *Conclusion:* The number of aliens here illegally appears to be significant and may be producing an adverse impact on the economy of Massachusetts and the distribution of the available social resources.

Recommendation: The appropriate federal and state agencies have been requested to assist in documenting the extent of this impact and to prepare specific legislative recommendations to deal with the problem on the federal level.

5. *Conclusion:* That a number of employers have actually invited and encouraged aliens on expired visitors' visas to work in an illegal status. An additional number of employers have acted with reckless disregard as to the status of their employees under our immigration statutes and have thereby encouraged the aforementioned violations. Estimates as to the loss of earning power that has resulted to American citizens run as high as $5 billion each year.

Recommendation: I have asked Attorney General John Mitchell to explore alternative methods by which employers could be made more aware of their responsibilities and immigration laws. In addition, I have requested that the Attorney General review existing statutes and determine whether additional authority is needed to take action against those employers who knowingly hire illegal aliens.

6. *Conclusion:* The requirement of labor certification is costly and is not addressing the problem at hand—that is, insuring that qualified domestic workers are not displaced by aliens. Furthermore, this requirement appears to be exacerbating the problem by encouraging aliens to circumvent the spirit, in many instances, the letter of the law.

Recommendation: Since this issue is currently being reviewed by the appropriate Congressional committees, we should await their findings and recommendations.

7. *Conclusion:* That a number of Portuguese aliens in the New Bedford-Fall River area, as a result of their dealings with at least one attorney, have suffered substantial hardship. Nevertheless, this hardship, by itself, is not sufficient, in my opinion, to justify the introduction of private bills in Congress.

8. *Recommendation:* Where additional hardship can be shown though not sufficient itself to justify the introduction of private legislation, such hardship should be considered cumulatively with the "attorney hardship" for the purpose of introducing the appropriate private measures. In addition, I have requested the Commissioner of the Immigration and Naturalization Service, Raymond F. Farrell, to exercise the greatest leniency permitted under existing immigration statutes in handling those cases that cannot otherwise be adjusted during the interim period. Finally, I have asked Marshall Medoff, Chairman of the New England Chapter of the Association of Immigration and Nationality Lawyers to continue his review of individual cases to insure that the full benefit of counsel is afforded.

TRIBUTE TO KABC–TV, CHANNEL 7, LOS ANGELES, ON THE CREATION OF A LOS ANGELES POLICE MEMORIAL

Mr. CRANSTON. Mr. President, now at a time when militants are directing such great volume of fire—both verbal and real—at police departments throughout our country, I would like to call attention to the efforts of a Los Angeles broadcasting company which has taken a very positive step toward the appreciation of law enforcement.

Channel 7, KABC–TV, Los Angeles, has been instrumental in the creation of a police memorial honoring those officers of the Los Angeles Police Department who have lost their lives in the line of duty. The project was nearly 3 years in planning and preparation, under the direction of John J. McMahon, vice president and general manager of KABC–TV and chairman of the Los Angeles Citizens Committee responsible for the memorial's construction and dedication

While the fundraising was conducted by KABC–TV, the memorial was truly a gift from the people of Los Angeles, with contributions received from private citizens from all walks of life. The memorial, one of the very few—too few—in our Nation, is designed not only as a tribute to fallen policemen, but also as a reminder to the community of how very much all officers may be called upon to give.

The engraved granite monument, 20 feet in height, was dedicated on Friday, October 1, at Parker Center, the police headquarters in Los Angeles, with Attorney General John Mitchell as dedication speaker.

I join the people of Los Angeles and police officers everywhere in commending channel 7 KABC–TV for its contribution to the image of law enforcement.

THE DANGER OF CORPORATE AGRICULTURE

Mr. McGOVERN. Mr. President, the controversy surrounding the confirmation of the nomination of Secretary of Agriculture Earl L. Butz focused a great deal of public attention on the future of American agriculture. Many of us who opposed his confirmation called attention to a genuine fear in rural America, the fear of corporate domination of American agriculture. Despite the claims of the U.S. Department of Agriculture, large corporations are producing more and more of our Nation's food and fiber.

Secretary Butz' longtime association with many of these firms precipitated unprecented grass roots opposition to his confirmation. During the hearings on his nomination conducted by the Senate Agriculture Committee, Secretary Butz implied that corporations now active in agricultural production were curtailing their farming operations. But at the same time, many of these corporations are telling their stockholders of plans to dominate the food industry "from the seedling to the supermarket," as one of the corporations put it in its annual report. These corporations are able to take unconscionable advantage of tax provisions originally intended for the family farmer. I have long advocated that the laws should be revised to eliminate tax-bonanza farming. It is also time to rewrite the antitrust laws to prevent the spread of corporate agriculture.

If we fail to take measures to turn

back the corporate invasion of American agriculture, the entire Nation will feel the results. Not only will rural-to-urban migration continue, but with the demise of the family farm we can expect to see an unhealthy increase in the cost of food in the supermarket.

In the New York Times of December 5, 1971, R. Drummond Ayres, Jr., has depicted with considerable success the extent of corporate inroads into American agriculture. Significantly, the article describes how large firms were able to administer consumer prices once they became the dominant interest in the market. Because the article shows the scope of the corporate threat to American agriculture and what it means for the Nation, I ask unanimous consent that it be printed in the RECORD.

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

RISE OF CORPORATE FARMING A WORRY TO RURAL AMERICA

(By B. Drummond Ayres Jr.)

KANSAS CITY, MO., December 3—Few things are growing faster down on the farm these days than corporate influence.

All across the United States, from the wide-open prairie surrounding this cattle and grain center to Maine's fertile potato fields and California's irrigated grapefruit groves, big business is diversifying and moving in on what once was strictly a family enterprise, a way of life.

International Telephone and Telegraph now produces not only transistors but also Smithfield hams.

Greyhound now runs not only buses but also turkey processing plants.

John Hancock now sells not only insurance but also soy beans.

Corporate farming or conglomerate farming or agribusiness—by any name it strikes deep fear in rural hearts, such deep fear that the new Secretary of Agriculture, Dr. Earl Butz, was almost rejected by the Senate after he had espoused the advantages of agricultural giantism and had disclosed membership on the boards of such super farm firms as Ralston Purina and Stokely-Van Camp.

Senator Gaylord Nelson called Dr. Butz's views "brazen" and has begun to investigate corporate influence in agriculture Legislation. The Wisconsin Democrat says: "Corporate farming threatens an ultimate shift in power in rural America, a shift in control of the production of food and fiber away from the independent farmers, a shift of control of small town economies away from their citizens."

The Agribusiness Accountability Project a non-profit study group with headquarters in Washington, has been looking into corporate farming for more than a year and reports:

"Corporations generally have become the dominant force in rural America. Their concentration of agricultural markets and their power over rural people is increasing every day. Control of American agriculture has moved from the fields to the board rooms of New York, Kansas City, Los Angeles and other centers of big business."

Farmers themselves speak even more directly the problem. Summing up the position of one of the largest farmer associations, the National Farmers Organization, Rogers Blobaum of Creston, Ia, said:

"A corporate takeover of the food industry would be a national disaster."

Corporations everywhere deny any takeover is threatened.

"We're not trying to run anybody out of business," says George Kyd, a spokesman for Ralston Purina.

A MISLEADING PICTURE

At first glance, corporations do not seem to loom large on the agricultural scene. Of the 2.7 million farms left in the United States, only about 1 per cent are carried on the Agricultural Department's books as incorporated or owned by corporations. And most of the incorporators still insist they are "family farmers."

But that picture is misleading.

Corporate farms are big farms. Many consist of thousands of acres of the best land obtainable. Their owners often have backlogs of development capital and, if diversified, obtain numerous tax advantages.

On the other hand, the average American farm, the unincorporated farm, consists of only about 400 acres, some of them nonproductive. The man who owns this relatively small plot probably has no big capital backlog, often is deep in debt, and seldom receives any special tax breaks.

Eventually, he may have to sell out, flee to the already jammed city, surrender to those who have the capital to compete in a business where $6,000 deals have replaced $60 mules.

This surrender, in one form or another, takes place 2,000 times a week all across America. That is the average number of farm sales weekly, according to the Agriculture Department. Often, a well-heeled corporation names in to fill the void, or maybe a wealthy city doctor looking for a tax deal or maybe a neighboring farmer who has somehow found the means to expand and is on the brink of incorporation.

Actually, not all farming corporations own land. Some only lease and thus do not show up in farm statistics.

Other farming corporations neither own nor lease land. They simply contract for crops, an operating method that now accounts for about a fifth of the country's total agricultural output.

METHODS COMBINED

A few corporations use a combination of operating methods.

For instance, the Tenneco Oil Corporation owns and farms about 35,000 acres of Southern California's best crop land. It leases 100,000 acres more. And it contracts for the crops of dozens of other farms in the area.

The overall effect is to make Tenneco one of the dominant agriculture forces in one of the biggest farming areas of a state that provides more than a third of all vegetables eaten in the United States.

Tenneco has no monopoly on the vegetable market. But in some other agriculture sectors, corporations have achieved dominance or near dominance.

Three companies—Purex, United Brands and Bud Antle—produce a large share of the lettuce eaten in America, a situation that has led to a rare agricultural antitrust investigation by the Federal Trade Commission. Many Government officials contend that a corporation cannot grow lettuce any cheaper than a family farmer, a point farm economists have frequently made, not only about lettuce but also about most other crops.

Another sector of agriculture dominated by corporate America is the broiler industry. There, 20 or so corporations are in control, producing everything from chicks to feed to packaged drumsticks. Among these companies are Pillsbury, Perdue and Ralston Purina, with which Secretary Butz was associated.

CHANGE AFTER WORLD WAR II

Until shortly after World War II, many broilers were raised in the barnyards of family farms. Small flocks of chickens, though always underfoot, supplied added income, cash for birthday presents or a winter weekend in the city.

Today, there is virtually no market for barnyard chickens. Instead, the family farmer is usually growing broilers under contract for one of the big agrigiants.

In a shed built with a loan from a corporation, he feeds mash produced by the corporation to chicks hatched in the corporation's incubators. When the birds are mature, the corporation takes them away, slaughters them in its own processing plant, packages them prettily, then ships them off to a supermarket—perhaps its own.

The farmer is paid $50 or so for every 1,000 chickens raised. But in any year, if times are hard or management particularly tough, the corporation may cut the growing fee in half.

Should the farmer refuse to sign a new contract, fine—so long as he pays off his loan on the corporation-financed chicken house.

Only last week, chicken farmers on the Delmarva Peninsula—comprising parts of Delaware, Maryland and Virginia—threatened court action when some broiler corporations proposed cutting growing fees in half.

And two years ago, in northern Alabama, growers became so incensed about reduced growing payments that they refused to sign new contracts and began to picket the offices of broiler companies. The companies refused to negotiate, however, and eventually the strikers gave in and returned to work.

Commenting on the strike's failure, one grower, Crawford Smith of Cullman, said:

"Us folks in the chicken business are the only slaves left in this country."

George Kyd of Ralston Purina counters:

"Chicken is cheaper to eat today than it was after World War II, and besides, a lot of farmers have been given work."

THE LESSON IS THERE

To which Harrison Wellford, one of Ralph Nader's agriculture "raiders," replies:

"Poultry peonage. One economist cranked in every applicable factor and concluded that most chicken farmers make minus 36 cents an hour. The broiler industry is the most corporatized in American agriculture and the lesson is there."

Foes of corporate farming refer to the broiler industry as being "vertically integrated"—that is, the corporations control almost everything from field to table. Few other segments of agriculture are so thoroughly integrated. But the trend is in that direction.

Tenneco recently told stockholders:

"Tenneco's goal in agriculture is integration from seedling to supermarket."

In fact, the corporation has almost achieved its goal. Not only does it own land, but it also makes tractors, tractor fuel and pesticides. Furthermore, it packages farm products and sells them in little groceries attached to its service stations.

In the potato industry, some companies have achieved full integration. This became evident several years ago when Idaho farmers tried to get more money for their potatoes by withholding them from processors for several months.

The processors refused to give in. Instead, they dipped into storage houses filled with spuds they had quietly grown themselves or had quietly obtained through growing contracts.

Eventually, the growers surrendered. Their potatoes were beginning to rot.

In the hog and cattle industries, vertical integration remains limited. But corporate influence is being felt.

For instance, some concerns like Ralston Purina now rent gilts and boars to farmers, sell the farmers grain to feed the resulting pigs, then offer to market the pigs once they reach maturity.

In the cattle business, a few petroleum corporations have set up huge feed lots in the Southwest, some with 50,000 heads or more. As a result, old companies are steadily becoming an influential force in cattle feeding, encroaching on the family farmer, the man trying to pick up a little extra income by raising a dozen steers out in the barnyard where the chickens used to scratch.

Big food chains often buy directly from feed lots or set up their own feeding operations. Thus, they reduce the need for stockyards, the one place where the family farmer can always be sure of getting the best price for his cattle because the bidding there is always competitive.

Victor Ray, an official of the National Farmers Union, a large farmers association, contends that several years ago Denver supermarkets whipsawed steer prices down from 29 cents a pound to 21 cents a pound simply by repeatedly shifting purchases from feed lot to stockyards and back to feed lots. Mr. Ray says:

"When the chains weren't buying at the yards, prices naturally would drop. Of course, the chains denied any connection. But interestingly enough, all the while that wholesale meat prices were going down, retail meat prices stayed the same. I figure the people of Denver paid at least $4 million more for food during that period than they should have."

Here in Kansas City, there is a company that specializes in investing the excess capital of wealthy corporations or individuals into cattle and other agriculture operations. Called Oppenheimer Industries, it takes on no client with a net worth of less than $500.-000 or an income tax bracket of less than 50 per cent.

Its specialty is "cowboy arithmetic," tax savings for the rich through depreciation, favorable capital gains levies and other legal loopholes. One of its clients is Gov. Ronald Reagan of California, who paid no state taxes in 1970.

The president of Oppenheimer Industries, H. L. Oppenheimer, argues that the money he steers away from the United States Treasury and into farming actually helps keep the family farmer in business and does not contribute significantly to the corporate invasion of rural America.

Federal tax records indicate that at least three out of every four people with annual incomes of $100,000 or more are involved in farming in some way, most of them reporting agricultural losses that can be written off against taxes on nonfarm income.

If Federal tax laws seem to help the city corporation that farms on the side more than the family farmer who farms full-time, they are not the only ways in which Federal programs tend to work against the little man.

The biggest farms—the ones with the wealthiest owners—receive the biggest agriculture subsidies. The biggest farms also get the biggest dollops of Government-supplied irrigation water.

Recently, Congress placed some limits on subsidies. And the courts are beginning to crack down on the big water users, particularly those who do not live on the land they farm.

But still the gap widens between the rich and the poor.

"We lost the battle against Earl Butz but the struggle sure swung attention toward the farm issue. I've never seen Washington so upset over an agricultural thing. Maybe Earl Butz will turn out to be the best thing that ever happened to us."

AUDIE L. MURPHY MEMORIAL VETERANS HOSPITAL

Mr. TOWER. Mr. President, I am extremely pleased that the Senate Committee on Veterans' Affairs has acted with such dispatch concerning H.R. 11220, which is the same as S. 2694, introduced by me on October 15. The bill designates the Veterans' Administration hospital in San Antonio, Tex., as the Audie L. Murphy Memorial Veterans Hospital. The entire Texas delegation in the House of Representatives introduced H.R. 11220, indicating the strong bipartisan support which this measure has evoked.

I feel that the dedication of the San Antonio Veterans Hospital is a fitting and proper memorial to a great American and a great man. Audie Murphy was a fellow Texan. Lieutenant Murphy, according to the Defense Department, was the most decorated soldier of World War II. He received 24 medals from the American Government, three from the French, and one from the Belgian. Besides the Medal of Honor, his awards included the Distinguished Service Cross, the Legion of Merit, the Silver Star with oak leaf cluster, the Bronze Star, the Purple Heart with two oak leaf clusters, and the Croix de Guerre with palm. After being wounded three times, young Audie Murphy was brought home, to receive the admiration and affection of the American people which he had truly earned.

The United States suffered a great loss on May 28, 1971, when Audie Murphy was killed in the crash of a light plane near Roanoke, Va. The dedication of the San Antonio veterans hospital is an appropriate tribute to such a brave and courageous man who sincerely loved his country.

WELL DONE, JUDGE HUGH BOWNES

Mr. McINTYRE. Mr. President, the media carries continuing reports of leniency on the part of our courts towards those who are convicted of trafficking in hard drugs—heroin, morphine, opium, and others.

I have been devoting much of my time to combating drug abuse. We must cut off the sources of drugs in foreign nations. We must crack down on the production of speed-type drugs in our Nation.

And, we must make certain that our court system is able to move swiftly to bring to trial those who are alleged to deal in illegal drugs.

Finally, when the drug pushers are convicted in court I hope they will receive the kind of judgment that will keep them from going back on the streets in a hurry to begin pushing drugs once more.

A distinguished U.S. district court judge, Hon. Hugh Bownes, in Concord, N.H., has just meted out two concurrent 20-year prison terms to a man convicted in his court on two counts of selling heroin in bulk in Nashua, N.H. This same individual had been arrested 2 years ago in connection with the beating death of a young boy in Rhode Island and is wanted in the same on kidnap charges. He is "president" of one of the motorcycle gangs in New Hampshire.

The Manchester Union Leader in a front page editorial says:

Well done, Judge Bownes.

I join the Union Leader in praising my friend, Judge Bownes and, Mr. President, I ask unanimous consent that the editorial be printed in the RECORD.

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

WELL DONE, JUDGE BOWNES!

This paper on Wednesday, November 17, reported the fact that U.S. District Court Judge Hugh Bownes sentenced Donald J. Picard, 29, to two concurrent 20-year prison terms after he had been convicted on two counts of selling heroin in bulk quantities from his Nashua residence.

In passing sentence, Judge Bownes termed Picard, who is president of the Lowell Hell's Angels motorcycle gang, "a dangerous menace to society."

This newspaper congratulates Judge Bownes not only for handing out this stiff sentence to someone convicted of pushing heroin but also for the fact that bail was revoked and the defendant remanded to Federal custody.

According to the records, Picard was arrested July 24, 1970, in Nashua in connection with the beating death of Dennis Mulhearn, 17, of Bristol, Rhode Island. Picard also is wanted by Rhode Island on kidnap charges.

In contrast to Judge Bownes vigorous action, unfortunately a great many courts and judges have administered only a slap on the wrist to convicted criminals. This, of course, is not the way to discourage drug traffic. It can only be accomplished by having most severe penalties for selling drugs or using drugs.

Judge Bownes has set a good example. We hope other judges throughout the State and throughout the nation will observe and follow it.

A NEW LOW IN AMERICAN DIPLOMACY

Mr. HARRIS. Mr. President, a new low in American diplomacy was reached yesterday. A senior State Department official, who refused to be identified, called in reporters to declare India primarily responsible for the war with Pakistan and to threaten a reduction in aid to the Indian economy.

This action must rank as one of the shabbiest in our diplomatic relations. It is hypocritical in the extreme for our Government ever to issue such a statement. The only possible justification for it is to hide the total failure of the administration's own policy over the past several months.

For nearly a year, the Congress has pointed to the slaughter in East Pakistan, the contribution which American arms and aid were making to it, and the grave danger of a war between India and Pakistan. Administration officials, almost alone in the country, remained unconvinced.

Even the reality of hundreds of thousands dead and millions in flight did not persuade them. They claimed that by continuing aid to Pakistan the United States gained "leverage" with officials there. They urged others, despite the new high in human misery caused by the flow of refugees, to show patience so that their policy could bear fruit.

Now it has. We have not saved Pakistan. We have contributed to its death. We have not only offended India. We have driven that country, now to emerge as the unchallenged great power in South Asia, firmly into Soviet arms.

I doubt we have suffered such a diplomatic reversal since the fall of China. And what will compensate for this? The President's trip to a country which because of its system of government proclaims that it must remain our eternal enemy?

Let us be honest. Nothing can compensate for this defeat. President Nixon has met his Bay of Pigs.

And it was all so unnecessary. Months ago there was a wave of warnings from the press, the Congress and other governments. Months ago there was widespread agreement by numerous observers that the only way to bring Pakistan to its senses was for the rest of the world to halt economic and military aid to Pakistan, to stop what amounted to an international subsidy for the slaughter of innocent people in East Pakistan. But this administration would not listen and now we see the results.

I do not contend that in this crisis India has been blameless. No sovereign state ever is. And in my statement issued December 4 I noted that India may have exploited this crisis in order to weaken Pakistan. But because of our shameful neglect of India's plight caused by the refugee flow, we should be the last to condemn India. Or if we do condemn Indian aggression, then we must at the same time grapple honestly with the root cause of the war—the cruel suppression of the East Bengalis by a ruthless Pakistani army. This, I and nine other Senators attempted to do on December 6 when we introduced a resolution calling for Bangla Desh participation in the Security Council proceedings.

At this point I ask unanimous consent that an article by Anthony Lewis in the New York Times, December 6, be printed in the RECORD. Mr. Lewis rightly points out that American policy toward the Indian subcontinent is "as much a disaster by standards of hard-nosed commonsense as of compassion." For however difficult at times, India does "happen to be the largest nation in the world following our notions of political freedom."

I also request unanimous consent that the Washington Post editorial of December 6 be printed in the RECORD. It also calls for the adjustment in U.S. policy which I believe any objective observer must agree we now need.

Mr. President, I do not believe that Congress can remain a silent observer of this crisis. Something is drastically wrong with our foreign policy machinery when a mistake of this magnitude occurs in the face of repeated pleas from the Congress for a policy change. I, therefore, urge the Committee on Foreign Relations to open hearings on U.S. policy in South Asia at the earliest opportunity so that we may at last understand why this has all happened. We must make every effort to see that this never happens again.

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

THE WRINGING OF HANDS

(By Anthony Lewis)

LONDON, December 5.—Suppose that Britain, in the 1930's, had responded to Hitler's savagery by the early threat or use of military force instead of appeasement. If the Nixon Administration had been in power in Washington at the time, it would presumably have sent some official out to wring his hands in public and charge Britain with "major responsibility for the broader hostilities which have ensued."

So one must think after the American statement over the weekend blaming India for the hostilities with Pakistan. Few things said in the name of the United States lately have been quite so indecent. The anonymous state department official who made the comment matched Uriah Heep in sheer oleaginous cynicism about the facts of the situation and about our own moral position.

Consider first the immediate origins of this dispute. They are exceptionally clear as international relations go.

The military junta that rules Pakistan under President Yahya Khan held an election. The largest number of seats was won, democratically, by a Bengali party that favored effective self-government for East Pakistan. Yahya thereupon decided to wipe out the result of the election by force.

Last March West Pakistan troops flew into the East in large numbers and began a policy of slaughter. They murdered selected politicians, intellectuals and professionals, then indiscriminate masses. They burned villages. They held public castrations.

To compare Yahya Khan with Hitler is of course inexact. Yahya is not a man with a racist mission but a spokesman for zenophobic forces in West Pakistan. But in terms of results—in terms of human beings killed, brutalized or made refugees—Yahya's record compares quite favorably with Hitler's early years.

The West Pakistanis have killed several hundred thousand civilians in the East, and an estimated ten million have fled to India. The oppression has been specifically on lines of race or religion. The victims are Bengalis or Hindus, not Czechs or Poles or Jews, and perhaps therefore less meaningful to us in the West. But to the victims the crime is the same.

This record has been no secret to the world. Firsthand accounts of the horror inside East Pakistan were published months ago. The refugees were there in India to be photographed in all their pitiful misery.

But President Nixon and his foreign policy aides seemed to close their eyes to what everyone else could see. Month after month the President said not a word about the most appalling refugee situation of modern times. Private diplomacy was doubtless going on, but there was no visible sign of American pressure on Yahya Khan for the only step that could conceivably bring the refugees back—a political accommodation with the Bengalis.

Pakistan's argument was that it was all an internal affair. Yes, like the Nazi's treatment of German Jews. But even if one accepts as one must that Pakistan was bound to defend its territorial integrity, this issue had spilled beyond its borders. The refugee impact on India very soon made it clear that the peace of the whole subcontinent was threatened.

It was as if the entire population of New York City had suddenly been dumped on New Jersey to feed and clothe—only infinitely worse in terms of resources available. Yet when Indira Gandhi went to the capitals of the West for help in arranging a political solution in East Pakistan, she got nothing.

The Indians can be sanctimonious. Mrs. Gandhi acts for political reasons, not out of purity of heart. India has helped the Bangla Desh guerrillas and, in recent weeks, put provocative pressure on East Pakistan. All true. But given the extent of her interest and the intolerable pressure upon her, India has shown great restraint.

After all, India has not intervened in a civil conflict thousands of miles from her own borders. She has not destroyed one-third of a distant country's forests, or bombed that land to such a point of saturation that it is marked by ten million craters. The United States has done those things and is still doing them; it is in a poor position to read moral lectures to India.

American policy toward the Indian subcontinent is as much of a disaster by standards of hard-nosed common sense as of compassion. India may be annoying and difficult, but she does happen to be the largest nation in the world following our notions of political freedom. In position and population she is by far the most important country of Asia apart from China. To alienate India—worse yet, to act so as to undermine her political stability—is a policy that defies rational explanation.

AS THE INDIA-PAKISTAN WAR DEEPENS

As the terrible war betwen India and Pakistan deepens, the war aims of both countries broaden. India, from its initial desire to stuff the refugees back into East Pakistan, now seems intent on destroying Pakistan's hold on the East and seating there an autonomous or perhaps independent Bengal political authority. Delhi may also be using the crisis to rip off part or all of Pakistan-held Kashmir. And so for Pakistan, the stakes become not merely its hold in the East, but its integrity in the West. A total war between the two countries is in progress. Communal strife, involving the Moslem minority in India and the Hindu minority in Pakistan, may flare accordingly. Who can predict the eventual toll of dead, and the devastation that awaits the survivors on both sides?

A cease-fire, then, becomes not merely a bow to the diplomatic amenities, but an absolute essential for the welfare for the entire subcontinent. It is plain that India and Pakistan will not themselves conclude a cease-fire; one will have to be imposed on them, and mere appeals—no matter how urgently or unanimously pressed—will make no more difference than a whisper in a hurricane. The elemental national and ethnic forces loose in the subcontinent will not be subdued by rhetoric.

What is needed is not only a strong United Nations call for a cease-fire but a strong United Nations proposal to begin to set right the legitimate political grievances which ignited this phase of the India-Pakistan fire. So swiftly has the crisis expanded in recent days that no one can be sure even this will work, but surely nothing else will. By legitimate political grievances, of course, we mean the return of the refugees and the establishment of an East Pakistan political authority which reflects the aspirations of the people who live there. India's invasion of the West and its apparent designs on Pakistan-held Kashmir deserve no support anywhere; on the contrary, they must be condemned.

It is precisely by these minimal standards that the American approach over the weekend—not to mention before the weekend—has been so grievously wanting. The State Department condemned India and introduced at the Security Council a cease-fire resolution almost entirely favoring Pakistan. The fault was not merely that the United States was wrong on the merits, though we believe that to be the case. The real fault was that the resolution could not conceivably fill its ostensible purposes of relieving Pakistan. No resolution so unbalanced and one-sided had a prayer; a third grader could have predicted the Soviet Union would have protected India with its veto. Merits aside, the only kind of resolution that can pass and that can stand a chance of implementation is one that deals not only with the shooting but with the East Pakistani political situation.

The administration's astonishing and so far largely unsupported charges against India are one thing. The naivete of its approach in the Security Council is quite another. We urge the administration to adjust its policy so as to deal with real tragedy that exists in the subcontinent. Empty words no longer serve.

DEATH OF ED HUSSIE, VETERAN NEWSPAPER REPORTER

Mr. SCOTT. Mr. President, an outstanding newspaper reporter, Ed Hussie, of the Philadelphia Inquirer, has died

after a 2-year battle with cancer. He was a friend for many years. He was a devoted family man and the father of nine children.

For more than 30 years he was a reporter on Pennsylvania newspapers. For the last 20 years he was regarded as one of the Philadelphia area's top crime reporters. He was a reporter's reporter. Such a tribute was offered by his city editor when he said:

When it was a big story and there was little time, you called on Ed Hussie.

Mr. President, I ask unanimous consent to have printed in the RECORD the story in the Philadelphia Inquirer of December 6, 1971, reporting on the death of Ed Hussie, a great newspaper reporter.

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

[From the Philadelphia Inquirer, Dec. 6, 1971]

EDWARD HUSSIE DIES, INQUIRER REPORTER, 54

Edward J. Hussie, veteran reporter and rewriteman for The Inquirer, died Sunday at his home, 1611 Spring ave., Noble, Montgomery county. He was 54.

Mr. Hussie, a native Philadelphian, was regarded as one of the area's top crime reporters and he was involved in virtually every breaking story of importance in the Philadelphia area for the past 20 years. He died of cancer after a two-month illness.

STAR PITCHER

A graduate of Germantown High School, he was a star southpaw pitcher in local sandlot baseball leagues.

He began his career in 1940 with United Press and worked for the old Philadelphia Evening Ledger, the Seattle Post Intelligencer, the Uniontown (Pa.) Morning Herald and the Philadelphia Daily News before joining The Inquirer in 1954.

"He was one of that vanishing breed of great rewritemen, who could work with unbelievable speed and accuracy on a big story at deadline," Inquirer city editor Robert Greenberg said. "When it was a big story and little time, you called on Ed Hussie."

UNCANNY REPORTER

His colleagues knew him as an uncanny reporter on murder stories, frequently pinpointing the guilty person or persons long before they were arrested or charged.

Some of his more recent major stories were the Mrs. Mary Mamon murder trial in Doylestown for the slaying of a Levittown housewife, a series of articles with reporter Acel Moore on "Terror in the Streets," and coverage of the slaying of Mrs. Laura Carpi, Princeton, N.J., socialite whose body was found in New York's East River last June 8.

His coverage of the Mamon trial in Doylestown was typical, admired by his editors and his competing reporters. Mr. Hussie covered the trial and wrote it, dictating his story to The Inquirer by telephone.

He had an advantage over his colleagues, however, because he had covered for The Evening Ledger, Mrs. Mamon's murder trial more than two decades earlier for the fatal beating of a West Oak lane child.

M'CLOSKEY SHOCKED

Last fall, Mr. Hussie wrote for The Inquirer's Today Magazine an article on Philadelphia builder Matthew McCloskey, which readers said made the prominent millionaire seemed like a next-door neighbor.

Reached at his Palm Beach, Fla., home, McCloskey was shocked to learn of Mr. Hussie's death, recalling the reporter had spent last Christmas Eve with McCloskey's family as part of his research on the biography.

"He was really a great reporter, a fine writer, and a wonderful man," McCloskey recalled. "First of all, he was able to get your confidence. You'd believe when he wrote it down that it would be exactly the way you told it.

"He was a great fellow. He was honest and he could write. In public life, he had a great place."

NINE CHILDREN

Hussie is survived by his wife, the former Anne Wall; four sons, Edward, Peter, Andrew and Terrance; five daughters, Mrs. Deanie Guggino, Christine, Barbara, Marian and Judy; his mother, Mrs. Mary Hussie, of Washington, D.C.; two brothers, William and Owen; three sisters, Mrs. Mary Tomkins, Barbara and Grace, and two grandchildren.

The viewing will be Wednesday evening at the Campbell Funeral Home, 500 E. Benner st. A Mass of the Resurrection will be at 10 A.M. Thursday at the Church of the Immaculate Conception, Jenkintown, Pa.

Burial will be at Holy Sepulchre Cemetery.

AGAINST CRANSTON AMENDMENT

Mrs. SMITH. Mr. President, the December 2, 1971, editorial of WGAN–AM–FM–TV was most admirable. My only disappointment in it is the failure to note that I was present and voted against the Cranston amendment to exempt the news media from the wage-price guidelines being enacted for all Americans.

I wish that the editorial had been timed for delivery before the vote on the Cranston amendment instead of subsequent to the vote. In contrast, Mr. Malcolm Forbes, president and editor in chief of Forbes magazine, provided much better timing in his telegram of November 19, 1971, that preceded the vote by 11 days and which letter I placed in the RECORD on November 22, 1971, and characterized as "most refreshing and unusual." He gave me courage to vote the way I did.

I ask unanimous consent to place the WGAN–AM–FM–TV editorial in the RECORD.

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

SENATE VOTE TO EXEMPT NEWS MEDIA FROM WAGE-PRICE GUIDELINES

We were astonished at yesterday's Senate vote to exempt the news media from the wage-price guidelines being enacted for all Americans.

As broadcasters, we don't want such an exemption.

If we were purely selfish, of course, we'd be pleased to be able to raise our prices and make bigger profits than any other industry. And, we'd be pleased to think we could get bigger raises than anyone else, because of increased prices.

But, that's an attitude we find distasteful. We don't think we're better than anyone else. Also, we suspect, favored treatment from government carries as great a threat to Freedom of the Press as does government interference. Further, we believe in sharing in the responsibility of all Americans to win the fight against inflation.

Therefore, we hope the House will reject the Senate amendment.

Beyond that, we pledge that even if Congress should vote to exempt the news media from Phase Two Guidelines . . . the Guy Gannett Broadcasting Stations in Portland, Maine, and Springfield, Massachusetts, will comply with them voluntarily in 1972.

ASSESSMENT OF FUTURE OF REPUBLICAN PARTY

Mr. HATFIELD. Mr. President, the Senate has wisely devoted a great amount of time and effort this year to reforming the political campaign process in this country. Action by the Congress was clearly overdue, but legislation, unaccompanied by the active concern of most Americans, cannot guarantee that either of our two great parties will be truly responsive, responsible, or representative of the best interests of the American people.

Last Saturday evening, the senior Senator from Maryland (Mr. MATHIAS) addressed the annual dinner of the national Ripon Society, held at the Radisson Center, in Minneapolis, Minn. The Senator appraised the state of our party, suggested a number of steps to help our party and our country, and urged responsible Americans to get more involved with the political process.

I think the Senator's remarks merit the attention not only of Republicans, but also of all Americans interested in improving our political system.

I therefore ask unanimous consent that the Senator's remarks be printed in the RECORD.

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

REMARKS OF SENATOR CHARLES MCC. MATHIAS, JR. (R–MD.) PREPARED FOR DELIVERY TO THE RIPON SOCIETY'S NATIONAL DINNER, RADISSON CENTER, MINNEAPOLIS, MINN., TOPIC: "THE DIMINISHING REPUBLICAN MINORITY"

I have come to Minneapolis to ask your help—for the Ripon Society, for our Party, and for our country. As we reaffirm the spirit of our Party's founders, we also assert our conviction that the national government which under their leadership overcame the crises of slavery, westward expansion, and industrialism can under like leadership surmount our current difficulties. And so we meet tonight to commit ourselves as strongly as did our forefathers to building a progressive Republican Party that has the capacity for leadership and the will to lead.

As we meet, the forces shaping national affairs are in an even, but uneasy balance. The left and the right tug at each other within the Congress and the Administration. And soon we will plunge into a national election which seems destined, unnecessarily, to polarize Americans even more.

Much of the nation's future will depend—not simply on who wins the election next year—but on how the issues of that election are defined. I sincerely believe that Americans can in the next twelve months reorder international and national affairs so as to assure both peace and prosperity for at least a decade. But I think our country will capitalize on this opportunity only if responsible, responsive and representative Americans seize the leadership in defining the issues that face us now. As holders of the balance of power between the left and the right, Republican progressives have the unique opportunity to clarify public debate, unite our country and move her forward.

The past year has been one of both promise and frustration for progressive Republicans. On the one hand, we have seen the President pull together into a coherent package—which he terms the New American Revolution—a number of programs pioneered by Ripon:

Family Assistance: A plan which would

provide both the incentive and the means for impoverished Americans to achieve real independence, and would lift some of the enormous financial strain placed upon our state and local governments.

Revenue Sharing: Over the past decade, there has been a revitalization of state and local governments—principally under Republican Governors and mayors like Nelson Rockefeller, George Romney, William Scranton, Linwood Holton, William Milliken, Richard Lugar, and John Lindsay—whose Party left him before he left the Party.

But the responsiveness of these state and local governments continues to be inhibited by an inadequate and regressive tax system. Revenue sharing offers the first real hope for achieving the effective and creative local governments that were the dream of the Founding Fathers of our country and our Party.

Executive Reorganization: As Congressman Frenzel has undoubtedly learned this year in Congress, a very large amount of our time is spent helping Mayors, Governors, and private citizens find their way through the maze of the Washington bureaucracy. The Executive Reorganization plan proposed by President Nixon would simplify and rationalize that bureaucracy—making it serve our citizens more effectively at less cost.

The Volunteer Army: A century after the enactment of the Thirteenth Amendment, we still require involuntary servitude from over 400,000 men each year. Euphemistically we term this system "selective service," and we tell ourselves that it is necessary to our national security—despite the fact that the morale of our fighting men is at an all-time low, and that 70% of our soldiers quit the military within 18 months after finishing their training. Study after study has supported the President's call for a more capable, less expensive military force of volunteers.

Just as we have cheered these and other proposals of the President for a New American Revolution at home, so too have we applauded the President for his initiatives abroad—toward China and Russia, in the Middle East, at the SALT talks, and in Southeast Asia. These delicate maneuvers offer real hope for a more peaceful, secure and just world order.

Taken together, the domestic and international initiatives of the New American Revolution respond not only to their separate problems, but also to the imperative need to restore confidence in our government.

Yet I know that many of you still feel frustrated and uneasy. For the great promises of this past year remain unfulfilled. While the sores in America remain unhealed, our remedies languish in Congress, while Dr. Kissinger is welcomed in Peking, B–52's drop a record number of American bombs in Southeast Asia; while SALT resumes over chocolate and pastries in Vienna, MIRV's and ABM's are deployed in North Dakota; while the President speaks of a New American Revolution, poll after poll shows that the voters identify our Party with the vested interests which seem to profit from war, pollution, discrimination, and income mal-distribution.

And so we ask, where have we failed? What must we Republicans do in the coming year to fulfill for all Americans the great promise of the past year?

I suggest that there are two major steps which we Republicans must take:

First, we must convince the White House to adopt a political strategy as forward-looking as its most important substantive programs. Second, Republicans who are as responsive and as responsible as yourselves must develop far greater clout at the grassroots level.

I want to elaborate on both of these points.

It is a fact which seems to have gone largely unrecognized by the White House that positive Republicans constitute the only major political force in the country which is both willing and able to support Richard Nixon on *all* these programs in the coming election year.

Look, for example, at the response to the President's initiatives toward China or his Family Assistance Program.

Our friends on the right don't support the President. William Buckley, Young Americans For Freedom, the American Conservative Union, have all denounced these key initiatives and publicly oppose President Nixon.

Our friends in the other Party either refuse to discuss these initiatives—hoping the voters will forget them—or else they wage a war of attrition against them.

So the Republicans represented here are the unique center that will consistently go to bat for the President on these parts of his New American Revolution. If we want national action on these programs, we must persuade both the President and the Democratic contenders to confront the problems which they address. Yet some White House staffmen have pursued a political strategy which betray substantive Nixon political supporters and may destine the Republican Party to a permanent minority status.

This strategy—evidenced by the divisive exploitation of the so-called social issue, and by the use of hard-line rhetoric on crime, civil rights, civil liberties, and student unrest, was discredited in the election returns of 1970. We cannot rally a responsible political majority behind the New American Revolution by appealing only the fears and insecurities of a group which is all-white and prematurely aged.

In Washington today, there are many Republicans who confidently proclaim that our Party is strong and growing stronger. Their optimism is buoyed by polls showing that President Nixon would defeat all rivals if an election were held today, by a Party treasury bulging in anticipation of the coming campaign, and by the obvious disarray of the other party.

I would warn Republicans to guard against over-confidence based on these facts. While the President leads all rivals, he still receives the support of only 43% of the electorate—the same percentage he received in 1968. A Gallup Poll found recently that only 25% of Americans identified themselves as Republicans. This is a smaller percentage than at any time in the past decade.

Four years ago 72% of the blacks in this country thought they could count on the Federal Government to help them a great deal. After three years of Republican Administration, only three percent feel that way.

The percentage of new young voters who register Republican is so low that many Republican organizations are afraid to mount new registration drives.

Today Republicans control fewer Governorships, state legislatures and mayoral offices than they did before the 1968 election. And we still hold only a minority of the seats in both Houses of Congress.

In a recent *Fortune* article entitled "That Elusive Political Majority," political analyst James Reichley concludes that "progressive Republicans" are more likely to "serve as the instrument for a new age" than any other group in the country. Among the many reasons Reichley offered for this conclusion was this:

Since the progressive Republicans do not share the legacy of past Democratic administrations, they have the important advantage of being free from the precedents as well as the guilts of recent decades.

They emphasize social reconciliation rather than class struggle. Most crucially, the progressive Republicans . . . are committed to a policy of harmonious collaboration in the public interest between government and business. They thus not only avoid politically exhausting strife with business, but actually can draw on business support and expertise.

Yet our Party's support among professionals and businessmen has steadily declined over the past thirty years. In 1940, 49% were Republicans while only 29% were Democrats. Today, more businessmen and professionals are Democrats or independents than Republicans.

In the next three weeks, the President will decide the substance and tone of his legislative strategy for 1972 and thereby his campaign strategy for reelection. The state of our party and the mood of the nation dictate that the President take these seven basic steps:

(1) to place his highest priority on working cooperatively and forcefully for Congressional action on his New American Revolution, recognizing that our Constitution enables each coordinate branch of government if it so desires to paralyze the system and that only the lubricant of good will and positive leadership can avoid hopeless stalemate;

(2) to replace the unsuccessful strategy of the 1970 campaign with a positive strategy emphasizing unity, equity, peace and prosperity;

(3) to appoint only men and women of unquestioned excellence who embody this positive appeal to key campaign and government positions;

(4) to stake out his position on the high road for the campaign—so he can run as President of all Americans;

(5) to lead efforts to reform the internal allocation of delegates among the states, the selection of delegates within each state, the procedures at the Convention. If the GOP is going to attract new members, it must be able to promise complete participation in Party government;

(6) to demonstrate an unequivocal commitment to the spirit of the Bill of Rights and the Fourteenth Amendment;

(7) to end the tragic war in Southeast Asia. As Senator Mark Hatfield wrote in the *Forum*, referring to leaders of both Parties: "I have seen more of a commitment to ending the war as a political issue in America than to actually ending the war in Indochina." A scheme by which American casualties are reduced but American bombings and civilian casualties are increased is neither politically or morally acceptable.

These are some measures which are necessary and proper for the White House to adopt.

But let me warn you tonight, you cannot sit on your hands and wait for the Republican leaders in Washington to remake the Party in your image.

Senator Barry Goldwater understood that when he told the Republican Convention in 1960:

This country is too important for anyone's feelings. This country in its majesty is too great for any man, be he conservative or liberal, to stay home and not work just because he doesn't agree. Let's grow up, Conservatives. If we want to lead this Party, let's go to work. I am a Conservative and I am going to devote all my time from now until November to electing Republicans from the top of the ticket to the bottom of the ticket, and I call upon you to do the same.

There are a number of Republicans today who suspect that the Ripon Society and all its fellow travelers are anti-Nixon almost by reflex. And, to an unfortunate extent, it would appear they are sometimes right. If you want a greater voice in the Republican Party, you must make it perfectly clear that there are no nattering nabors of negativism amongst your ranks. You must give the same commitment to Republican politics as you have given to issue development in the past. You must school yourselves in practical party politics and in so doing reach out to all groups within the Party as well as to those groups currently alienated from the politics of the status quo.

There are plenty of campaigns around the country in which you can hold a responsible position and get practical experience—whether it be with an incumbent like Mark Hatfield, Ed Brooke or Chuck Percy, or with a prospective Senator like Bob Smylie in Idaho, David Cargo or Pete Domenici in New Mexico, John Chafee in Rhode Island, or Tom Reardon in South Dakota, or with an outstanding Congressmen such as Bill Frenzel or candidates such as John Price in New York. Find a candidate and work for him or her. Or, in the words of the first Ripon book—if you cannot find one, be one. Go to the Convention as delegates or alternates. Become ward and state committeemen and committeewomen. Run for the city council, the state legislature, and the Congress.

One hundred and seventeen years ago a small band of men, fearful for their country's future, frustrated by political fragmentation, and fired by the conviction that principled politics was essential to solving national problems, came together in a small white schoolhouse in Ripon, Wisconsin, to form a political party that could build a progressive America.

The times were not auspicious for their undertaking. Amidst growing division and strife, almost a score of political parties had sprung up in the previous 16 years, only to wither away. At the time Free-Soilers, Know-Nothings, Barnburners, Radical Whigs, Abolitionists, Conservative Whigs, Anti-Nebraskans, Union Democrats and Normal Democrats were all competing for public attention. It took the founders of our party two years to agree on the name "Republican." In some states the new party participated in its first election with no name at all. When the founders of the party first approached an obscure, small town lawyer named Abraham Lincoln and asked him to lead the Illinois party, he flatly refused, predicting that the country's future lay with the Whigs.

But the men persevered. Lincoln reconsidered, and they forged a political coalition that forced the country to face up to its most fundamental problems, that led the union through the bloodiest war in its history into a new era of peace, and that dominated national politics for the next three quarters of a century.

Today, our Party and our country need the faith and spirit of those men in Ripon. To rekindle the Ripon-Lincoln tradition is your mission. It is a very large and difficult undertaking, but a challenge worthy of great men and women. I know you have the ability to meet that challenge, if you have the will.

As James Reichley wrote,

The progressives have little chance of leading the Republican party, let alone the country, before 1976—if then. A few more years of maturing experience, however, will give the younger generation of progressive Republicans time to develop their program. Just possibly, some future Lincoln sits in a governor's chair, in the back rows of Congress, or at some lesser post. If so, the shape of the next national majority probably depends, as much as on anything else, on the thoughts and dreams now passing through his head.

That is your opportunity and your responsibility.

CHILD DEVELOPMENT

Mr. MONDALE. Mr. President, on Thursday, December 2, 1971, by a vote of 63 to 17, the Senate agreed to the conference report on S. 2007, a bill to extend the Economic Opportunity Act, and for other purposes.

During the debate on that measure, under which a time limitation granted 3 hours to those opposing the conference report, and only 15 minutes to those supporting it, a number of misleading statements were made concerning the comprehensive child development provisions.

I have reviewed the record of the full debate with the distinguished Senator from Wisconsin (Mr. NELSON), chairman of the Subcommittee on Employment, Manpower, and Poverty from which this measure arose. In order to correct any misunderstanding about the purpose of this child development program, we would like to answer four of the concerns expressed about it.

First, and of greatest importance, are the allegations that this child development program represents child control. It was charged, during the debate, for example, that the program would concentrate on the inculcation of collectivist attitudes on helpless children; that it is somehow based on the notion that the parent is a failed experiment; that it is totally alien to traditional American values.

Charges and implications of this kind could not be further from the truth. Neither we, nor any of the other 30 Senators and over 100 Congressmen who introduced this legislation, would support a measure of that nature.

The simple truth is that this program is totally voluntary, is designed to strengthen the family, and vests the major responsibility for the operation and control of child development efforts in the parents of the children these programs serve.

This measure specifically requires that programs or services under this title shall be provided only for children whose parents or legal guardians have requested them.

It expressly states that—

Nothing in this title shall be construed or applied in such a manner as to infringe upon or usurp the moral and legal rights and responsibilities of parents or guardians with respect to the moral, mental, emotional or physical development of their children.

And it deliberately requires that parents of children served by child development programs will compose at least one-half of the membership of both the governing boards created to administer these programs. These parent governed boards—the Child Development Councils and the Project Policy Committees—will decide which programs to fund, and approve the content, curriculum, and policy of each individual project.

Finally, to the extent consistent with the capacity of local governments, these programs will be administered locally—like the public school system—to assure that they operate as close as possible to the parents and the people concerned.

Rather than establishing Federal or State control of children, as some opponents contend, this measure returns tax dollars to localities and States to help them develop and strengthen day care programs in community centers, schools, churches, and Headstart programs.

We believe these provisions are absolutely consistent with the traditional American value on parental responsibility. The emphasis we placed in the bill on parental decisionmaking and parent governed councils reflects our belief in the strength and wisdom of parents and families—not, as some have charged, on any "notion that the parent is a failed experiment."

Second, a number of our opponents criticized the delivery system in the bill, and argued that there was not a sufficient role for the States. We disagree.

This bill unquestionably puts a priority on local administration—wherever a locality is, in the determination of the Secretary of Health, Education, and Welfare, capable of providing high quality, comprehensive services. We placed this priority on local administration precisely in order to assure that these programs will be accessible and responsible to the concerns of parents, and will avoid the danger of remote governmental control.

Yet within this framework the measure provides a significant role for the States:

Every local application must be submitted to the Governor for review and comment.

Five percent of the funds are reserved for States for technical assistance, coordination, and review of these local applications.

And States, as well as other public and private nonprofit agencies, may serve as prime sponsors where localities do not apply, or where the HEW Secretary finds that a locality is incapable of providing comprehensive services.

Moreover, States can administer programs for migrant children, programs in areas where a city or county is not adequately meeting the needs of preschool children, or programs under the Secretary's additional 5-percent reservation for model programs.

These roles, and the Secretary's responsibility to determine whether localities are capable of administering programs are spelled out in the bill, and clarified by a colloquy between Senator NELSON and Senator JAVITS during the debate on the conference report. See CONGRESSIONAL RECORD of December 2, 1971, pages 44117–44119.

As Wilbur J. Cohen, dean of the University of Michigan School of Education and former Secretary of Health, Education, and Welfare, said in a recent telegram to us supporting the child development program in the conference report:

In my opinion, and from my past experience, I believe that the various provisions of Sections 512(2)(0), 513(9), 517(3)(4), 534, 535, 572 would enable the Secretary of HEW and the Governors of the various States to establish appropriate State coordinating arrangements to assure effective statewide planning and review of local projects.

Reasonable men may disagree with the initial priority this measure places on local administration which we believe is essential to assure maximum parental involvement and responsbility. But no reasonable man who has read this legislation carefully can deny that the Secretary of Health, Education, and Welfare, has substantial discretion with respect to which prime sponsorship applications are approved, or that States have a significant role in the planning and operation of these programs.

Third, the suggestion was made that this measure had not received sufficient consideration by the Congress and the

public. The facts just do not support that conclusion.

President Nixon, in February 1969, brought public attention to this issue when he called for "a national commitment to providing all American children an opportunity for healthful and stimulating development during the first 5 years of life."

And since 1969, when the original bills were introduced, over 200 witnesses have been heard by the Senate and House committees considering this legislation. The Labor and Public Welfare Committee in the Senate held 12 days of hearings, and numerous executive sessions on this legislation; the House Education and Labor Committee held 20 days of hearings and several executive sessions.

Moreover, this issue has been the subject of numerous public discussions, conventions, conferences, and studies. The 1970 White House Conference on Children considered this issue, and the delegates to that conference voted as their top national priority the provision of "comprehensive family-oriented child development programs including health services, day care and early childhood education." The Joint Commission of the Mental Health of Children recommended a proposal of the nature as one of its top priorities for children.

And Project Headstart, which has now been in operation for over 5 years, and on which this measure seeks to build, has given the Congress, the executive branch and the public ample opportunity to review and assess child development efforts.

To question or disagree with elements in this measure or with purpose of the entire measure itself is clearly legitimate and indeed helpful to those of us who want to improve it; but to imply that this measure has not received careful and lengthy consideration by the Congress is just plain wrong.

Finally, the suggestion was made that child development and education experts are uncertain about whether a program of this kind should be undertaken. Yet the facts reveal that the professional organizations experienced in the education, health, and welfare of children are nearly unanimous in the opinion that this measure represents one of the soundest investments our country can make.

In addition to the White House Conference on Children, and the Joint Commission on the Mental Health of Children, the following organizations especially experienced in and concerned with the needs of children have urged the adoption of this conference report:

American Academy of Pediatrics.
Black Child Development Institute.
Child Welfare League of America.
Children's Lobby.
Council for Exceptional Children.
Day Care and Child Development Council of America.
National Association for the Education of Young Children.
National Education Association.

The entire list of national organizations representing parents and citizens concerned about children that are supporting this measure—many of whom were involved in the drafting and refinement of the legislation—includes:

AFL–CIO.
Amalgamated Clothing Workers.
American Bar Association.
Americans for Democratic Action.
Americans for Indian Opportunity Action Council.
American Public Welfare Association.
Committee for Community Affairs.
Common Cause.
Friends Committee for National Legislation.
International Ladies Garment Workers Union.
Interstate Research Association.
Leadership Conference on Civil Rights.
League of Women Voters.
NAACP.
National Association for Catholic Women.
National Association of Social Workers.
National Board of YWCA.
National Conference of Catholic Charities.
National Conference of Christians and Jews.
National Council of Churches.
National Council on Hunger and Malnutrition.
National Council of Jewish Women.
National Council of Negro Women.
National League of Cities—U.S. Conference of Mayors.
National Organization of Women.
National Welfare Rights Organization.
Southern Christian Leadership Conference.
United Auto Workers.
United Methodist Church.
Urban League.
U.S. Catholic Conference.
United Steel Workers of America.
Washington Research Project Action Council.

Mr. President, we are heartened and encouraged by the bipartisan and overwhelming Senate vote to agree to the conference report, and are hopeful that the House of Representatives will take a similar position in support of this program when it votes on the conference report tomorrow.

THE JOSEPH MacDONALD FAMILY HELPS VIETNAM ORPHANS

Mr. McINTYRE. Mr. President, when the American people are asked to help, they do. In a recent newsletter to my New Hampshire constituents, I printed a letter from Father Morris F. Wells, chaplain for the 196th Infantry Brigade in Vietnam. Father Wells, whose parents live in Hampton, N.H., asked me a special favor. He said:

During my tour here, I have become involved with a Catholic orphanage, Phuoc Tien Orphanage, in a small hamlet of the same name, located near Da Nang. There are 190 children with six Vietnamese Sisters taking care of them. One of our battalions, 4/31st Infantry, has unofficially "adopted" the orphanage and the men are doing everything they can to make life a little more pleasant for these children. The children need everything, and anything, but especially summer clothes, toys (there isn't a ball or a doll in the entire orphanage) and food (especially baby food). My request is that perhaps you could put in a "plug" for help in one of your newsletters to your constituents. They could send any used clothing, toys, food, etc., to me and I would be happy to hand carry them to the orphanage. I am hoping that it will be possible to extend the arm of friendship from the USA to this unknown orphanage in Vietnam. God bless you.

The response from New Hampshirites has been overwhelming.

The Joseph MacDonald family of 360 Winnacunnet Road in Hampton, N.H., responded to Father Wells' request with so much enthusiasm and generosity when they mailed a package on November 15.

With all the talk about people being afraid to get involved and unwilling to give their time to help others, it certainly has been heartwarming to me to see this kind of response from people in New Hampshire. I am proud to serve them in the U.S. Senate.

SUBVERSIVE ACTIVITIES CONTROL BOARD

Mr. ERVIN. Mr. President, I ask unanimous consent to have printed in the body of the RECORD the following articles and editorials relating to the Subversive Activities Control Board:

First. An editorial by Carl T. Rowan entitled "Do-Nothing SACB Should Keep on Doing Just That," which appeared in the Washington Star of July 25, 1971.

Second. An editorial entitled "The Sense of the Senate on Subversion," which appeared in the Washington Post of August 10, 1971.

Third. An article by Henry Raymont entitled "Publishers Warned of Threats to United States Freedoms," which appeared in the New York Times of September 23, 1971.

Fourth. An editorial entitled "Faith in One Another," which appeared in the Washington Post of October 3, 1971.

Fifth. An article entitled "Plan Drawn To Fire U.S. 'Subversives,'" which appeared in the Evening Star of October 29, 1971.

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

[From the Washington Star, July 25, 1971]

DO-NOTHING SACB SHOULD KEEP ON DOING JUST THAT

(By Carl T. Rowan)

It seems such a shame to have the United States Congress tied up for days in argument about a do-nothing relic of the postwar witch-hunts called "The Subversive Activities Control Board."

Unfortunately, such action by Congress is necessary if we are to prevent the use of the SACB to impose another spell of McCarthyism and ease the country a little further into police statism.

As things stand, the SACB is no big threat to the people's liberties. The courts long ago clipped the boards' wings to the extent that it is just a $450,000-a-year boondoggling sop to those conservatives who still see Communists under every bed.

The board now rarely meets, and, according to testimony by its chairman, interviewed only three people last year. So it is hardly the great protector of the nation's security.

But the SACB has been of convenience to presidents. When Lyndon B. Johnson wanted to favor one of his secretaries, he named her groom to a seat on this board.

When Richard Nixon wanted to curry favor with the right-wingers, he named one of their favorites, Otto F. Otepka, to a $36,000-a-year seat on the board. The Senate has yet to confirm Otepka, who is a sort of Daniel Ellsberg in reverse. Whereas Ellsberg leaked the "Pentagon papers" out of liberal, anti-war convictions, Otepka was fired by the

State Department for leaking secret documents to senators known to share his right-wing sentiments.

With liberals (and conservative Democrats like Sen. Allen J. Ellender of Louisiana) complaining about spending half a million dollars a year for such a moribund outfit, President Nixon decided to give the SACB at least the appearance of doing something.

On July 2 he issued a little-noticed executive order that would empower the SACB to "determine whether any organization is totalitarian, fascist, Communist, subversive, or whether it has adopted a policy of unlawfully advocating the commission of acts of force or violence to deny others their rights under the Constitution or laws of the United States or of any state or which seeks to overthrow the government of the United States or any state or subdivision thereof by unlawful means."

Thanks to that ever-surprising civil libertarian, Sam J. Ervin Jr., D.-N.C., the Senate has voted that SACB may use nary a dollar of its $450,000 appropriation to carry out the broad duties that Mr. Nixon wants to give it.

Ervin and others in Congress know that SACB's proposed new role would carry us back into that ugly era of punishment by smear and guilt by association.

When scores of groups are screaming for peace, who are these five members of SACB to decide that one organization is true-blue American and another subversive?

Who are they to decide which civil rights group is "too militant" and is to be labeled "totalitarian, fascist, Communist, or subversive"?

What worthwhile purpose does it serve in a free society for the attorney general or SACB to draw up a list telling me that the Ku Klux Klan or the Black Panthers are "subversive"? Let their deeds speak. If anyone in either group violates the law, let him be indicted, tried fairly, and if convicted, punished according to the law. This business of punishment by government blacklisting has no place in this society.

With a shift of four votes the Senate would have cut off funds and abolished SACB completely.

But if the board must continue, let it doze in do-nothing splendor the way it has for years. In which case I promise not to ridicule the SACB ever again, having learned the painful way that it is wise to let sleeping ogres lie.

[From the Washington Post, Aug. 10, 1971]

THE SENSE OF THE SENATE ON SUBVERSION

Sen. Sam Ervin has apparently just begun to fight against the President's order exalting and aggrandizing the Subversive Activities Control Board. The senator served notice on Friday, just before the Senate went off for its vacation, that he means to raise the issue again as soon as it returns. He introduced a bill which would forbid federal employees to engage in the new activities propounded for the SACB by the President. And, in addition, he has proposed a resolution expressing the sense of the Senate that Mr. Nixon's executive order is "an attempt to usurp the legislative powers conferred on Congress by the Constitution" and "an infringement of the First Amendment rights of all Americans."

This is strong language. In our judgment, it is precisely right on both counts. Congress created the SACB to do one thing. President Nixon, without any enabling or authorizing legislation from Congress, has now directed it to do something entirely different. It is as though the Civil Aeronautics Board, established by law to discharge certain specified functions in regard to aviation were suddenly told by an executive order to go far beyond those functions and regulate the railroads. The President has supervisory authority over all executive agencies, of course, and a responsibility to see to it that the laws enacted by Congress are faithfully executed. But the President has no lawmaking powers whatever. Lawmaking is exclusively the province of the legislative branch of the government.

Senator Ervin seems to us to be quite right not only in his view that the President has breached the constitutional separation of powers but also in his view that the President has done so in a way that seriously jeopardizes the freedom of expression and the freedom of association guaranteed by the First Amendment. Under Mr. Nixon's executive order, the SACB would be empowered to tell the American people which groups and organizations were officially approved for membership and which were deemed unsuitable by the federal authorities. The SACB would be empowered, in short, to tell you that it is all right for you to join some committees, but not others.

Committees and associations to espouse this and oppose that, to pressure the government in one direction or another, are the dynamos of democracy. They are the chosen instruments for self-government in America. It is dismaying that President Nixon should be so indifferent to the restraints which his order would impose on political action and expression in this country. The idea of an American Republic was conceived in committees of correspondence which flourished among the English colonists in this new world—and which would have been condemned as subversive by any Subversive Activities Control Board appointed by King George III.

The President got funds for his new-fangled SACB by a clever legislative maneuver. His executive order was issued after the House had passed a major appropriation bill in which the controversial agency played no more than a trivial role. The Senate approved an amendment forbidding use of any part of the appropriated funds to carry out the executive order. That amendment was eliminated in conference; and the appropriation passed in its deleted form because Congress wanted to get out of town and knew the departments and agencies had to have money to carry on their work.

Sam Ervin is now offering Congress a clear chance to express its convictions and to deal with the SACB on its demerits. Congress' own honor and authority are at stake. And so is an essential freedom of the American people.

[From the New York Times, Sept. 23, 1971]

PUBLISHERS WARNED OF THREATS TO U.S. FREEDOMS

(By Henry Raymont)

The Association of American Publishers held its fall meeting yesterday amid warnings that Government censorship and radical pressure groups are increasingly threatening the nation's First Amendment freedoms.

A report by the association's Freedom to Read Committee likened the situation to the McCarthy era of the early nineteen-fifties, "when attacks on intellectual freedom by the Government and various pressure groups were at their peak."

Senator Sam J. Ervin Jr., chairman of the Senate Subcommittee on Constitutional Rights, in a speech delivered to the closing dinner at the end of the day-long meeting at the Biltmore Hotel, said:

"If America is to be free, her Government must permit her people to think their own thoughts and determine their own associations without official instruction or intimidation."

MORALISTS ASSAILED

At a luncheon session the association heard Homer D. Babbridge Jr., president of the University of Connecticut, assail what he called "a virulent new version" of American moralists, who he said were interfering with free cultural exchanges among nations.

He cited the Jewish Defense League's disruption of concerts by Soviet artists, groups on campuses who thwarted speakers from Greece and Portugal and critics who urged a pullout from Olympic competitions in South Africa because of the country's racial policies.

Senator Ervin's speech was the high point of a day in which more than 300 chief executives from literary and educational publishing houses and university presses discussed such diverse subjects as international copyright problems, dwindling funds for libraries and Government pressures against the publication of controversial materials.

In an extensive analysis of the First Amendment, Senator Ervin, a North Carolina Democrat, developed arguments he has been using against the Nixon Administration on such issues as the use of lie detectors on Federal employes, Army surveillance of private citizens and President Nixon's Executive order expanding the mandate of the Subversive Activities Control Board.

CONCERN IS EXPRESSED

The Senator's speech reflected a concern that leading members of the publishing community have frequently expressed and that was often a factor in yesterday's panel meetings and general discussions—namely, that Government attempts to interfere with such publishing ventures as the Pentagon study of the Vietnam war or the dissemination of radical books in libraries represented a threat to freedom of speech and press.

"It is a critical fact that we are now faced with the necessity of defending the First Amendment," W. Bradford Wiley, chairman of the association, said at a morning meeting. "Nothing like this had happened since the days of Senator Joseph R. McCarthy."

Kenneth D. McCormick, vice president of Doubleday and chairman of the association's Freedom to Read Committee, reported that, among other activities this year, the committee had protested a contempt citation against the Columbia Broadcasting System for refusing to supply out takes, or unused film, from its documentary "The Selling of the Pentagon" and had filed a brief opposing the Government action against The New York Times and other newspapers for publishing the Pentagon Papers.

Mr. McCormick said the association would also file a brief in behalf of the Rev. Phillip F. and the Rev. Daniel J. Berrigan, supporting the rights of Federal prisoners to disseminate their writings and recordings to publishers and the public.

PRESSURES HELD WIDENING

Declaring that pressures from private groups to have certain titles removed from public and school libraries were no longer confined to pornography and sex education, he said:

"It is more and more the book that really talks about the war and gives two sides of it, that presents the race problem as more than an unfortunate spat between two regions, that presents the United States as a country that's been right sometimes and wrong at others."

Other speakers who expressed concern that the political acrimony was interfering with the free exchange of ideas were John C. Frantz, executive chairman of the National Book Committee; Whitney North Seymour, a former president of the American Bar Association, and Harrison E. Salisbury, editor of the Op-Ed page of The New York Times.

In introducing Senator Ervin, Robert L. Bernstein, president of Random House, who is vice chairman of the association, noted that the Senator's subcommittee planned to start hearings on Sept. 28 on "the meaning of the First Amendment's prohibition against abridgement of freedom of the press" and that publishers, newspaper editors and government officials had been invited to testify.

Pounding away at a favorite theme, Senator Ervin said that the First Amendment "is

based upon an abiding faith that our country has nothing to fear from the exercise of its freedom as long as it leaves truth free to combat error."

If the right to express dissent is respected, he declared, "violent revolution has no rational or rightful place in our system."

Mr. Ervin, a political conservative who is considered the leading constitutional law expert in the Senate, said President Nixon's order strengthening the mandate of the Subversive Activities Control Board was "beyond the constitutional power of the President," too broad to have any legal value and in violation of the First Amendment.

Mr. Nixon's order, issued July 2, gave the board the power to hold hearings to help determine which organizations should be classified as subversive by the Attorney General.

Before the order, the board, an independent, semijudicial agency created in 1950, had had little work to do for several years.

[From the Washington Post, Oct. 3, 1971]

FAITH IN ONE ANOTHER

When the founders of the American Republic dissolved the political bands that connected them with the British people and signed their names to the Declaration of Independence, they had as yet no country to which they could pledge their allegiance. For the support of this Declaration, they declared instead, "we mutually pledge *to each other* our Lives, our Fortunes, and our sacred Honor." That kind of faith in each other served as the cement of the American society for 175 years.

In the 1950s, however, Sen. Joseph McCarthy began to make a cult of distrust among Americans. Fear of communism, fear of subversion, fear of non-conformity—fear of each other—replaced mutual confidence to a terrifying degree. The superb self-confidence that had been an identifying trait of Americans all but disappeared. Instruments such as the Subversive Activities Control Board and the House Committee on Un-American Activities were forged to keep an official eye on Americans, to search out disloyalty among them, to penalize unpopular opinions and associations, in short, to protect the people from themselves.

It was always a funny thing about the heresy hunters that they never supposed that they themselves were going to be subverted by Communist propaganda or by other dangerous ideas; it was always and only the loyalty and good sense of their fellow-countrymen that they doubted. They had so little confidence themselves in the gospel according to Thomas Jefferson that they were forever fearful that "ordinary" Americans would easily be won over to the gospel according to V. I. Lenin. They had so little faith in freedom as a way of life that they could never bring themselves to rely upon the free institutions established by the American Constitution.

The bluntest instrument of the heresy hunters was the Subversive Activities Control Board. A menace to individual liberty at its inception, this clumsy agency collapsed of its own ineptitude as soon as the political health of the American people began to be restored. It was in a state of innocuous, if costly, desuetude when President Nixon, for some unexplained reason, chose this summer to revive it by giving it a thoroughly totalitarian duty to perform—the compilation of lists of officially disapproved organizations which Americans could join only at their own political peril.

That inveterate believer in freedom, Sam Ervin, has taken another swing at the Subversive Activities Control Board and the odious task the President has assigned to it. In a recent speech to the Association of American Publishers the senator gave a moving expression of his own faith in Americans and in the American dream. "I affirm my faith," he said, "in the sanity and steadfastness of the overwhelming majority of all Americans. I shall not fear for the security of my country as long as love of liberty abides in their hearts, and truth is left free to combat error."

That faith needs to be restored to America. It is time for us to take a new pledge of allegiance to each other.

[From the Evening Star, Washington, D.C., Oct. 29, 1971]

PLAN DRAWN TO FIRE U.S. "SUBVERSIVES"

(By Joseph Young)

The Nixon administration is drafting plans for the automatic firing of all federal employees who are members of any organization the government decides is "subversive" or "revolutionary-terrorist."

The plan would abolish present legal safeguards adopted following the witch-hunts of the Joseph McCarthy era in the 1950s and the loyalty programs of the late 1940s.

It would apply to both "sensitive" as well as "non-sensitive" jobs in government.

Mere membership in a group listed by the attorney general as "subversive" is not now grounds to fire a federal employee. The government must prove that an employee is an "active and knowing" member of such an organization.

The proposed new standards would bring the dismissal of an employee if the government decided his continued employment "would not promote the efficiency of the service."

Apprised of the administration's proposed changes, federal employee union leaders expressed alarm that this could result in a new witch-hunt in the federal service.

They also express concern that the proposal would mean virtually any employee could be fired on vague charges.

The union leaders ask who is to determine in these rapidly changing times of social stress and upheaval which organizations are "subversive" or "revolutionary" and which are not?

Federal union leaders say there is a grave danger that government employees belonging to groups demanding an end to the fighting in Vietnam or in the cause of school and housing integration and other social issues would stand to lose their jobs if the plan becomes effective.

Asst. Atty. Gen. Robert G. Mardian, chief of the Justice Department's internal security division, referred to the proposal in remarks prepared for an Atomic Energy Commission security conference. Mardian has also indicated the administration's thinking on the matter in testimony before Congress.

Mardian described as "legalisms" federal court decisions which carefully circumscribed operations of internal security programs.

He said that "legal distractions . . . have placed an onerous, if not impossible, burden on government and industrial security officers," and that the new standards are part of several proposals to correct this.

Among others he named was a July 2 executive order from President Nixon authorizing the Subversive Activities Control Board to hold hearings and designate groups that fall into the "subversive" or "revolutionary-terrorist" category.

This order is under attack in Congress. There have been bills introduced by Sen. Sam Ervin, D-N.C., to bar use of federal funds to enforce the order.

Mardian argued that evaluating the membership in groups "dedicated to revolutionary-terrorist" principles would offer a "more realistic" test than present standards.

Mardian argued that government agencies should be able to fire employees if member ship in an offending group would diminish his agency's efficiency.

Mardian added that "the vast majority of Americans would . . . agree that persons who are knowing members" of such groups "should not be employed in even non-sensitive positions, not simply because they are disloyal, but because such people are not likely to improve the delivery of governmental services of a government system they are trying to destroy."

SICKLE CELL ANEMIA

Mr. TUNNEY. Mr. President, I invite the attention of Senators to an article describing a new approach to the treatment of sickle cell anemia.

I introduced S. 2676, the National Sickle Cell Anemia Prevention Act, which was cosponsored by a bipartisan group of 44 Senators. It is the purpose of the bill to conduct testing, counseling, treatment, public education, and research in regional and community centers.

Sickle cell anemia has been tragically neglected in the past and new approaches for effective treatment and cure have been developing much too slowly. The funding of research efforts has been almost negligible, and it has been a continuing tragedy that no hope could be extended to those with the disease. The research on cyanate treatment at Rockefeller University is a most hopeful development.

Mr. President, I ask unanimous consent that the article, published in the November 19, 1971, issue of the New York Post, and entitled "A Weapon Against Sickle Cells," be printed in the RECORD.

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

A WEAPON AGAINST SICKLE CELLS

(By Barbara Yuncker)

A new approach to treating sickle cell anemia, the severe, incurable hereditary blood disease of blacks, is being tested here, it was revealed today.

At Rockefeller University 25 volunteer patients with the life-shortening disease are being given a chemical called sodium cyanate in the hope that it may do in their blood what it does in the test tube—inhibit the deforming "sickling" of oxygen-carrying red blood cells.

The work has already produced the hopeful clue that the survival of abnormal red cells treated outside the body, then replaced appears to be prolonged to near normal (about 120 days) from the variable but much shorter span that is typical of sickle cells. The report was made today by chemist Dr. James M. Manning, a member of the four-man Rockefeller team to a Symposium on Sickle Cell Disease at the Commodore Hotel.

The two-day meeting which has attracted 1200 doctors and allied professionals, about half of them white, is the first major conference in the U.S. devoted to the long-neglected genetic disease.

Nearly 10 per cent of American blacks are believed to be sickle carriers, having one mutant gene. About one in every 400 to 500 blacks inherits the mutant from both parents and suffers the overt disease. It is virtually unknown in whites.

The Rockefeller report represents 11 months of crash research following a 1970 report from Dr. Robert M. Nalbandian of Grand Rapids, Mich., that a body waste chemical, urea, could be used as a drug to ease pain and apparently to desickle deformed red cells in some patients.

That report has been greeted with considerable professional caution. (The sponsors of the present meeting did not invite Nalbandian to be on the program.) But at least four other clinics are now trying to certify or disprove his urea treatment.

And it prompted Dr. Arthur Cerami, a cell biologist at Rockefeller, working with

Manning, to hypothesize that a simple component of the urea solution—cyanate—might be getting whatever results were showing up in Nalbandian's patients.

"And indeed we found cyanate did inhibit sickling in the test-tube," Cerami said in an interview. They were also able to pin point the exact location on the hemaglobin portion of the red cell where the cyanate hooked on and stayed, making the reversal of the sickling permanent for that cell.

Much of the damage of the disease process arises because the misshapen cells snag in the capillaries between the outgoing arteries and incoming viens, slowing blood cell traffic like a jack-knifed truck on a turnpike. Not only does blood flow get snarled, cells die young in the process.

"If sodium cyanate ever works as therapy," Cerami pointed out, "treatment will have to be continuous throughout life, because each new red cell would have to be doctored."

"REASONABLE" TOXICITY

Safety tests on animals indicated cyanate is "no more than three times as toxic as aspirin," regarded as a reasonable range for proceeding to human trials.

Dr. Peter Gillette, assistant professor at Rockefeller and Dr. Charles Peterson, a Harlem Hospital resident on loan to the project, are now treating the 25 sickle cell anemics, from 7 to 50 years old, either by mouth, by intravenous injection or by taking out blood, treating it and putting the red cells back.

The patients are treated continuously. "We don't wait for a sickle cell crisis," Cerami said. "The hope is to use sodium cyanate to prevent the disease process." The tests, under Food and Drug Administration experimental drug rules, are expected to yield answers in about six months.

Cyanate is a comparatively cheap industrial chemical ($400 a ton) in powder form, easily dissolved. It is a three-atom molecule of nitrogen, carbon and oxygen. The Rockefeller team has been using material from an American firm which is giving up production because German and Japanese firms make it more cheaply.

FULL OF IMPURITIES

The unsolved problem for future medical use, Cerami said, is that "much of the stuff bought for industrial use is full of junk, impurities," which could damage patients and foul up experiments so the true value of the pure drug would be hard to determine.

But if the pure drug works and is adequately safe, it would be the first specific therapy for an ailment that can now be treated only symptomatically in most cases.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

EXECUTIVE SESSION—NOMINATION OF LEWIS F. POWELL, JR., TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session for further consideration of the nomination of Mr. Lewis F. Powell, Jr., to be an Associate Justice of the Supreme Court, with the vote coming at 4 o'clock p.m.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

RECESS

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess until 1 p.m. today.

The motion was agreed to; and (at 10 o'clock and 44 minutes a.m.) the Senate took a recess until 1 p.m.; whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. McINTYRE).

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CHILES). Without objection, it is so ordered.

A PERSONAL EVALUATION OF LEWIS E. POWELL, JR., AND WILLIAM H. REHNQUIST, NOMINEES TO BE ASSOCIATE JUSTICES OF THE U.S. SUPREME COURT

Mr. FONG. Mr. President, I support the nominations of Lewis E. Powell, Jr., and William H. Rehnquist to be Associate Justices of the Supreme Court of the United States.

Because of the questions which have been raised in connection with these nominees, I should like to state my analysis of the qualifications of these candidates and my reasons for reaching the conclusions I have.

Mr. Powell is a person of unusual professional competence. His outstanding legal ability is universally recognized.

His personal integrity is unimpeachable.

His sensitivity to the problems which his stockholdings present under the Canons of Judicial Ethics and his efforts to minimize these problems, even where it will probably be at considerable financial cost to him, so as to avoid even "the appearance of impropriety," is further indication to me of his sensitivity to and commitment to the concept of assuring not only equal justice under law to all Americans, but of avoiding any appearances which may lead to questions as to the basis of his actions.

Senators are well aware that I am most concerned about preserving our constitutional rights and especially the rights of the people guaranteed under the first 10 amendments to our great Constitution—our Bill of Rights.

I am one of only four Senators who voted against final passage of the omnibus crime bill. I did this because of its provisions which I am convinced are in derogation of these most sacred constitutional rights.

At the hearing on Mr. Powell's nomination before the Judiciary Committee, I very carefully and at length questioned Mr. Powell as to his position in regard to these most valuable and valued guarantees of the liberty and very safety of minorities—and we are all members of some minority in these United States—against the oppression and tyranny of the majority or of the Government.

The Supreme Court of the United States is the last bulwark of freedom and justice for all our peoples.

I am fully satisfied of Mr. Powell's complete and sincere dedication to the preservation of these vital, constitutional rights and of his ability to so interpret our great Constitution as to assure equal justice under law to all persons in this country.

I urge my brethren to confirm the nomination of Lewis F. Powell, Jr., to be Associate Justice of the Supreme Court of the United States.

Now I turn to the nomination of William H. Rehnquist, which is also before us for confirmation, to be Associate Justice of the U.S. Supreme Court. In Mr. Rehnquist, we have before us a much younger man, one likely to serve in that exalted capacity for many, many years.

Fortunately, in Mr. Rehnquist, we have a person of outstanding legal ability and scholarship and unquestioned personal integrity. Even his most severe critics have not questioned these qualifications, which he so abundantly has demonstrated.

What four of the distinguished Senators who opposed Mr. Rehnquist's nomination in the Judiciary Committee and various witnesses questioned was largely Mr. Rehnquist's interpretations of and dedication to the concepts contained in the Bill of Rights.

In fairness to Mr. Rehnquist, his various utterances on these subjects should be put in context of time and circumstances.

Much is made of his opposition in 1964 to a proposed Phoenix public accommodation ordinance and to a letter to the editor published in the Arizona Republic on the proposals of the Phoenix school officials to eliminate de facto segregation in that city.

Little is made of the nominee's actions at those times or his very humble and human confession of error of an earlier judgment.

Throughout the period in question, Mr. Rehnquist's own children attended fully integrated schools in the downtown area of Phoenix. Surely, his recognition of the benefits of integration to the children he loved and cared for most—his own children—must give credence to his recognition of the value of equality of opportunity for all, else he could readily have chosen to live in one of the suburban areas where de facto segregation was almost assured. In view of his actions in this regard, I feel compelled to conclude the nominee does not endorse or practice segregation.

It takes a big man to reverse himself—a bigger one to admit in public that he was wrong—and a still bigger one to alter his course of conduct.

While Mr. Rehnquist did oppose a proposed public accommodations ordinance in 1964, in 1966 as a member of the Arizona delegation to the National Conference of Commissioners on Uniform

State Laws he supported the proposed public accommodations provision of the draft model State antidiscrimination act.

When he appeared at the confirmation hearings before the Judiciary Committee, he admitted he was wrong in his 1964 opposition; that he was aware of that error of judgment; and that his understanding of the significance of, the need for, and the scope of the concept of equality had changed and broadened since that time.

As the distinguished senior Senator from Pennsylvania (Mr. SCOTT) brought out at the hearing, Mr. Rehnquist altered his course of thinking, and he reflected this in his conduct.

In 1969, the opinion of the Comptroller General of the United States was that the Philadelphia plan was unconstitutional. The Philadelphia plan, as Senators well know, required, as a condition of receiving a Government construction contract, a commitment to achieve certain goals of minority hiring. This was to overcome the fact that certain unions did not have minority race members.

Through the efforts of Mr. Rehnquist, the Attorney General upheld the legality and constitutionality of such plans. This was a major breakthrough in the fight for equality in employment opportunity—a basic right to be afforded all men equally under law.

On the subject of civil rights, I am fully satisfied as to the nominee's position and commitment to equal rights.

Insofar as Mr. Rehnquist's approach to civil liberties and the Bill of Rights is concerned, I questioned Mr. Rehnquist very carefully on the subject of wiretapping and electronic surveillance, and on the subject of certain Federal grand jury practices which I fear are in violation of the fifth amendment.

I spelled out to him at considerable length my long and firmly held conviction that if wiretapping and eavesdropping practices were allowed on a wide scale, we would soon become a nation in fear—a police state. I also indicated that, whether based on fact or fancy, many people in all walks and areas of life fear they are under surveillance, so in my opinion we are coming close to being a nation in fear.

While Mr. Rehnquist as the attorney to the Attorney General had spoken in support of positions of the Justice Department, his response to my questions and his prior statement when he addressed a symposium on law and individual rights held in December 1970, at the University of Hawaii, clearly indicated to me that despite his advocate's position and the attorney-client relationship with the Justice Department, the nominee himself is fully aware of the, as he put it, "chilling effect on one's feeling of freedom of certain alleged Government procedures and is capable of disassociating himself therefrom.

Again, I quote his response, in part:

> I believe that I could divorce my role as an advocate from what it would be as a Justice of the Supreme Court, should I be confirmed.

When I pressed him on comments made by a Phoenix Democrat, but representative of other such comments, that he was a "retrograde" in terms of race relations, "a supporter of police methods," "restrictive" on free speech, and so forth, his response, even under the pressure he was subjected to, showed his humaneness, a sense of humor, and the approach to be expected from him to problems presented to him as a Justice of the Supreme Court.

He stated at page 144 of the hearings before the Committee on the Judiciary:

> My first comment would be I can defend myself from my enemies but save me from my friends.

But then in a most serious vein, he continued:

> I think that that is not a fair characterization even of my philosophical views. My hope would be if I were confirmed to divorce as much as possible whatever my own preferences, perhaps, as a legislator or as a private citizen would be as to how a particular question should be resolved and address myself simply to what I understand the Constitution and the laws enacted by the Congress to require.

I am satisfied Mr. Rehnquist is a man of esteemed legal and intellectual ability, a man of great integrity, whose personal philosophy as shown by his actions may, in fact, prove to be not too far removed from that of his critics.

In any event, I feel that as a Justice of the Supreme Court he would apply his great talents "simply to what (he) understood the Constitution and the laws enacted by Congress to require."

I will, therefore, vote for the confirmation of his nomination.

I urge the confirmation of his nomination to be Associate Justice of the Supreme Court of the United States, for I am certain he will serve all the people of this great country with distinction.

THE NOMINATION OF LEWIS F. POWELL, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. JACKSON. Mr. President, the Senate will vote today on the nomination of Lewis F. Powell, Jr. to be an Associate Justice of the Supreme Court.

It is no surprise that this nomination has been unanimously reported by the Senate Judiciary Committee. Mr. Powell's reputation was well known to many of us in the Senate, even before his nomination. Since then, the widespread endorsement of his nomination by those of differing political and philosophical viewpoints has confirmed that Mr. Powell is a man of exceptional ability and character. Indeed, the reception accorded his nomination is a rebuff to those who suggested that the Senate would not confirm a Southerner to serve on the Supreme Court. One wonders why it has taken so long to propose a man of Mr. Powell's stature.

Quite aside from his competence and integrity, Mr. Powell meets another basic test of fitness to sit on the Supreme Court. He has shown by what he has done and what he has been that those who bring causes to him for judgment will have the fullest confidence that their cases will be heard and decided on the law and the merits and not otherwise.

Of course Justices come to the Supreme Court influenced by their pasts. But to be fit to serve there, a nominee must inspire faith that he can overcome these influences when he must. No group—not the organized bar, not business, not labor, not the law schools, not the politicians of any party or region, no racial group—has the right to veto a nominee because they would prefer someone more sympathetic to their side of particular issues. But they do have a right to expect fair treatment and to expect the nomination of those who will justify belief that disputes which come to be settled through the courts will be settled by law and justice alone. I believe that Lewis Powell meets this test: that he will bring to high judicial office the qualities of decency and fairness that are a crucial component of judicial decisionmaking.

Because Mr. Powell has shown in his life and work those qualities of distinction which we should expect in every Justice of the Supreme Court, I hope the Senate will vote—overwhelmingly—to confirm this nomination.

Mr. HOLLINGS. Mr. President, ordinarily I would take this occasion to speak in behalf of the appointment of Lewis Powell to the Supreme Court of the United States. He is a southerner. He is noncontroversial; and he is certain to be approved. But a speech in his behalf would only be an exercise in headlinemanship. Mr. Powell needs no defense from me. The man I rise to defend today, on the other hand, is not from my section of the country. He is controversial; and his nomination is being contested. It would be unfair to William Rehnquist and to his record to remain silent today.

I have studied the record. I have looked closely at the man. And I am convinced that his appointment to the Supreme Court is not merely satisfactory—it is excellent. I know Bill Rehnquist, and I have worked alongside him. I know his beliefs and his reactions. I know he is no racist. Everyone who knows him knows that. I recently received a letter from Mr. Ben Holman, the Director of the Community Relations Service, in Mr. Rehnquist's behalf. The Community Relations Service is a civil rights agency charged with working for the improvement of minority groups in America. As Mr. Holman points out, Bill Rehnquist "has been highly supportive of our cause and on several occasions sought to broaden our statutory mandate." Mr. President, I ask unanimous consent that the full text of Mr. Holman's letter be printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HOLLINGS. Mr. President, of all the tasks which come before the Senate, none is more important than its constitutional duty to act on the President's appointments to membership on the Supreme Court.

Throughout most of its history, the Court has held a rightfully exalted position in the esteem of the American people. And because it had the trust of the people, it worked for the inestimable benefit of the Nation. The Supreme Court lacked a bureaucracy, yet it became a powerful force for good. Fragile in form yet enduring in substance, it be-

came a strong pillar for the support of the Republic.

Today—among a sizable, and growing, percentage of our people—the Court has lost ground. The loss is not sectional, nor is it generational. It is North and South. It is young and old. This is simply a statement of fact. No Member of the Senate who has recently been among his constituents is likely to claim that this is the heyday of the Court's prestige. We hear no chorus of praise for the highest tribunal. While its past is still occasionally sung, celebrations of its present are few and far between. The question is obvious—Why? Why this declining esteem for an institution which depends for its success on the public trust?

I believe that the past successes of the Court resulted from its adherence to the activities prescribed by the founders and the Justices themselves. It succeeded because it seldom strayed very far from those activities. And when it did stray, it did not stray for long. The Court usually was in the mainstream of our national life. It saw nothing to be gained from lagging far behind or racing swiftly ahead of America's other institutions.

In recent years, however, the Court seems to have forgotten the lessons of its successful past. It has gone far beyond its normal activities—far beyond its jurisdictions of even a quarter century ago. And, without getting into a lengthy and detailed exposition, there are those who believe the Court has gone into the business of legislation rather than adjudication. There are those who believe that the Court is enforcing practices which the Constitution does not prescribe nor the Congress authorize. I am among the number who so believe.

Mr. President, when a person runs out on his past, forsaking old ways for new, he is the object of at least temporary suspicion. And when a politician promises one thing and does another, his integrity is questioned and his credibility vanishes. So it is with an institution such as the Court. When it goes beyond the normal range of its activities, and does so over a period of many years, it is playing with the fires of suspicion. This is what the Supreme Court has done. And now it has reaped the ashes of discord and distrust.

We are all quick to point out the credibility gaps of the executive branch. And, whether we admit it or not, we are equally aware of the skepticism in which the legislative branch is held. That hardly leaves time to worry about the problems of the judiciary. But today we must find time. Public confidence in the Nation's highest tribunal—in the arbiter of its basic law—is essential if this system of ours is to survive. The Constitution, both as actual law and as popular symbol, is the cement which has bound America together. Weaken the cement by twisting and torturing, and tearing and bending and breaking—and watch the Nation come apart.

Mr. President, the clear imperative of the Constitution is the necessity for balance. The success of our Federal Government has always depended upon balance: balance between the State and local governments; balance between the three separate branches of the Federal Government; and, within the judicial branch, a large measure of self-balance and impartiality. The Constitution is not an ideological brief for today's liberals, or, for that matter, for today's conservatives. It is a complex and diverse document, written by a varied people, and surviving all the many changes of nearly two centuries of national life. Yet there are those who would throw that balance—that richness of experience—that diversity of history—overboard. There are those who argue not for diversity, but uniformity; not for judgment, but for advocacy; not for right versus wrong, but for left versus right or right versus left.

And that, Mr. President, is what this debate today is all about. All the President has to do is nominate someone whose beliefs do not accord with the insistent mood of the establishment, and the establishment rides to the chase with the scent of blood in its nostrils.

The debate over Mr. Rehnquist is not over Arizona polling booths or memberships in such-and-such an organization. It is not over the handling of Mayday or the tapping of a criminal's telephone. A cursory glance at the record suffices to set any impartial observer's mind to rest on all those accounts. No, Mr. President—those are simply smokescreens sent up by those who would remake the Supreme Court in their own image. They know Bill Rehnquist will not help them do that. So Bill Rehnquist becomes to them public enemy, No. 1.

Mr. President, I have been down this road before, 2 years ago, with Judge Haynsworth. The smokescreens went up then, too. "Appearance of impropriety" was the howl of the pack, and a promising high court career was snuffed out before it could begin. Now—with the possibility of Judge Haynsworth's going to the Court gone—many of his opponents admit how flimsy those charges were. The charges against William Rehnquist are just as flimsy.

He is closed-minded, some say. He starts out with the conclusion and works backward toward justifying evidence. Even more serious, he places no value on individual rights and would give the stamp of judicial approval to police-state tactics. The attack on this nominee is a display of dizzying gymnastics the likes we have not seen for a long, long time. He is a conservative, therefore, too individualistic—conservatives want too much freedom for the individual. Then the critics turn right around and attack Mr. Rehnquist for lack of concern for the individual and for glorification of the state. "Now you see it, now you don't" seems to be the motto of the pack in their desire to do Bill Rehnquist in.

Mr. President, there is just no truth in the charge that Mr. Rehnquist is insensitive to civil liberties. His statements abound with references to the rights of the individual. He has thought long and hard about the necessity of protecting the rights of the individual and the necessity for balancing the rights of the individual in relation to the Government's obligation to enforce the law. His statements show a rational balanced, and constitutional position from which the Court can only benefit. As the nominee himself put it:

> A government which does not restrain itself from unwarranted official restraints on the persons of its citizens would be a menace to freedom; but a government which does not or cannot take reasonable steps to prevent felonious assaults on the persons of its citizens would be derelict in fulfilling one of the fundamental purposes for which governments are instituted among men. A society as a whole has a right, indeed a duty, to protect all individuals from criminal invasions of the person.

Would Mr. Rehnquist put a microphone under every table and desk, a wiretap on every phone, an agent in the footsteps of every citizen? Ridiculous. Again, I quote from the nominee,

> I do not conceive it to be any part of the functions of the Department of Justice or any other governmental agency to surveil or otherwise observe people who are simply exercising their First Amendment rights.

The record demonstrates very clearly that the nominee would never be willing to sacrifice the constitutional protections afforded our people simply in the interest of governmental efficiency. For him, the Constitution clearly places restraints on the activities of government. On the other hand, the record also makes clear that he would use the powers afforded the Government by the Constitution-makers at Philadelphia to preserve, protect and defend the safety and well-being of the American people. Any judge who is too shallow to raise the question of how to maintain order is ignorant of one of the basic questions of all government, and ignorant of one of the enduring themes of political philosophy.

The record shows William Rehnquist to be superbly qualified for service on the Supreme Court. His educational and professional career is a long string of our society's highest accolades. His academic honors testify to an acute and profound intelligence. His professional citations mirror the confidence of his associates and the breadth of his experience. Anyone who seriously expects Bill Rehnquist to be the slave of some narrow ideology or defunct theoretician simply does not know the man or his record.

There is not the slightest doubt in my mind that as Associate Justice of the Supreme Court Justice Rehnquist's allegiance will be to the Constitution, and his dedication to making it the honored and revered fountain of law and trust that it deserves to be. He will be there to research, to question, to study, to analyze, and ultimately, to judge. Justice Rehnquist will not need a law clerk to do his homework for him, or to write his opinions. He knows how to do these things himself. And he does them with a precision and a clarity and a brilliance which command respect.

It is the charge of the jurist to judge just as it is our charge in this chamber to legislate. Mr. Rehnquist has the discernment to keep the two functions separate. His opponents cannot make the same claim.

I commend the President of the United States for the excellent choice he has made. And I urge my fellow Members

of the Senate to vote "aye" when the moment of decision is upon us.

EXHIBIT 1

DEPARTMENT OF JUSTICE,
COMMUNITY RELATIONS SERVICE,
Washington, D.C., November 4, 1971.

HON. ERNEST F. HOLLINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HOLLINGS: You have asked that I share with you my regard of William H. Rehnquist who has been nominated by the President to be an Associate Justice of the United States Supreme Court.

I have personally worked in close association with Bill Rehnquist during my 2½ years as Director of the Department of Justice's Community Relations Service. I always found him to be of impeccable integrity and of gentlemanly conduct.

On many occasions Bill Rehnquist and I have discussed issues relative to the welfare of the Community Relations Service, which, as you know, is a civil rights agency whose sole direction is guided by the improvement of the status of minorities in America. He has been highly supportive of our cause and on several occasions sought to broaden our statutory mandate.

His "conservative" philosophy while practicing law in Arizona was unknown to me until I read about it in the newspapers. As a black man sensitive to the various forms of racist behavior I can assure you that Bill Rehnquist will judge minorities fairly if he is confirmed to the Court.

I hope this information will be helpful to you in your deliberations.

Sincerely,

BEN HOLMAN.

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

Mr. HOLLINGS. I yield.

Mr. COOK. Mr. President, I commend the Senator from South Carolina for his remarks. I want to say that the remarks which I will make either late today or on tomorrow will be in respect to what the Senator from South Carolina has said.

I would like to have printed in the RECORD an article in this morning's Wall Street Journal entitled, "Rehnquist and Critics: Who's Extreme?" However, first, I would like to read for the RECORD a portion of that article. It reads:

The minority report argues that "Mr. Rehnquist's record fails to demonstrate any strong affirmative commitment to civil rights, to equal justice for all citizens, let alone a level of commitment which would rebut the strong evidence of insensitivity to such rights." The evidence the report discusses at greatest length is a letter Mr. Rehnquist wrote to The Arizona Republic in 1967, responding to remarks on school integration by Phoenix School Superintendent Howard Seymour.

The minority report says, "The truly alarming aspect of the 1967 letter, however, is Mr. Rehnquist's statement, 13 years after Brown v. Board of Education that 'We are no more dedicated to an "integrated" society than we are to a "segregated" society'. . . Yet at least since the Supreme Court declared that 'separate is inherently unequal,' this nation has not been neutral as between integration and segregation; it stands squarely in favor of the former. And if Mr. Rehnquist does not agree, he is outside the mainstream of American thought and should not be confirmed."

A FREE SOCIETY

The statement in the original letter that must be located with respect to the mainstream runs, "Mr. Seymour declares that we 'are and must be concerned with achieving an integrated society.' . . . But I think many would take issue with his statement on the merits, and would feel that we are no more dedicated to an 'integrated' society than we are to a 'segregated' society; that we are instead dedicated to a free society, in which each man is equal before the law, but in which each man is accorded a maximum amount of freedom of choice in his individual activities."

Mr. Rehnquist's extremist position on civil rights, then, turns out to be nothing more than the familiar proposition that the Constitution is color-blind. On surveillance he believes that at this moment the scales are not tipped in such a way that dissent is "chilled." On wiretapping he believes the government side of the national security question deserves its day in court. These opinions, the minority report suggests, are so outrageous the nominee should be defeated.

Then, the most important paragraph of the editorial in relation to the remarks of the distinguished Senator from South Carolina:

As the Senate debates the nomination, it seems, it will have to decide more than whether it's proper to weigh a nominee's philosophy. It also needs to weigh whether words like "extreme" and "out of the mainstream" better describe Mr. Rehnquist's philosophy, or the position his critics have been forced to take to oppose him.

Without objection the article was ordered to be printed in the RECORD, as follows:

REHNQUIST AND CRITICS: WHO'S EXTREME?

(By Robert L. Bartley)

WASHINGTON.—The most powerful impression to emerge from the microscopic public analysis of the life and works of Supreme Court nominee William H. Rehnquist is that his critics are pretty desperate. At one point the arguments and innuendos offered by critical witnesses proved too much even for the most critical Senators, and Sen. Edward Kennedy upbraided the witnesses for creating "an atmosphere which I think is rather poisonous."

Now the critical members on the Senate Judiciary Committee—Sens. Bayh, Hart, Kennedy and Tunney—have filed their minority report setting out the responsible case against the nomination. As Sen. Kennedy's remark suggests, it judiciously avoids the less substantial allegations that have appeared in the press in recent weeks. There is, for example, no suggestion that Mr. Rehnquist is guilty until proven innocent of membership in extremist organizations because his name appears on a list compiled by a little old lady and willed to someone else.

OUTSIDE THE MAINSTREAM

The minority report, rather, focuses mostly on Mr. Rehnquist's views on certain issues, and as such is an intriguing document. It volunteers that there is no question about Mr. Rehnquist's qualifications in terms of legal standing or personal integrity. On the widely debated question of whether the Senate should consider a nominee's judicial philosophy, it makes the case that indeed the Senate should.

The minority, of course, argues that on this third test Mr. Rehnquist flunks. It says he "has failed to show a demonstrated commitment to the fundamental human rights of the Bill of Rights, and to the guarantees of equality under the law." While not every detail of a nominee's philosophy ought to bear on his Senate confirmation, it suggests, so extreme a deviation should. At one point the text puts it simply: The nominee "is outside the mainstream of American thought and should not be confirmed."

A fascinating proposition, this. How can someone with legal standing and personal integrity fit to grace the Supreme Court be that far out of the mainstream? What would be the opinions of a man who is such a pillar of the bar and still fails to understand the Bill of Rights?

So it is with no little anticipation that one turns to the issues discussed in the minority report to find just which of Mr. Rehnquist's opinions bar him from the Court service. One expects not merely that he will have debatable opinions on debatable topics. Certainly the four Senators disagree on many things with Lewis F. Powell Jr., the other Supreme Court nominee before the Senate, but they voted to approve him. So in Mr. Rehnquist's case one expects more extreme opinions, those further out of the mainstream on the right, say, than Justice William O. Douglas is on the left.

As sort of a benchmark, recall Justice Douglas' popular book arguing, "We must realize that today's establishment is the new George III. Whether it will continue to adhere to his tactics, we do not know. If it does, the redress, honored in tradition, is also revolution." What right-wing outrages has Mr. Rehnquist uttered, one wonders, that are further from the mainstream than *that?*

As the confirmation hearings started, the best bet for that sort of outrage seemed to lie in the Justice Department position on wiretapping. As the department's chief legal adviser, Mr. Rehnquest must bear no small responsibility for that position, and the department has argued that the Executive Branch has an "inherent right" to wiretap without court order in national security cases. This is tantamount to an assertion that neither Congress nor the courts can control executive wiretapping, and certainly does suggest an insensitivity to the spirit of the Bill of Rights.

Alas for Mr. Rehnquist's critics, though, it turns out that on his advice the Justice Department has dropped the "inherent right" argument in current briefs before the Supreme Court. It now merely argues that in the particular instances of the case, the tap in question was not an "unreasonable" search barred by the Fourth Amendment. He says that the effect of the change is "to recognize that the courts would decide whether or not this practice amounted to an unreasonable search."

Mr. Rehnquist declined to give his personal views, as opposed to the Justice Department position, but he did defend the department's current arguments on the grounds that there are substantial legal questions unresolved, and the Executive is obligated to make its side of the case. "Five preceding administrations have all taken the position that the national security type of surveillance is permissible . . . one Justice of the Supreme Court has expressed the view that the power does exist, two have expressed the view that it does not exist . . . one has expressed the view that it is an open question . . . the government is entirely justified in presenting the matter to the court for its determination."

WIRETAPPING OF RADICALS

This did not satisfy the four critical Senators. They noted that the current issues are somewhat different from those of preceding administrations, not least because the current argument is about wiretapping not of foreign agents but of domestic radicals. The change in the department's position is "more cosmetic than real," they argued, because it is still defending wiretapping rules that would not "provide an adequate restraining effect on the Executive Branch, an adequate deterrent to protect the right of privacy."

For those who may find this particular dispute a matter not of extremist opinions but of reasonable men differing, the minority also delves into Mr. Rehnquist's widely quoted opinion on government surveillance of individuals, that is, not wiretapping but the recording of their activities in public

places. In warning against overly restricting such surveillance, he once said, "I think it quite likely that self-restraint on the part of the Executive Branch will provide an answer to virtually all of the legitimate complaints against excesses of information gathering."

During the hearings, Mr. Rehnquist noted that in his remark he was addressing the question of whether new legislation is needed in addition to the Bill of Rights and laws already on the books, and that the remark must be understood in that context. In colloquy at the time, he conceded that widespread surveillance should be "condemned," and that an individual might already have legal recourse against a government tail. But in considering the argument that surveillance is unconstitutional because it has a "chilling effect" on freedom of expression, he said any such effect is a question not of constitutional law but of fact. And, "those activities didn't prevent, you know, two hundred, two hundred fifty thousand people from coming to Washington on at least one or two occasions to, you know, exercise their First Amendment rights, to protest the war policies of the President. . . ."

The minority report argues that even if 250,000 appeared, others may have been deterred by surveillance. It agrees that the committee's majority report correctly describes Mr. Rehnquist's attitude: "Information-gathering activity may raise first amendment questions if it is proven that citizens are *actually* deterred from speaking out." The minority argues that this is precisely the problem, "the difficulty of proving a specific chilling effect is obvious, and the notion that a First Amendment question isn't even *raised* until it is 'proven that citizens are *actually* deterred from speaking out' (emphasis in original) is alarming."

But if Mr. Rehnquist's opinions here are outrageously extreme, it would seem, so are the opinions of the majority of the Senate Judiciary Committee. Similarly if his defense of the constitutionality of such laws as "no-knock" raids and "preventive detention" in the District of Columbia are out of the mainstream, the mainstream does not include the majority of both houses of Congress. So what mostly remains is the question of Mr. Rehnquist's attitudes on the racial issue.

The minority report does not make too much of allegations that Mr. Rehnquist harassed black voters when he was involved in Republican voter challenging teams in Phoenix, but it also does not dismiss them as the majority did. Some of his black opponents have come up with affidavits charging he was personally involved in harassment, and his supporters have come up with a defense of his challenging activities and attitude by a sometime counterpart on the Phoenix Democratic challenging team. The minority report says, "Each Senator will have to decide for himself what weight—if any—to give either the charges or the blanket denial."

On the nominee's general racial attitudes, the majority report also came up with a letter from the principal of the elementary school Mr. Rehnquist's children attended in Phoenix. "Mr. Rehnquist became known to me when I was a teacher here at Kenilworth School. He had moved his family into Phoenix Elementary School District from one of the outlying suburban, and predominantly middle socio-economic, school districts. He wanted his children to have experience and associations with children from minority groups, as well as with the different socio-economic groups."

The minority report argues that "Mr. Rehnquist's record fails to demonstrate any strong affirmative commitment to civil rights, to equal justice for all citizens, let alone a level of commitment which would rebut the strong evidence of insensitivity to such rights." The evidence the report discusses at greatest length is a letter Mr. Rehnquist wrote to The Arizona Republic in 1967, responding to remarks on school integration by Phoenix School Superintendent Howard Seymour.

The minority report says, "The truly alarming aspect of the 1967 letter, however, is Mr. Rehnquist's statement, 13 years after Brown V. Board of Education that 'We are no more dedicated to an "integrated" society than we are to a "segregated" society'. . . Yet at least since the Supreme Court declared that 'separate is inherently unequal,' this nation has not been neutral as between integration and segregation; it stands squarely in favor of the former. And if Mr. Rehnquist does not agree, he is outside the mainstream of American thought and should not be confirmed."

A FREE SOCIETY

The statement in the original letter that must be located with respect to the mainstream runs, "Mr. Seymour declares that we 'are and must be concerned with achieving an integrated society.' . . . But I think many would take issue with his statement on the merits, and would feel that we are no more dedicated to an 'integrated' society than we are to a 'segregated' society; that we are instead dedicated to a free society, in which each man is equal before the law, but in which each man is accorded a maximum amount of freedom of choice in his individual activities."

Mr. Rehnquist's extremist position on civil rights, then, turns out to be nothing more than the familiar proposition that the Constitution is color-blind. On surveillance he believes that at this moment the scales are not tipped in such a way that dissent is "chilled." On wiretapping he believes the government side of the national security question deserves its day in court. These opinions, the minority report suggests, are so outrageous the nominees should be defeated.

As the Senate debates the nomination, it seems, it will have to decide more than whether it's proper to weigh a nominee's philosophy. It also needs to weigh whether words like "extreme" and "out of the mainstream" better describe Mr. Rehnquist's philosophy, or the position his critics have been forced to take to oppose him.

Mr. ERVIN. Mr. President, for many years I have followed the career of Lewis Powell, of Richmond, Va., as one of the leaders of the American bar. It will afford me much pleasure to vote for his confirmation as an Associate Justice of the Supreme Court of the United States. I predict that in that post he will exhibit some of the finest legal acumen and some of the most profound learning that has ever been shown by any member of the Court.

I have found in the decisions of the Supreme Court only one ruling which sets forth the qualifications which the Constitution requires of a member of the Supreme Court bench. This statement appears in the ruling of the greatest jurist of all time, Chief Justice John Marshall, in what was, perhaps, the most famous of all his decisions, that of Marbury versus Madison. In that case Chief Justice Marshall pointed out that the Constitution of the United States obligates every Supreme Court Justice to take an oath or to make an affirmation to support the Constitution. This clearly means that it is the duty of a Supreme Court Justice to lay aside his own notions of what he thinks the Constitution ought to provide and to be guided solely in his decisions by what the Constitution actually does provide.

Chief Justice Marshall made this abundantly clear when he said that the oath of a Supreme Court Justice to support the Constitution requires him to accept that instrument as the rule for his official action as a member of the Court.

I am confident that Lewis Powell possesses this qualification and that he will adhere faithfully to his oath as a Supreme Court Justice to support the Constitution. For this reason I look forward with confidence to seeing him assist the Constitution of the United States in performing its function as a rule for the guidance of Supreme Court Justices.

Mr. President, for these reasons I shall take delight in voting for the confirmation of the nomination of this distinguished American lawyer.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that a nomination reported earlier today, which is at the desk, and which has been cleared all around, be stated.

The PRESIDING OFFICER (Mr. CHILES). Without objection, it is so ordered. The nomination will be stated.

U.S. DISTRICT JUDGE

The legislative clerk read the nomination of Richard A. Dier, of Nebraska, to be a U.S. district judge for the district of Nebraska.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be notified of the confirmation of the nomination.

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

QUORUM CALL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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, without amendment, the following bill and joint resolution of the Senate:

S. 952. An act to declare that certain public lands are held in trust by the United States for the Summit Lake Paiute Tribe, and for other purposes; and

S.J. Res. 149. Joint resolution to authorize and request the President to proclaim the year 1972 as "International Book Year."

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 11932) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending June 30, 1972, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. NATCHER, Mr. GIAIMO, Mr. PRYOR of Arkansas, Mr. OBEY, Mr. STOKES, Mr. MCKAY, Mr. MAHON, Mr. DAVIS of Wisconsin, Mr. SCHERLE, Mr. MCEWEN, Mr. MYERS, and Mr. BOW were appointed managers on the part of the House at the conference.

NOMINATION OF LEWIS F. POWELL, JR.

The Senate continued with the consideration of the nomination of Lewis F. Powell, Jr., to be Associate Justice of the Supreme Court of the United States.

Mr. COOK. Mr. President, after 5 days of extensive and exhaustive hearings in November, and after a long and thorough debate of the qualifications of the two nominees in executive session, the Senate Committee on the Judiciary favorably reported to the Senate the nominations of Lewis F. Powell and William H. Rehnquist to be Associate Justices of the Supreme Court.

In light of the events of the past 4 years, these nominations cannot be considered by themselves but must be regarded as a continuing series of events resulting from the Senate's scrutiny of Justice Abe Fortas' nomination to be Chief Justice. While not a member of this body at that time, it was my privilege to be a part of the nominations of Warren E. Burger, Judge Clement Haynsworth, Judge Harrold G. Carswell, and Justice Harry Blackmun. While not agreeing with all of the Senate's actions on these nominations, I am strongly committed to the Senate's constitutional duty of advising and consenting to the President's Supreme Court nominations.

In my examination of these nominees, I developed certain standards to apply to Mr. Rehnquist and Mr. Powell. On May 15, 1970, in a Senate speech, "Haynsworth, Carswell and Blackmun: a New Senate Standard of Excellence," I set forth my criteria. In part, the statement read:

First, the nominee must be judged competent. He should, of course, be a lawyer, to my way of thinking, although the Constitution does not require it. Judicial experience might satisfy competence, although I would certainly not restrict the President to naming sitting judges. Legal scholars as well as practicing lawyers might well be found competent.

Second, the nominee must be judged to have obtained some level of achievement or distinction. After all, it is the Supreme Court of the United States we are considering—not the police court in Hoboken, New Jersey, or even a U.S. district or circuit court. This can be established by writings, but lack of publications alone would not be fatal. Reputation at the bar and bench would be significant. Quality of opinions if a sitting judge, or appellate briefs if a practicing attorney, or articles and other publications if a law professor, might establish distinction. Certainly, the acquisition of expertise in certain areas of the law would be an important plus in establishing the level of achievement of the nominee.

Third, temperament could be significant in some cases. Although difficult to establish and not as important as the other criteria I am suggesting, temperament might become a factor where, for example, a sitting judge was hostile to a class of litigants or abusive to lawyers in court.

Fourth, the nominee, if a judge, must have violated no existing standard of ethical conduct. If the nominee is not a judge, he must not have violated the canons of ethics and statutes which apply to the standard of conduct required of members of the bar.

Mr. President, fifth, and finally, the nominee must have a clean record in his nonjudicial or nonlegal life. He should be free of criminal conviction and not possessed of debilitating personal problems, for example, alcoholism or drug abuse. However, this final criteria would rarely, if ever, come into play, due to the intensive personal investigations customarily employed by the executive before nominations are sent to the Senate.

LEWIS F. POWELL

1 AND 2. COMPETENCY; ACHIEVEMENT OR DISTINCTION

In 1929, Mr. Powell graduated magna cum laude from Washington and Lee University, and in 1931 he received his law degree from the same university. He earned his masters in law from Harvard the very next year.

From that time until the present, Mr. Powell has been engaged in the general practice of law in Richmond, Va. The only break in this period was his service from 1942 to 1946 as a combat and staff intelligence officer.

The nominee is recognized throughout the Nation as a lawyer of outstanding ability and has served as president of the American Bar Association, president of the American Bar Foundation, president of the American College of Trial Lawyers and vice president of the National Legal Aid and Defender Association.

He was also appointed by President Johnson in 1965 to the President's Commission on Law Enforcement and Administration of Justice. President Nixon appointed him to serve on the President's blue ribbon defense panel in 1969.

The American Bar Association's committee on the Federal judiciary said that he met the "high standards of professional competence, judicial temperament and integrity" necessary for this high position. The committee also noted that he met the standard in an "exceptional degree."

The list of outstanding lawyers who have enthusiastically endorsed his nomination is indeed impressive. I would like to list just a few of these lawyers and legal scholars:

Orison S. Marden, former president of the American Bar Association.

Bernard G. Segal, former president of the American Bar Association.

Hicks Epton, president, American Trial Lawyers.

Maynard J. Toll, former president of National Legal Aid and Defenders Association; O'Melveny and Myers, Los Angeles.

Dean Phil C. Neal, University of Chicago Law School.

Geoffrey C. Hazard, Jr., Yale University Law School.

William T. Gossett, former president of American Bar Association.

E. Smythe Gambrell, former president of American Bar Association.

Earl F. Morris, former president of American Bar Association, Columbus, Ohio.

Dean Monrad G. Paulsen, University of Virginia Law School.

Dean James P. White, Jr., William and Mary Law School.

Dean Roy L. Steinheimer, Jr., Washington and Lee University Law School.

Charles S. Rhyne, former president of the American Bar Association.

Whitney North Seymour, former president of the American Bar Association, New York City.

Sylvester Smith, former president of the American Bar Association, New Jersey.

David F. Maxwell, former president of the American Bar Association, Pennsylvania.

Bernard Segal, in his statement before the committee summarized the thinking of everyone who has been associated with Mr. Powell when he said:

It is therefore with profound satisfaction that I speak in support of a nominee who in my judgment is as eminently qualified to serve on our highest judicial tribunal as anyone who has come before the committee since I have been concerned with such matters, and I daresay for many years before that as well. In legal education, legal experience and legal competence, he ranks among the elite of the Nation's bar.

Mr. Lewis Powell is quite obviously one of the most distinguished nominees to come before the Senate in some time. No one has been more highly recommended. Further documentation would surely be redundant. The committee hearings and the Senate report speak for themselves.

3. TEMPERAMENT

I believe that all members of the committee were impressed with the manner in which the nominee handles himself at the hearings.

In a statement urging favorable consideration, Andrew P. Miller, the attorney general of Virginia declared that—

But more importantly, Lewis F. Powell, Jr. possesses the judicial temperament for the great task to which the President of the United States has nominated him. He has the quality of mind which will enable him to serve with distinction as a Justice of the Supreme Court of the United States.

It is not given to all men to have that quality of mind, yet I know of no man better endowed with it than Mr. Powell. Many men exhibit a knee-jerk reaction to the issues of the day, and render cliched treatment in response, but not the nominee before you.

Of course, like Mr. Rehnquist, we would expect such comments from his friends who not only know him, but generally agree with him. Therefore, I would once again like to turn to those who come from different backgrounds and who have different philosophies.

Jean Camper Cahn, director of the Urban Law Institute of Antioch College, knew Mr. Powell personally through their work together on the legal services pro-

gram for the poor. While admitting a disagreement with him on many matters, she based her support of this nomination on the qualities that I believe are very important. She said:

In the context in which I have known him he has come to symbolize the best that the profession has to offer—a man imbued, even driven, by a sense of duty, with a passion for the law as the embodiment of man's ordered quest for dignity. Yet he is a man so curiously shy, so deeply sensitive to the hurt or embarrassment of another, so self-effacing that it is difficult to reconcile the public and the private man—the honors and the acclaim with the gentle, courteous, sensitive spirit that one senses in every conversation, no matter how casual. And it is an unceasing source of wonder to me that so much seems to get done without any sense that the man is ever burdened, hurried, under strain or unable to give you his full and undivided attention.

In questioning the nominee, Senator HART stated:

I think I should also add for the record a communication which was brought to the attention of the Senate through its introduction in the Record on November 2, by Senator BYRD, who was sitting here with you, of a letter from a member of the Virginia House of Delegates representing Richmond and Henrico County, Doctor William Ferguson Reed. Doctor Reed is the first Negro elected to the Virginia General Assembly during this century, and that letter, written by Doctor Reed to Senator BYRD, strongly recommends your confirmation and makes reference to the fact that all regard you as a fair-minded man. I think it is well that you be aware of that comment by Doctor Reed.

4 AND 5. ETHICAL CONDUCT; PERSONAL CONDUCT

Mr. Powell's life has been subjected to intense scrutiny by the Government and by private citizens alike. His personal and ethical conduct, if anything, is above reproach. There is absolutely nothing in the record to indicate that the nominee has ever been guilty of any impropriety or indiscretion. To the contrary, there is much to recommend him.

Mr. Powell is a man of substantial personal wealth including stock in major corporations which are potential parties to litigation ultimately to be decided by the Supreme Court. Mr. Powell has agreed to divest himself of all but a few of these holdings, and to disqualify himself from cases where he may still retain an interest, however small. He also said that in regard to these and other major corporations that he has represented that he would "lean over backward" to avoid the appearance of impropriety. The committee, very properly, was satisfied with his past and future ethical and personal conduct.

CONCLUSION

Lest some believe that there may be something missing or lacking from my examination of the candidates, I would like to make a few remarks concerning philosophy or ideology.

Concerning this, as criteria, I said in my speech of May 15, 1970, the following:

At the outset, let us discard the philosophy of the nominees, philosophy should not be considered by the Senate. This happened quite often in the 19th century and the result was to make a political football out of the Supreme Court. The President is elected by the people presumably to carry out a certain program. The Constitution gives to him the power to nominate. If the nomination power had been given to the Senate, as was once considered during the debates at the Constitutional Convention, then it would have been proper for the Senate to consider philosophy. The Senate's role, as I see it, is to advise and consent to the nomination, and thus, as the Constitution puts it, "to appoint." This, I believe, taken within the context of modern times, means an examination into the qualifications of the President's nominee.

I must confess that this concept is not original on my part. It was mentioned at least once before by the Senator from Massachusetts (Mr. KENNEDY) during the Senate's consideration of Justice Thurgood Marshall, when he said:

I believe it is recognized by most Senators that we are not charged with the responsibilities of approving a man to be associate justice of the Supreme Court only if his views always coincide with our own. We are not seeking a nominee for the Supreme Court who will express the majority view of the Senate on every given issue, or on a given issue of fundamental importance; we are interested really in knowing whether the nominee has the background, experience, qualifications, temperament and integrity to handle this most sensitive, important, responsible job.

Mr. President, I believe that to be as sound now as it was then. Furthermore, the President is the only person who is elected by all the people, and who is chosen to represent all of the people. He alone reflects the views of the majority of the people of this country at a given time. Senators are elected by smaller groups of people at different points in time.

I do not seek to persuade all of my colleagues to my position. I merely wish to state it, and say that it has stood me well in considering previous, as well as the current, Supreme Court nominations.

In conclusion, after attending the Judiciary Committee hearings, and examining the record, I wish to give my unqualified endorsement to this very distinguished lawyer and legal scholar. I believe him to be uniquely qualified to sit on the Supreme Court of the United States.

Mr. President, I urge the immediate confirmation of Mr. Lewis F. Powell, Jr. to be Associate Justice of the Supreme Court.

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

Mr. COOK. I yield.

Mr. BAYH. I suggest to my friend from Kentucky that I am deeply impressed by the reference that he made to the letter of Jean Camper Cahn. I found that to be one of the most emotional, persuasive bits of correspondence that I have seen relative to the human qualities of the man. Certainly the fact that the Senator from Kentucky used it in support of the nominee from Virginia I think is a point well taken.

I just might interject one observation about the feeling of the Senator from Kentucky—he and I agree on many things and disagree on a few, and each of us arrives at his own conclusion as to what criteria we use: I am sure the Senator from Kentucky is aware that should the Senate totally disregard in its consideration the philosophical views of a prospective Supreme Court nominee, we would be at odds with the strong and eloquent position taken by the other nominee, William H. Rehnquist, in a very persuasive article that he had published in one of the Harvard Law Journals, in which he suggested that it was not only the right but the responsibility of the Senate to consider the philosophy of the nominee.

Mr. COOK. I thank the Senator from Indiana. I must say to him I am one Senator who does speak for himself. I lost any tendency toward a dogmatic attitude a long time ago, and I should think to a considerable degree one's attitude is one's own criterion; and that would reflect itself on any other individual.

I thank the Senator for commending the distinguished jurist from Virginia. I look forward to being on the same side with him at 4 o'clock.

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

Mr. COOK. I yield.

Mr. SPONG. I thank the Senator from Kentucky for the splendid presentation he has made to the Senate today in behalf of the nomination of Lewis Powell. I know from observing the actions of the Senator from Kentucky on past occasions that he speaks on these nominations only after a thorough review of the qualifications of a nominee. He and I have been through judicial nomination wars together. I should also like to say that the Senator has again rendered the Senate a service by spelling out his own views, which parallel mine, on the Senate's role of advice and consent.

I recognize, as has been demonstrated by the remarks of the Senator from Indiana, that there is some difference of opinion as to how this role should be played by Senators, but I think since his coming to the Senate, the Senator from Kentucky has rendered a conspicuous service in trying to outline what he conceives to be the constitutional role of the Senate in considering advice and consent to these nominations.

Mr. COOK. I thank the Senator from Virginia very much, Mr. President, and I yield the floor.

Mr. FANNIN. Mr. President. during the weekend a columnist observed that it was a difficult task for the Senate to sustain a 2-day discussion on the nomination of Lewis F. Powell, Jr., to be an Associate Justice of the Supreme Court.

Debate is not very exciting when—as in this case—there is nothing to debate. After the first round of wonderful praise for Mr. Powell, all else is repetition.

Nevertheless, I am pleased to join in this discussion and to add my voice to those who have cited the excellent qualifications of Mr. Powell.

He is a legal scholar; he has had a distinguished career as an attorney, including service as president of the American Bar Association; he has been a leader on a number of important boards and commissions.

It is significant that Mr. Powell has been deeply involved in the educational affairs of an important Southern city during a very trying time in history. He carries to the Supreme Court some practical knowledge of the problems which face schools, school officials, parents, and

children. We need this experience on the Supreme Court.

Mr. Powell is a man of high intelligence, unquestioned integrity, vast experience, and total devotion to law and to the Constitution of the United States.

Mr. President, it is without reservation that I support the confirmation of the nomination of Lewis F. Powell, Jr., to be Associate Justice of the Supreme Court of the United States.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

RECESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate stand in recess until 3 p.m.

The PRESIDING OFFICER. Is there objection?

There being no objection, at 1:51 p.m. the Senate took a recess until 3 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. BUCKLEY).

Mr. MANSFIELD. Mr. President, I ask unanimous consent that a number of nominations at the desk be called up at this time. It is my understanding that they have been cleared all the way around.

The PRESIDING OFFICER (Mr. BUCKLEY). Without objection, the nominations will be stated.

GOVERNORS OF THE U.S. POSTAL SERVICE

The legislative clerk read the following nominations, which had been reported earlier:

Elmer T. Klassen, of Massachusetts, Frederick Russell Kappel, of New York, Theodore W. Braun, of California, Andrew D. Holt, of Tennessee, George E. Johnson, of Illinois, Crocker Nevin, of New York, Charles H. Codding, of Oklahoma, Patrick E. Haggerty, of Texas, and M. A. Wright, of Texas, to be Governors of the United States Postal Service.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

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

Mr. McGEE. Mr. President, the Post Office and Civil Service Committee, without objection, this morning, reported the names of the Board of Governors. These names were sent to the committee a little over a year ago. The committee read about their appointment in the various newspapers, the first notification it had. Because the new Postal Reorganization Act of 1970 specified that the Board of Governors would be selected with the advice and consent of the Senate, the members of the Senate Post Office and Civil Service Committee felt that the administration had been less than forthright in its procedures in this regard. The consequence was, only now has the Senate committee seen fit to approve the nominations.

Why now, rather than some other time? The answer is that there are now changed circumstances in the Postal System. Some of the elements that contributed to the lack of communication, or the "iron curtain," whatever we want to call it, between the Senate and the operation of the system have since been removed or changed in other ways.

The committee was delighted to approve this panel of nominations for the Board of Governors. They are all very astute gentlemen, distinguished individuals in their own right in their various pursuits. They are of many persuasions and of many talents. I think it is urgent that their approval be followed without delay in their pursuit of the responsibilities of getting the new Postal System off the ground. It is an awesome task and will take time yet, and the patience of this body, as well as the patience of users of the mails which will still be taxed heavily in the psychological sense, as well as in the monetary sense, for the reason that a transition with new structuring is a relatively slow process and yet the ultimate goal is laudable, indeed, both in the saving of money for the taxpayers as well as in the improvement of service for all who use the mails. We are getting there. It will take a while yet before we reach the goals we have set in the reorganization. But we are happy to report the approval of the nominees for the board of governors.

My colleague, the ranking minority member of the committee, who shared with me the responsibilities for the legislation in the first place, and seeking its implementation in the many months since, has been one of the leaders looking ahead to a constructive and responsible U.S. Postal Service which will serve all the people.

Mr. FONG. Mr. President, I join my distinguished colleague from Wyoming in saying that I am very pleased that the Senate has confirmed the members of the Board of Governors of the U.S. Postal Service.

We have been working on these confirmations for a long time and we are very happy that their confirmations have now come to pass.

We, as Members of Congress, should not expect too rapid progress in curing the ills of the Post Office Department, or in believing that many of the criticisms that have been leveled at it will end immediately by having the members confirmed at this time; but we hope that, given time, and given a little more effort, this group will be able to work out a very efficient postal service for this country.

The President has selected an able and capable group for the Board of Governors. They seem to be quite experienced in the field of business operations. We are hopeful that in tackling the big problem of operating the Postal Service, which is a $7 billion a year business, employing approximately 740,000 employees, these Board of Governor members will produce a very efficient Postal Service.

We hope that with a little patience and much hard work, we will achieve the efficient and responsible postal system, we sought when the bill to reorganize the Postal Service was passed.

INDEFINITE POSTPONEMENT OF S. 2722, COMPARABILITY PAY OF FEDERAL EMPLOYEES

Mr. MANSFIELD. Mr. President, I ask unanimous consent, as in legislative session, that Calendar No. 422 (S. 2722), the comparability pay of Federal employees bill, be indefinitely postponed.

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

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent, as in legislative session, with no Senator seeking to speak on the pending nomination at this moment, that the distinguished Senator from Idaho (Mr. CHURCH) be recognized on that basis.

The PRESIDING OFFICER. Without objection, the Senator from Idaho is recognized.

WAR BETWEEN INDIA AND PAKISTAN AND THE INEPTITUDE OF U.S. POLICY

Mr. CHURCH. Mr. President, the war that has erupted between India and Pakistan is no affair of ours. Whichever side prevails, we can live with the result. Our vital interests as a nation are not at stake on the Indian subcontinent, as long as the great powers refrain from direct intervention in the conflict.

The American role, therefore, should be confined to the efforts within the international community to restore peace, as taken in the Security Council or through the office of the Secretary General of the United Nations. We should also contribute—as no doubt we will—to humanitarian relief efforts on behalf of the millions of refugees who have fled from the war zone. Beyond this, however, we should withhold our hand. The American people have been satiated with too much war already, without mixing in another.

This calls for neutrality, something we have not practiced for a long while. Neutrality means that we keep our Navy out of the way; it means that we refrain from sending our merchant ships into the harbors of either country; it means an arms embargo applied even-handedly for the duration of the hostilities; and it means scrupulous avoidance of favoritism toward either side.

Already the postulate of nonfavoritism had been breached. The Nixon administration, speaking through the State Department, has declared that India bears the major responsibility for the war, while the President's personal spokesman, Ronald Ziegler, charges In-

dia with having launched an extensive movement of forces into East Pakistan.

"When you take into account the human problems that exist in the area," Ziegler is reported to have said, "it is difficult for the Americans to understand a resort to force."

As an American, I find it difficult to understand how any Presidential spokesman, with knowledge of the problems that exist in the area, could make such an unctious statement. I have just returned from India, where I traveled the road to Jessore from Calcutta to the Bengal border. I saw for myself the endless stream of refugees fleeing East Pakistan, 1 day's part of the multitude that has inundated the bordering states of India during the past 8 months.

I visited a field hospital near the border, where wounded refugees were brought for treatment. Half of the patients were laid out on the floor, for lack of beds, and the surgery was crude—like that which took place during our own civil war a century ago—due to the limited facilities and the incapacity to administer blood transfusions. Every complicated gunshot wound could be treated only by amputations. Patients were surviving who would have died a century ago, only because of sulfa and penicillin.

These refugees were the victims of Pakistan fire. Most were Hindus but many were Muslims who supported Sheikh Mujibur Rahman in the elections which took place in East Pakistan last year. In those elections the people of East Pakistan had spoken in one voice. They had massively elected the candidates of the Awami League, endorsing a platform which called for an autonomous East Bengal. "Bangla Desh" was the rallying cry in those elections, as it remains the rallying cry today.

I wandered through the refugee camps, questioning men, women, and children on every side. Invariably, their story was the same, the same sad tale of villages pillaged, families decimated, young girls raped. Mothers spoke proudly of their sons of fighting age who had escaped and had now returned to fight in the ranks of the Mukti Bahini guerrilla forces to free their country.

Words cannot describe the sorrow, the outrage, the hatred engendered by the brutal repression of the Pakistan army. I shall not soon forget the passion of a "holy man" I met in a crowded camp. Tears streaked down his creased face, as he kept repeating, "we voted for freedom; we were the majority in the whole country, East and West. We voted for freedom and we were killed."

I came away from that scene of tragedy and despair, knowing in my bones two things: That the people of East Pakistan would never again submit to the rule of the West Pakistan Government in Islamabad, and that, as between India and Pakistan, we Americans should have the humility not to pass a hurried judgment on who is right and who is wrong.

Yet, by implication, we have already branded India the aggressor. It comes with ill grace considering the circumstances. How long would we have waited to strike back had a bloody massacre in Mexico led to the influx of 10 million Mexican refugees into southern California, New Mexico, and Arizona? Would we have waited 8 months? Eight weeks? Eight days?

I do not maintain that India has been blameless nor that she does not now seek advantage in alining herself with the people of East Pakistan against her old enemy in the west. But as long as she resists the temptation to annex East Pakistan and limits her objective to that of supporting the Bengali people in their struggle for independence, there is a large measure of justice in India's cause.

If India has intervened in the civil war of her neighbor, we did the same in Vietnam with far less provocation. Indeed, we dispatched our Army to intervene in a civil war 8,000 miles away from our homeland, against an enemy that could not even reach, let alone threaten, the United States. For the past 7 years, we have fought to sustain in Saigon a government whose latest claim to legitimacy rests upon a dubious election, in which the incumbent President, Mr. Thieu, ran uncontested. Yet, we have fought the war in the name of giving the right of self-determination to the people of South Vietnam.

It must follow that if self-determination is right for South Vietnam, it is also right for East Pakistan, where the people, in an open, free, and contested election, voted overwhelmingly for autonomy. If intervention on their behalf causes India to be accused of "aggression," the Government of the United States should be the last in the world to cast that stone.

I find it hard to understand why there has been such a persistent pro-Pakistan bias in American policy. India's position in the war which has now broken out is not only consistent with our professed ideals, but it is also the position which is most likely to prevail. By showing such favoritism toward West Pakistan, we side with the probable loser, and we forfeit the good will of the freedom fighters in East Pakistan as well as the people of India.

Unless one believes that West Pakistan represents the wave of the future on the subcontinent, it is impossible to reconcile this administration's obvious bias toward Yahya Khan's government with the real national interest of the United States.

Mr. BAYH. Will the Senator yield just briefly?

Mr. CHURCH. I am happy to yield to my good friend, the Senator from Indiana.

Mr. BAYH. I have the greatest respect for my friend, the Senator from Idaho, and I am aware that he has just returned from that trouble spot of the world. I listened with great interest to the remarks and logic of the Senator from Idaho, which were, as usual, very persuasive.

There is one point the Senator from Idaho raised upon which I wonder if he could just expand a bit, in which he mentioned that so long as India restricts its effort to the support of the rebel Bengali regime, he would not be concerned. I know that is a poor paraphrasing.

I watched the special over one of the networks last evening, and noticed the military maneuvers and the strategy that appeared to bring sizable Indian forces into East Pakistan in a very convincing and overwhelming way.

Having just returned from that part of the world, and being familiar with the situation, plus the tradition and the past animosity, does the Senator feel that once the Indian forces have been placed in such a manner as to control East Pakistan that it would be relatively easy to have them removed.

Mr. CHURCH. This question was very much on my mind as I discussed the possibility of impending war with leaders of the Indian Government in New Delhi.

I spoke with the President, Mr. V. V. Giri, with Prime Minister Gandhi, with the Foreign Minister, the Foreign Secretary, the Defense Secretary, and others. And I raised with each of them the question of India's objectives, should war come. All of them stressed that India's only objective was to support the effort of the Bengali people to achieve independence, in accordance with the results of the election that had taken place a year ago.

I asked them if India entertained any ambition to annex East Pakistan and make it a part of India. They denied this categorically. They said repeatedly that the purpose of the Indian Government was simply to help the people of East Pakistan achieve Bangla Desh, which means a free East Bengal. Every Bengali leader I have talked with has expressed his determination that Bangla Desh be a free and separate nation. So I have no reason to believe otherwise; my remarks are predicated upon the assumption that a new nation is in the making. Should it later develop that India, once having occupied East Pakistan, comes to take a different view, then will be the time to pass adverse judgment on Indian motives, and to brand her with the label of "aggressor." But on the basis of the present facts, as we know them, India is doing no differently in intervening in this Pakistan civil war than we ourselves did when we intervened in the Vietnamese civil war or when we invaded Cambodia last year, except that, in India's case, the provocation was much greater, and the necessity for taking some action much more acute.

India cannot possibly support 10 million refugees indefinitely. She is a poor country to begin with. A person has to go out there and witness the tragedy to appreciate its true dimensions. Not only had an enormous economic burden been imposed upon India, but the most severe political and social strains as well. It is the very existence of these refugees, some of whom actually outnumber the indigenous Indian residents in the bordering states of Meghalaya and Tripura, that is creating for the Indian Government a very serious political problem; and the longer this festers, the more radicalized the politics become.

Calcutta is already a seething caldron, largely as a result of the fallout effects of the tremendous influx of refugees following partition in 1947. Now this new burden. So India really had to do some-

thing and, it is to her credit, first of all, that she compassionately took in these refugees and attempted, at great cost, to administer to them, to shelter them, and to furnish them with food, medicines, and hope.

But clearly, having waited 8 months for the problem to disappear, it was apparent in New Delhi when I was there that some action had become essential, that India could not wait much longer.

I came away realizing that war was imminent, but I did not think within the week; otherwise, I would not have left my wife and son in India. They came out on the last airplane, leaving just under the wire.

Mr. BAYH. I appreciate the additional thoughts of the Senator.

I have been amazed in reading and in studying, and, on the one opportunity I had, to visit India as a member of our delegation a year or so ago, at the way in which our relationship with India was not what I would like for it to be. I do not know if acrimony is a proper word to use but it is close to some of the comments that have been passed.

So, without belaboring his remarks, would the Senator, for the benefit of those of us who would like the Senator's opinion, give an appraisal of the assistance we have given to try to help the refugees in that situation, whether the Senator feels there is more we could be doing from a humane standpoint, and whether there is any appreciation on the part of Indian officials relative to assistance we already have given?

Mr. CHURCH. I am glad to respond to the Senator. I saw evidence of the assistance we are giving through the United Nations relief agencies, for instance, there are many trucks in the area bearing the UNICEF symbol. Some of them had come from the United States, others from Japan, and still others from Europe. The amount of food and medical supplies we have given is substantial. I kept making the point that the United States had contributed more to the relief of the refugees than all other foreign countries combined.

I must say, however, that although India recognizes this and expresses its appreciation, there are limits to gratitude in a situation of this kind. Likewise, the economic aid we have given India is recognized and acknowledged. Over the years, it has been by far the largest amount of aid India has received from any country.

Yet here again, the gratitude that comes from programs of this kind fades away, at a moment of crisis. All that India can think about now is the dreadful plight of 10 million refugees, the imminence of war, the outrage over what the Government of Pakistan had done in turning its army upon its own people, and the terrible consequences that have flowed from the genocide practiced in East Pakistan.

Also, Indians just cannot understand why, in the face of such a hideous tragedy, there has never been a single word of official condemnation or concern uttered by the Government of the United States; and, of course, they focus on those acts which in their minds indicate that we favor Yahya Khan's military government in West Pakistan, such as our reluctance to cut off military and economic aid to Pakistan after the repression began, and the continuation of military transfers after we announced these had been cutoff.

Mr. BAYH. Mr. President, if the Senator will permit me to interrupt him, will the Senator yield further?

Mr. CHURCH. Yes.

Mr. BAYH. It is impossible for one removed from the foreign policy area to understand, if, indeed, our policy was to cutoff assistance to both adversaries, how we could let that amount of assistance slip through to one side. I still have not had that explained.

Mr. CHURCH. Well, actions of this kind on our part, followed, in the last three days by statements from the Department and the White House, both to the effect that India is principally to blame for the present war, is interpreted by India that the United States is against her; that we clearly favor Pakistan; and, given the character of the root cause for this war, it is exceedingly difficult for India to understand how the American Government can take that attitude, and it is difficult for me to understand it, too. The people of Bengal will prevail. Anyone who believes the status quo can be restored has not faced up to reality on the subcontinent, and I am afraid we have ended up siding with a loser, once again.

Mr. BAYH. I thank the Senator.

Mr. CHURCH. I thank the Senator for his questions.

All of this seems to me a tragedy. India is the only major democracy on the continent of Asia, yet we lack close and cordial relations with her. Our top leaders just have never taken the time to appreciate India's diversity. For sure the United States refuses to recognize India's political significance in Asia. Instead, we have conducted ourselves in such a way as to lose the goodwill of the Indian people, the Bengal freedom fighters, and all those elements that will come to govern East Bengal when this war is over. I think this is an example of gross ineptitude in the conduct of American foreign policy.

WHITE HOUSE CONFERENCE ON AGING: A TRIUMPH FOR THE PEOPLE

Mr. CHURCH. Mr. President, thousands of delegates to the White House Conference on Aging have completed their work and began their journeys back home.

They left behind a report which is a triumph for all older Americans and for every other American as well.

Included in that report are many recommendations which are almost identical with recommendations made, at one time or another, by the Senate Committee on Aging, or harmonious in concept with committee goals.

As chairman of that committee, I feel that the conferees have provided the committee, the entire Congress, the executive branch, and every citizen of this land with a stirring declaration, not only of need, but of confidence that the need can be met.

Even in its preliminary form, the 176-page mimeographed report is a formidable document. It cannot be analyzed in this statement. I will, however, comment on segments of the report in future statements, as perhaps will other members of the committee.

Today, I will merely point to certain key conference recommendations, which give solid support to proposals made earlier by the Senate Committee on Aging:

Adequate retirement income—the No. 1 problem of older Americans—is described as an immediate goal of older Americans, and a basic floor of income is sought through a combination of payments from the social security system and payments from the general tax revenues.

Medicare should be improved by elimination of deductibles, coinsurance, and copayments, and a coordinated delivery system for comprehensive health services should be developed, legislated, and financed to insure continuity of both short- and long-term care for the aged.

Housing funds now impounded by the administration should be released and the highly effective direct loan section 202 of the Housing Act with its special guidelines related to space, design, construction, and particularly favorable financing restored. Minimum production of federally assisted housing was put at 120,000 units annually, a goal identical with that expressed by the Committee on Aging.

A President's Commission on Mental Health and the Elderly should be established at an early date, as recommended in a committee report issued early this month.

The Administration on Aging should be strengthened, and a special Office on Aging established in the White House.

The Federal Government was urged to act immediately to increase support for the development of transportation for all users, with special consideration given to the elderly, the handicapped, rural people, the poor, and youth.

Earmarked funding for manpower training of older workers was urged.

Conferees asked for major increases in funding for research and training related to aging and programs for the elderly.

Mr. President, these preliminary comments have not touched upon many other heartening recommendations, including those made by participants in 16 special concerns sessions. Much more analysis is needed, and I am sure that Congress will take a great interest in providing its share of followup action.

However, I ask unanimous consent to have just one section report from the Conference reprinted in this RECORD today. It deals with income of the elderly, and it emphatically expresses the high priority the conferees placed upon this vital subject.

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

INCOME SECTION

INTRODUCTION

There is no substitute for income if people are to be free to exercise choices in their style of living.

The income of elderly people in the past left the greater number of them with insufficient means for decent, dignified living. During the sixties the elderly as a whole enjoyed improvements through greater employment opportunities and better old age security and other public and private benefits. The last two years may have witnessed the reversal of these trends toward improvement as inflation continued to erode the purchasing power of fixed incomes, and rising unemployment reduced job opportunities for older workers. The economic situation of the elderly if past experience is repeated, will improve more slowly than that of younger groups even with an upturn in the national economy. Direct action to increase the income of the elderly is urgent and imperative.

RECOMMENDATIONS

Income adequancy.—The immediate goal for older people is that they should have total cash income in accordance with the "American standard of living."

We therefore recommend the adoption *now*, as the minimum standard of income adequacy, of the intermediate budget for an elderly couple prepared by the Bureau of Labor Statistics (nationally averaging about $4500 a year in Spring 1970). This level must be adjusted annually for changes in both the cost of living and rising national standards of living. For single individuals the minimum annual total income should be sufficient to maintain the same standard of living as for couples (not less than 75 percent of the couple's budget). For the elderly handicapped with higher living expenses, the budget should be appropriately adjusted.

Providing floor of income.—The basic floor of income for older people should be provided through a combination of payments from the Social Security system and payments from general tax revenues.

This proposal would retain the basic features of the Social Security program. In addition, there should be a supplementary payment system based on an income test to bring incomes up to the minimum, financed entirely from Federal Government general revenues and included in a single check from the Social Security Administration.

Liberalizing the retirement test.—Many older persons work in order to supplement their retirement income.

The exempt amount of earnings under the Social Security retirement test should be increased to no less than $3,000 a year (adjusted periodically to changes in the general level of wages).

The offset formula of $1 reduction in benefits for each $2 of earnings should apply to all earnings in excess of the exempt amount.

Elimination of the test would cost an additional $3 billion, and there are more urgent needs to which this sum could be applied than paying benefits to persons who are still employed at more than the exempt levels.

Widow's benefits.—Increasing numbers of women without dependent children who have not been regularly employed are becoming widowed before age 60. We recommend that they be eligible to receive widow's benefits starting at age 50 to help fill the income gap until they are eligible at the later age to receive their Social Security benefit.

Extending "special age-72" benefits.—Certain residents of the Commonwealth of Puerto Rico, Samoa, the Virginia Islands, and Guam are presently excluded from special benefits which are otherwise applicable to persons over the age of 72 who reside in the United States.

We recommend that the 1965 amendments to the Social Security Act, providing for special benefits to all persons 72 years of age and older not otherwise receiving benefits, be applied without discrimination to all residents of Puerto Rico and the territories and possessions of the United States.

Position of disadvantaged groups under Social Security.—Studies should be made to determine whether there are disadvantaged groups within the population whose age at retirement or benefits under the Social Security system may be inequitable because of shorter life expectancy due to social and economic conditions or racial discrimination.

Financing Social Security.—The financing of the Social Security system should include a contribution from general revenues. The whole structure of payroll taxes should be reviewed to lighten this burden on low-income workers.

Private pensions—Social security benefits provides a basic protection which should continue to be improved but which can be augmented through private pension plans.

The Federal Government should take action to encourage broader coverage under private pension plans and insure receipt of benefits by workers and their survivors. It should require early vesting and/or portability, survivor benefits, and complete disclosure to beneficiaries of eligibility and benefit provisions of the plans. In addition, Federal requirements should assure fiduciary responsibility, minimum funding requirements and protection, through reinsurance and other measures, of the promised benefits.

Remission of property taxes.—It is desirable that older persons be enabled to live in their homes.

States and localities should be encouraged to remit part or all of the residential property taxes on housing occupied by older persons as owners or tenants who qualify on the basis of an appropriate measure of income and assets. Remission is to be achieved by Federal and State grant programs to State and local taxing authorities to compensate for reduced revenues.

Meeting health needs.—This Nation can never attain a reasonable goal of income security so long as heavy and unpredictable health costs threaten incomes of the aged.

Priority consideration should be given to the establishment of a comprehensive national health security program which would include the aged as well as the rest of the population. Financing the program solely through wage and payroll taxes and contributions from Federal general revenues would insure that health care expenses would be a shared responsibilty of the Government, employers, and individuals. There should be not deductibles, copayments, or coinsurance.

Until such a system is established, the benefits of medicare-medicaid should be increased immediately to include, at a minimum, out-of-hospital drugs, care of the eyes, ears, teeth, and feet (including eyeglasses, hearing-aids, dentures, etc.); and improved services for long-term care, and expanded and broadened services in the home and other alternatives to institutional care. Here, too, there should be no deductibles, copayments, or coinsurance.

Government should assume responsibility for assuring an adequate supply of health manpower and essential facilities and for improving the organization and delivery of health services.

We support the establishment of a special committee of the House of Representatives which will devote its attention to all social and economic problems of the aged, including income, health, housing, and other needs areas reflected in the organization of this Conference.

Our Nation has the resources to effectively carry out the proposals made by this section provided there is a reordering of national priorities.

NOMINATION OF LEWIS F. POWELL, JR.

The Senate continued with the consideration of the nomination of Lewis F. Powell. Jr., to be Associate Justice of the Supreme Court of the United States.

Mr. WEICKER. Mr. President, despite the fact that he went to Washington and Lee University and I to the University of Virginia, and he went to Harvard and I to Yale, it is with a great deal of pride and affection that I speak on behalf of Lewis Powell to my colleagues this afternoon.

I came to know this distinguished American 25 years ago when he and my father returned as comrades in arms and friends from World War II. I was 15 years of age and he almost 40.

So when I commend Lewis Powell to the favorable attention of the Senate it is done not just by the evaluation of a U.S. Senator, but also done through the eyes of a youngster, college student, Army lieutenant, law student, lawyer, mayor, Congressman, and constant friend. From whatever view, Lewis Powell has always lived for the America that was dreamt to be.

To him, patriotism and compassion have not been just words. They have meant courageous activism. Sometimes the battlefields were Europe; other times they were Richmond and Virginia.

As I have watched Lewis Powell through the gaze of different ages and different occupations, I always knew that to him love of country involved heart, brains, and guts in equal measure. I knew that he believed in our political system as the greatest not because it could protect the status quo but because it could bring about change without tragedy. And he has been in the forefront of such change.

Loose talkers will never have much in common with this man from Richmond. Americans who have been, are, or could be wronged, will.

I yield the floor.

Mr. COOPER. Mr. President, it seems to me that the confirmation of Mr. Powell is certain, and I shall not take the time of the Senate to speak at length on his superior qualities. I simply would like to note that in 1964, during the tenure of the President's Commission to Investigate the Assassination of Late President Kennedy, more familiarly known as the Warren Commission, I had the duty of serving as one of the members of that Commission. Mr. Powell was one of the advisers of the Commission. During the hearings of the extensive and at times complex evidence, many difficult ques-

tions arose. His advice and counsel, and the trust that we held in him, proved of the greatest value. One could not only understand his great legal ability, his competence and his own confidence in his great ability, which great lawyers have, but one could learn also of his intellectual qualities, his sympathy in the subject of our investigation, and judicial restraint in dealing with the issues. I was glad I had that experience with him, and I am happy to join with Members of the Senate in voting to confirm the appointment of one who I am sure will make a great Justice of the Supreme Court.

ORDER OF BUSINESS

Mr. COOPER. Mr. President, may I speak on another subject?

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senator may speak as in legislative session.

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

WAR BETWEEN INDIA AND PAKISTAN

As in legislative session,

Mr. COOPER. Mr. President, a full-scale war has broken out between India and Pakistan—a war caused by the internal conflict in East Pakistan and Pakistan and the flight of 9 to 10 million refugees to India. There are already reports of mounting casualties on both sides, as the armies of India and Pakistan go into battle against each other armed with modern weapons of war.

This is the third time since the independence of India and Pakistan that a war has broken out. The war between India and Pakistan is the final step in the series of devastating human tragedies in East Pakistan. It is my view that an end to the present conflict between India and Pakistan will not take place until a settlement is reached which will assure that the 9 to 10 million refugees now in India will be able to return in safety to Pakistan, from which they fled, because of the repressive action of the Government of Pakistan.

I support the President's efforts to secure action by the Security Council of the United Nations, which, it is hoped, will bring the war in the Indian subcontinent to an end.

The primary purpose of the Security Council is to take action for the "maintenance of international peace and security."

The Charter of the United Nations, provides under article 33 that, upon the request of any member of the United Nations in the event of war, "the continuance of which is likely to endanger the maintenance of international peace and security," shall first of all, "seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."

It is my hope that the Security Council will act, and the Governments of India and Pakistan will accept the good offices of the Security Council, and the United Nations as a whole, to bring the war to a quick end.

The United Nations was created to provide a way for the nations of the world to resolve their disputes peacefully, and to prevent disputes between nations from developing into war. It has this responsibility which it should assume, if it is to maintain the faith of peoples through the world—this is the central issue, rather than the problem and interests of the Soviet Union, the United States, or the Peoples Republic of China.

The United States should continue to urge the United Nations to carry out its great responsibility in the Security Council if possible, and in the General Assembly if efforts in the Security Council fail.

I repeat what I said a minute ago. I have kept up with the problems of India and Pakistan. I have said that the cause of the flight of the refugees to India is the result of the Government of Pakistan's repression in East Pakistan. But now that they are at war, the real question is whether the United Nations will undertake the responsibility which belongs to that body. I hope very much that it will do so.

NOMINATION OF LEWIS F. POWELL, JR.

The Senate continued with the consideration of the nomination of Lewis F. Powell, Jr., to be Associate Justice of the Supreme Court of the United States.

Mr. STENNIS. Mr. President, a thorough knowledge of the basic and essential fundamentals of our legal system is of course necessary for a member of the Supreme Court of the United States if that member is going to effectively fill the role of a Justice. However, it is not merely learning in the law that makes a member of that Court a capable member. Rather, it is the knowledge of the law and the fundamentals of the system properly applied to a given set of facts—this is the true test of the contribution any given member may be able to make to the Court.

Mr. Powell is unusually well qualified in this manner through his many years of active and extensive law practice. This included personal and direct participation in hundreds of major courtroom trials before juries and capable judicial officers.

The trial courtroom is the place where the better judicial timber is grown for any court, including the Supreme Court of the United States.

This qualification, along with many others that Mr. Powell possesses, will make him an outstanding member of the Court. His experience and other qualities will strengthen the Court greatly in this highly important field. I am pleased to support his confirmation and predict for him a splendid judicial career of value and consequence to the Nation.

Mr. President, I yield the floor.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the nomination.

The yeas and nays were ordered.

Mr. BYRD of Virginia. Mr. President, I ask unanimous consent to speak as in legislative session.

The PRESIDING OFFICER. The Chair did not understand the Senator's request.

Mr. BYRD of Virginia. I ask unanimous consent to speak as in legislative session.

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

FINANCIAL REPORT ON THE UNITED NATIONS

As in legislative session,

Mr. BYRD of Virginia. Mr. President, a factual report as to the financial condition of the United Nations seems in order. The United States has been the largest contributor to the United Nations since its founding 26 years ago on June 26, 1945.

During the 25 years that contributions have been made, the U.S. taxpayers have contributed $4.1 billion to the United Nations and its affiliated agencies and programs.

This $4.1 billion contributed by the taxpayers of this country represents approximately 40 percent of the total contributions by all members during the period 1946 through 1971.

U.S. contributions over the years is enumerated as follows:

	Total U.N. assessments	U.S. share	Percent
United Nations operation and maintenance (mandatory)	$4,400,800,000	$1,248,309,000	28.3
U.N. peacekeeping forces (mandatory)	719,600,000	276,905,000	38.5
Special programs (voluntary)	5,168,300,000	2,581,182,000	49.9
Total	10,288,700,000	4,106,396,000	39.9

In addition the United States has purchased in excess of $141 million of United Nations bonds. Sixty-five million dollars interest free and $76.3 million at 2 percent.

The 1971 calendar year expenditures of the United Nations are estimated at a total of $1,115,000,000. This is an alltime high and is 17.7 percent higher than last year's expenditures.

Of this $1.1 billion which the United Nations will expend in 1971, the U.S. contributions and assessments total $335,443,000 or approximately 31 percent.

An article in the New York Times dated April 19, 1969, stated:

> The United States, Britain and France told Mr. Thant in separate identical notes that the United Nations budget must be frozen at its present level for the next two years except for small adjustments that are inevitable because of past commitments.

Yet, the total budgets rose from $821,500,000 in 1969 to $1,115,000,000 in 1971, an increase of over 35 percent in that 2-year period.

One hundred seventeen of the 131 members of the United Nations collectively pay less than the single contribution of the United States in a 1-year period.

So that my colleagues in the Senate

may be familiar with the exact figures surrounding the financial condition of the United Nations, I will quote from Secretary General U Thant's address October 6, 1971, before the Budget Committee.

Secretary U Thant stated:

It would be foolish in the extreme to fail to take account of the melancholy fact that the Organization (United Nations) is, as of now, in a state of near and hopeless insolvency . . . The Working Capital Fund of $40 million has been fully utilized. More than $50 million of debts incurred for past and present peace-keeping operations remain unpaid.

Further, Mr. Turner, Controller of the United Nations, when questioned by my office on Friday, November 5, 1971, as to the exact cash position of the United Nations, indicated that he was unable to state the exact cash position. He could, however, state that the organization—United Nations—did not at present have sufficient liquid assets to meet the mid-month payroll.

Eighty-eight members of the United Nations are in arrears on their payments for a total of $186,867,884 as of January 1, 1971.

Secretary General U Thant when appearing before the Budget Committee of the General Assembly placed much of the blame for the insolvency of the United Nations on:

Russia which is in arears on its payments as of Jan. 1, 1971	$86,864,900
France which is in arrears on its payments as of Jan. 1, 1971	21,780,942
11 Communist members (other than Russia) which are in arrears on their payments as of Jan. 1, 1971	32,731,785

Article 19 of the United Nations Charter denies a country in serious arrears its vote in the General Assembly. This has never been invoked.

I ask unanimous consent that the tabulation of 88 countries in arrears be published in the RECORD, together with other financial figures.

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

United Nations family of agencies and programs, Nov. 30, 1971

Total estimated budget for 1971	$1,115,500,000
United Nations, specialized agencies and International Atomic Energy Agency	443,200,000
United Nations peacekeeping force, Cyprus	12,400,000
Special programs	659,900,000
Total	1,115,500,000
Total estimated U.S. contributions for 1971	335,443,000

Regular budget assessment	$111,859,000
U.N. peacekeeping force pledge	4,800,000
Special programs pledges	218,784,000
Total (30.7% of total estimated U.N. budget)	335,443,000

(The aforementioned pledges are partly contingent on other member contributions.)

Arrears due from 88 members as of January 1, 1971	$186,867,884
Arrears due from 75 members for regular budget	55,222,425
Arrears due from 66 members for Middle East (U.N.E.F.) operations	49,546,212
Arrears due from 56 members for Congo (U.N.O.C.) operations	82,099,247
	186,867,884

In connection with these arrears, Article 19 of the United Nations Charter states:

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.

SUMMARY AS OF JAN. 1, 1971, COLLECTIONS AND ARREARAGES FOR 1970 AND PRIOR YEARS OF UNITED NATIONS ACCOUNTS FOR THE REGULAR BUDGET, WORKING CAPITAL FUND EMERGENCY FORCE AND THE CONGO [1]

Year	Gross assessments	Credits and reductions	Net assessments	Amount received	Balance due
Working capital fund	$40,064,000		$40,064,000	$40,064,000	
United Nations regular budget: [2]					
Calendar year 1967	118,073,337	$8,654,686	109,418,651	109,379,371	$39,280
Calendar year 1968	130,571,361	10,203,755	120,367,606	118,661,489	1,706,117
Calendar year 1969	143,467,267	12,528,441	130,938,826	123,266,929	7,671,897
Calendar year 1970	159,833,395	12,987,123	146,846,272	101,041,141	45,805,131
Balance due					55,222,425
United Nations Emergency Force:					
Calendar year 1957	15,028,988		15,028,988	11,472,402	3,556,586
Calendar year 1958	25,000,000		25,000,000	18,221,833	6,778,167
Calendar year 1959	15,205,000	41,226	15,163,774	11,060,304	4,103,470
Calendar year 1960	20,000,000	3,553,223	16,446,777	11,896,113	4,550,664
Calendar year 1961	19,000,000	1,754,991	17,245,009	12,623,668	4,621,341
January–June 1962	9,750,000	1,467,296	8,282,704	6,055,740	2,226,964
July–December 1963	9,504,784	691,893	8,812,891	6,369,648	2,443,243
Calendar year 1964	17,770,056	1,656,356	16,113,700	11,714,728	4,398,972
Calendar year 1965	$18,556,141		$18,556,141	$13,690,978	$4,865,163
Calendar year 1966	18,550,000		18,550,000	13,045,944	5,504,056
Calendar year 1967	17,315,000		17,315,000	10,817,414	6,497,586
Balance due					49,546,212
United Nations Congo Account:					
July–December 1960	[3] 48,500,000	3,900,000	44,600,000	29,348,616	15,251,384
January–October 1961	100,000,000	15,575,036	84,424,964	56,877,769	27,547,195
November 1961–June 1962	80,000,000	11,457,858	68,542,142	44,735,145	23,806,997
July–December 1963	33,029,108	2,965,256	30,063,852	19,409,766	10,654,086
January–June 1964	15,068,090	1,207,115	13,860,974	9,021,389	4,839,585
Balance due					82,099,247
Total amount due, Regular budget, UNEF, and UNOC					186,867,884

[1] Source: Information as of Dec. 31, 1970, supplied by the United Nations.
[2] Contributions to the regular budget prior to 1967 are fully collected.
[3] Total costs, including initial airlift, amounted to $60,000,000.

BALANCE DUE, 1970 AND PRIOR YEARS, JAN. 1, 1971

Members (126) [1]	Regular budget	Middle East (UNEF)	Congo (UNOC)	Balance due 1970 and prior years
Afghanistan		$29,499	$37,603	$67,102
Albania	61,343	45,299	43,602	150,244
Algeria	591	8,932		9,523
Argentina	145,756			145,756
Australia		63,227		63,227
Austria				
Barbados				
Belgium	148,367	144,583		292,950
Bolivia	148,259	41,905	34,883	224,997
Botswana				
Brazil	751,705		248,838	1,000,543
Bulgaria	472,890	181,155	190,746	844,791
Burma				
Burundi	109,570	11,278	10,471	131,319
Byelorussian S.S.R.	696,113	911,964	1,357,881	2,965,958
Cambodia	106,252	1,689		107,941
Cameroon		1,689		1,689
Canada				
Central African Republic	$48,817	$2,256	$6,589	$57,662
Ceylon				
Chad	59,547	8,385	9,832	77,764
Chile	123,475	165,903	224,847	514,225
China, Republic of	11,934,547	5,274,569	6,687,207	23,896,323
Colombia	433,361			433,361
Congo (Brazzaville)	8,519	9,249	9,938	27,706
Congo (Kinshasa)				
Costa Rica	138,855	13,853	7,218	159,926
Cuba	488,816	249,811	260,259	998,886
Cyprus				
Czechoslovakia	1,447,167	1,814,845	2,759,408	6,021,420
Dahomey	105,314	5,530	6,994	117,838
Denmark				
Dominican Republic	165,495	22,898	54,503	242,896
Ecuador	105,555	10,129	4,120	119,804
El Salvador	106,243	7,411	3,349	117,003
Equatorial Guinea	72,227			72,227

Footnotes at end of table.

BALANCE DUE, 1970 AND PRIOR YEARS, JAN. 1, 1971—Continued

Members (126)[1]	Regular budget	Middle East (UNEF)	Congo (UNOC)	Balance due 1970 and prior years
Ethiopia				
Finland				
France	$3,984,135	$765,655	$17,031,152	$21,780,942
Gabon	4,117			4,117
Gambia	55,612			55,612
Ghana	112,513			112,513
Greece	56,605			56,605
Guatemala			38,209	38,209
Guinea	149,940	19,410	9,938	179,288
Guyana				
Haiti	165,469	25,661	33,916	225,046
Honduras	78,308	691	5,677	84,676
Hungary	1,147,451	898,298	995,024	3,040,773
Iceland				
India	187,545			187,545
Indonesia	478,179			478,179
Iran				
Iraq	98,449	100,407	22,362	221,218
Ireland				
Israel	349,938			349,938
Italy	219,418			219,418
Ivory Coast		1,689		1,689
Jamaica	26,418			26,418
Japan				
Jordan	56,256	45,299	43,602	145,157
Kenya	56,256			56,250
Kuwait				
Laos	152,478			152,478
Lebanon	70,321	19,850	12,108	102,279
Lesotho				
Liberia				
Libya		1,689		1,689
Luxembourg				
Madagascar				
Malawi				
Malaysia				
Maldives	56,256			56,256
Mali	74,236	5,469	24,259	103,964
Malta				
Mauritania	59,000	10,673	17,215	86,888
Mauritius				
Mexico	136,352	679,491	786,193	1,602,036
Mongolia	32,303	12,387	17,215	61,905
Morocco				
Nepal				
Netherlands				
New Zealand				
Nicaragua	$117,666	$1,288	$33,915	$152,869
Niger	63,296	1,906		65,202
Nigeria				
Norway				
Pakistan	140,000			140,000
Panama	56,256	15,648	33,915	105,819
Paraguay	151,205	31,661	24,229	207,095
Peru	287,825	77,441	89,184	454,450
Philippines	690,627	15,632		706,259
Poland	1,177,581	2,528,364	2,466,010	6,171,955
Portugal	311,759		201,673	513,432
Rumania	390,402	682,212	641,015	1,713,629
Rwanda	5,510	11,278	10,471	27,259
Saudi Arabia		74,890	69,487	144,377
Senegal	39,936	9,814	20,418	70,168
Sierra Leone	38,595	5,469		44,064
Singapore				
Somalia		11,191	17,445	28,636
South Africa	352,402	80,862	1,503,337	1,936,601
Southern Yemen	46,256			46,256
Spain		1,089,981	985,159	2,075,140
Sudan	132,805	89,332	5,860	227,997
Swaziland				
Sweden				
Syria	56,256	46,654	20,379	123,289
Tanzania				
Thailand		9,026		9,026
Togo	5,613	16,174	25,324	47,111
Trinidad and Tobago	5,644			5,644
Tunisia				
Turkey				
Uganda	116,997	9,589	10,471	137,057
Ukrainian S.S.R	1,759,080	3,476,580	5,185,697	10,421,357
U.S.S.R	19,976,184	27,665,631	39,223,085	86,864,900
United Arab Republic		351,946	48,387	400,333
United Kingdom		283,300		283,300
United States	2,500,000	[2]1,188,096		3,688,096
Upper Volta	92,258	19,936	14,145	126,339
Uruguay	223,298	54,388	97,662	375,348
Venezuela	632,885	32,298		665,183
Yemen	165,750	45,299	43,602	254,651
Yugoslavia		7,598	333,269	340,867
Zambia				
	55,222,425	49,546,212	82,099,247	186,867,884
Members in arrears	75	66	56	88

[1] The number of members (126) excludes Fiji, admitted to membership by the 25th General Assembly, Oct. 13, 1970.

[2] This amount is the difference between the original apportionment for 1967 and the amount paid by the United States toward its share of revised estimates of 1967 costs.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may proceed as in legislative session.

The PRESIDING OFFICER (Mr. SPONG). Is there objection to the request of the Senator from New York? The Chair hears none, and it is so ordered.

(The remarks of Mr. JAVITS when he introduced S. 2596 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

NOMINATION OF LEWIS F. POWELL, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Mr. HATFIELD. Mr. President, in a few minutes, the Senate will vote on the nomination of Lewis Powell to the U.S. Supreme Court.

I plan to vote for his nomination. I would like to repeat what I said earlier, on November 15, when I first announced I would support the nomination of Mr. Powell.

During the consideration of the nomination of G. Harrold Carswell to the Supreme Court, I said:

I stand ready to support a nominee from any geographical section of the country. Just as every section should be open for consideration for an appointment, so should any nominee represent the best in professional excellence and personal integrity.

In my opinion, Mr. President, Lewis Powell meets these standards, and is a man I support completely.

Mr. DOLE. Mr. President, the nomination of Lewis F. Powell, Jr. to be an Associate Justice of the Supreme Court, provides a clear sign of President Nixon's continuing commitment to bring Americans of the very highest personal and professional qualifications to the Court as well as his recognition of the great importance of a nomination to the Court.

In his statement announcing the nomination of Lewis Powell the President pointed out the significance of a nomination to the Court. A Justice's appointment is for life. Once seated, his only obligation is to the Constitution and to the people of whom the Government is constituted. A President has more influence—by design or by happenstance—through a Supreme Court appointment than by any other act in the domestic area. If a President's deeds can be said to endure beyond his term in office they do so in the men he places on the Supreme Court. Thus, a great opportunity and a great responsibility is given a President and consequently to the Senate in considering those who might be chosen to fill one of the nine seats on the world's most powerful and important judicial body.

Distinction and honor have been the hallmarks of Lewis Powell's lifetime of service to the law, his State, and his Nation. Both in private practice and in public service he has consistently exemplified the qualities of intellect and character required of those who would sit on the United States highest tribunal. In addition, he is an individual possessing the judicially conservative attitudes the President seeks to have represented on the Court.

He will bring to the Supreme Court the same assets and strengths which have already propelled him to high positions of responsibility and respect among his colleagues and fellow citizens.

His philosophical dedication and practical devotion to our system of "equal justice under law" give every indication that he will emerge as a powerful influence within the Court.

President Nixon has been afforded a unique opportunity to reshape the prevailing attitude of the Supreme Court. Four vacancies within a 3-year period have made it possible for him to move directly and decisively toward fulfillment of his commitment to the American public that he would provide the Court a conservative judicial outlook.

The records of Chief Justice Burger and Associate Justice Blackmun illustrate the impact President Nixon has had in his campaign to balance and redirect the Court. Lewis Powell, I am sure, will make further contributions of significant value to the Court's work of interpreting the Constitution and laws in such a way as to preserve the fullest measure of freedom for all citizens without sacrificing the rights of the majority of peaceful, law-abiding and conscientious Americans.

The number of individuals who have spoken in behalf of Lewis Powell's nomination has been impressive. But even more impressive is his own record which provides persuasive and extremely encouraging evidence that he is ideally suited for service on the Supreme Court. It is a pleasure to support his nomination, and I urge the Senate to confirm the nomination so he may, as soon as possible, assume his share of the Court's heavy work load and begin what will quickly be recognized as an outstanding judicial career.

Mr. TOWER. Mr. President, I support the nomination of Lewis F. Powell, Jr. of Virginia, to be an Associate Justice of the U.S. Supreme Court. Mr. Powell is one of the most distinguished attorneys, not only in the South, but also in the Nation as a whole. He was graduated from Washington and Lee University in 1929, magna cum laude, and received his LL.B. from that same institution in 1931. In the next year, he received a Master of Laws from Harvard Law School. The achievements of Mr. Powell in the field of judicial education are most impressive, and I know that he will add to the expertise of the Court in many areas.

Mr. President, Mr. Powell has practiced law in his native Virginia since 1932, with the exception of time that he spent in the service in World War II. He has distinguished himself in his practice and has been honored in nearly every possible way by his fellow attorneys. He has served as President of the American Bar Association, as president of the Legal College of Trial Lawyers, and as the president of the American Bar Foundation. He most probably knows more about the every day practice of law than anyone on the Court and will be of a tremendous help to the Chief Justice in his attempt to modernize court procedures so that the very great backlog of many cases in certain areas can be cleared up. The expertise of a practicing attorney sitting on the Court will be most beneficial. Not only will the South now have a representative, but the American trial lawyer will likewise have someone who is intimately familiar with his problems.

Lewis F. Powell, Jr. also has expertise in one of the judicially most volatile areas today, the control of local schools. Having served as chairman of the Richmond Public School Board from 1952 to 1961, and as a member of the Virginia State Board of Education from 1968 to 1969, Mr. Powell well understands the problems that our Nation's schools are facing today. In fact, Mr. Powell wrote very cogently on this problem just last year when he stated in a brief on the Swan decision:

> The effort to attain racial balance promotes resegregation and movement to the suburbs. These results defeat the goal of racial balancing, adversely affect education and contribute to urban deterioration. The goal of the desegregation movement must be to achieve the highest quality of education.

In Mr. Powell, quality education will have an effective spokesman on the High Court.

Mr. President, President Nixon has fulfilled his promise that he would nominate and see confirmed a southerner to the Supreme Court. Mr. Powell is a judicial conservative who has all of the qualifications of expertise and sensitivity that one could ask for in a member of the Supreme Court. I believe that Lewis F. Powell, Jr. will make an outstanding successor to the late Justice Hugo Black and I give him my unhesitating support.

Mr. GRIFFIN. Mr. President, as we know our colleague, the distinguished Senator from Utah (Mr. BENNETT) is absent because of illness. I ask that his statement on the pending nomination, together with a letter, be printed in the RECORD.

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

STATEMENT BY SENATOR BENNETT

When President Nixon recently announced his nominees to the Supreme Court he prefaced it by saying that during a President's term of office he makes over 3,000 major appointments to high government positions. Because of the finality of the Supreme Court decisions and their far-reaching impact on this generation and future generations, it is evident that none is more important than the Supreme Court nominations sent to the Senate for its advice and consent.

The names of Justices Marshall, Holmes, Hughes, Frankfurter and others all bring to mind decisions or opinions which have helped to shape this nation and its legal system. Any review of the Court provides ample evidence of the fact that while there is no single background common to these outstanding jurists, there are common traits which can be used in providing a workable criteria to evaluate the nominees which are before the Senate for consideration.

Of prime importance in the consideration of a nominee to the Supreme Court is his judicial philosophy. President Nixon summarized this when he said, ". . . it is the duty of the judge to interpret the Constitution and not to place himself above the Constitution or outside the Constitution. He should not twist or bend the Constitution in order to perpetuate his personal, political and social views."

Those of us who have had an opportunity to read past statements of Mr. Powell feel confident there is nothing more important to him, professionally speaking, than the law and its relationship to the Constitution. He has demonstrated a genuine respect for the Supreme Court and a willingness to alter his actions if he felt it necessary for him to be in compliance with the Constitution as interpreted by the Court. This high regard for the Court and its decisions reflects the attitude expressed by Justice John Marshall Harlan when he said, "Let it be said that I am right rather than consistent."

A second issue of prime importance is the legal expertise demonstrated by Mr. Powell. Since the Supreme Court is the highest judicial body in this country its members should be among the very best lawyers in the nation. There can be no question that Lewis Powell is one of the most distinguished legal scholars in the United States. Lewis Powell's career has been marked with distinction since his days as a student at Washington and Lee, where he was Phi Beta Kappa and first in his class at Law School. It is worth noting that he has served as President of the American Bar Association, President of the American College of Trial Lawyers, and President of the American Bar Foundation. As further evidence of the respect this man has, Mr. President, I would like to place in the record at the conclusion of my statement a letter which is representative of the mail I have received from my constituents in Utah who have had an opportunity to associate with Mr. Powell. The letter is from Mr. Dallin Oaks, who is presently serving as President of Brigham Young University. As I mentioned, this letter is only one of the many I have received in support of this man, and I could go on to cite numerous examples of how Lewis Powell has distinguished himself in the legal profession. However, after the extensive hearings conducted by the Judiciary Committee, it would only serve to be repetitious.

There is one additional comment I would like to make regarding the Court and its relationship to Congress. Those of us who are students of history are aware of the conflicts Andrew Jackson had with the Supreme Court. In an attitude of dissatisfaction with the Court, Andrew Jackson said, "The authority of the Supreme Court must not be permitted to control the Congress or the Executive, when acting in their legislative capacities." While I certainly would agree with that position, I think the opposite to this statement is also true, particularly as it applies to the Congress. In our legislative duties we have the opportunity and often times the duty to enact legislation which will accomplish certain objectives; but in our consideration of this nominee, it should not be our goal or our position to impose our individual philosophies on the Court. It is the role of the President to nominate these men he feels are qualified to serve on the Court, and it is the role of the Senate to pass on the qualifications of those nominees, not their philosophies.

The President has sent to the Senate a nominee who is not only an outstanding legal scholar, but a great American as well. I strongly and enthusiastically support his nomination.

BRIGHAM YOUNG UNIVERSITY,
October 28, 1971.

Re Appointment of Lewis F. Powell, Jr. to the United States Supreme Court.

Hon. WALLACE F. BENNETT,
U.S. Senator, U.S. Senate,
Washington, D.C.

DEAR SENATOR BENNETT: I am writing in strong endorsement of the appointment of Lewis F. Powell, Jr., to the United States Supreme Court. On the basis of my thorough knowledge and acquaintance with Lewis Powell, I am certain that his service on the United States Supreme Court will add quality, prestige, and balance to that great tribunal. I consider him among a handful of truly distinguished appointments of the past two decades.

Since my evaluation of Lewis Powell is a comparative matter, I believe it is appropriate for me to state something of my own experience and basis for comparison. I served for one year as a law clerk to Chief Justice Warren. I then worked for three years as an associate in Chicago's largest law firm, for ten years as a professor of law at the University of Chicago Law School, and for a year as Executive Director of the American Bar Foundation. Since August 1, 1971, I have been President of this University. In the course of the employments just described I have had occasion to work intimately with the most distinguished federal and state judges in our nation, with high government officials (particularly while I was doing a study of the Criminal Justice Act for the United States Department of Justice), with leaders of the Bar, and with top legal scholars.

By comparison with the best legal minds I have encountered, Lewis F. Powell is a nominee of preeminent qualifications and ability for the United States Supreme Court. You will have full information on his wide experience, so I will not review that here. What is important to me is that his wide experience is matched by a breadth of vision. What he sees, he understands, and what he understands, he has the courage to confront, resolve and improve. He has a keen mind, with the extraordinary gift of identi-

fying and resolving the basic issues. He is not led aside by minutia or technicalities. He has a consummate skill in working in groups, combining insight, understanding, and a firm momentum toward the goal.

Lewis F. Powell is a brilliant lawyer, with deep sensitivity and understanding of the problems of individuals and society. He has an excellent grasp of all that is modern and advanced in legal thinking, including techniques and uses of empirical research. Yet, more important he has a deep and abiding loyalty to the principles of our Constitution and to the fundamentals of character and integrity and honor that undergird all of our social institutions.

I urge you to vote for his confirmation, and do all in your power to hasten the day when he can assume his position and commence his service in what I am certain will be an illustrious career on the United States Supreme Court.

Sincerely,

DALLIN H. OAKS.

Mr. BROOKE. Mr. President, I am pleased to vote to confirm the nomination of Lewis F. Powell, Jr., to be an Associate Justice of the Supreme Court.

Since President Nixon nominated Mr. Powell on October 21, I have had the opportunity to meet with him and to carefully review his record. I find Mr. Powell to be exceptionally well qualified to serve on the Nation's highest court. He is unquestionably a man of great intellect and integrity. But I believe he is much more. I believe he is an intensely human man, aware of and concerned about changing social tensions.

During the confirmation proceedings on past Supreme Court nominees, I have said I could vote to confirm a conservative though I am a moderate; a southerner though I represent a Northern State; and a strict constructionist though I favor a liberal interpretation of the Constitution. I meant what I said then and I mean it now. And I shall vote to confirm Mr. Powell.

I do so with the confidence that he will uphold the sacred dictum of the Supreme Court: Equal justice under law.

The PRESIDING OFFICER (Mr. SPONG). The hour of 4 o'clock having arrived, under the previous order the question now is, Will the Senate advise and consent to the nomination of Lewis F. Powell, Jr., of Virginia, to be an Associate Justice of the Supreme Court.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Georgia (Mr. GAMBRELL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), and the Senator from Utah (Mr. Moss), are necessarily absent.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL), the Senator from Utah (Mr. Moss), and the Senator from Minnesota (Mr. HUMPHREY), would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

The Senator from Colorado (Mr. DOMINICK), the Senator from Iowa (Mr. MILLER), the Senator from Illinois (Mr. PERCY) and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

If present and voting, the Senator from Utah (Mr. BENNETT), the Senator from Colorado (Mr. DOMINICK), the Senator from Illinois (Mr. PERCY), and the Senator from Iowa (Mr. MILLER) would each vote "yea."

The yeas and nays resulted—yeas 89, nays 1, as follows:

[No. 439 Ex.]

YEAS—89

Aiken	Ervin	Montoya
Allen	Fannin	Muskie
Allott	Fong	Nelson
Anderson	Fulbright	Packwood
Baker	Goldwater	Pastore
Bayh	Gravel	Pearson
Beall	Griffin	Pell
Bellmon	Gurney	Proxmire
Bentsen	Hansen	Randolph
Bible	Hart	Ribicoff
Boggs	Hartke	Roth
Brock	Hatfield	Saxbe
Brooke	Hollings	Schweiker
Buckley	Hruska	Scott
Burdick	Hughes	Smith
Byrd, Va.	Jackson	Sparkman
Byrd, W. Va.	Javits	Spong
Cannon	Jordan, N.C.	Stennis
Case	Jordan, Idaho	Stevens
Chiles	Kennedy	Stevenson
Church	Long	Symington
Cook	Magnuson	Taft
Cooper	Mansfield	Talmadge
Cotton	Mathias	Thurmond
Cranston	McClellan	Tower
Curtis	McGee	Tunney
Dole	McGovern	Weicker
Eagleton	McIntyre	Williams
Eastland	Metcalf	Young
Ellender	Mondale	

NAYS—1

Harris

NOT VOTING—10

Bennett	Inouye	Percy
Dominick	Miller	Stafford
Gambrell	Moss	
Humphrey	Mundt	

So the nomination was confirmed.

Mr. BYRD of Virginia. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

The PRESIDING OFFICER (Mr. SPONG). Without objection, the President will be notified forthwith.

THE NOMINATION OF WILLIAM H. REHNQUIST TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of the nomination of William H. Rehnquist, of Arizona, to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the nomination.

The second assistant legislative clerk read the nomination of William H. Rehnquist, of Arizona, to be an Associate Justice of the Supreme Court of the United States.

AMENDMENT OF SECTION 903(c)(2) OF THE SOCIAL SECURITY ACT

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the Senate turn to the immediate consideration of Calendar No. 533, H.R. 6065.

The PRESIDING OFFICER. The bill will be stated by title.

The second assistant legislative clerk read as follows:

A bill (H.R. 6065) to amend section 903 (c) (2) of the Social Security Act.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none.

The Senate proceeded to consider the bill.

Mr. LONG. Mr. President, this is a bill to extend for an additional 10 years, the period through which the States may obligate for administrative purposes certain funds transferred from excess Federal unemployment tax collections. The committee report is available.

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

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

EXPLANATION OF H.R. 6065

A bill to extend for ten years the period during which certain unemployment funds may be used for State administrative expenses.

Prior to 1954, one-tenth of the 3-percent Federal unemployment tax, or 0.3 percent (called the net Federal tax), was intended to pay the cost of Federal and State administration of the unemployment insurance and employment service programs. However, the net Federal tax was not earmarked for this purpose and, since the revenues had been exceeding administrative costs by about $65 million annually, the excess merely served to increase the general funds of the Treasury.

The Employment Security Administrative Financing Act, signed into law August 5, 1954, earmarked revenues from the net Federal tax for the employment security system, with this order of priority for their use: (1) funds would first be used for current Federal and State administrative expenses; (2) additional funds, if any, would be placed in a special loan account (until the account reached $200 million) from which States could get advances when the cost of benefits became particularly heavy; (3) any remaining funds would be credited to State accounts in the unemployment trust fund either for benefits or (with the specific approval of the State legislature) for additional administrative purposes. If a State wished to use the excess funds for administrative purposes, Federal law required them to use the funds within 5 years of their transfer.

During the next few years, revenues continued to exceed administrative expenses as in the years preceding the 1954 Act. In those years, no State needed to use the loan fund, which quickly reached the $200 million limitation. In 1956, 1957, and 1958, a total of $138 million was credited to State unemployment trust fund accounts. (Table 1 on page 3 of the House report shows amounts credited for each State).

In 1959, three States received advances from the loan fund. Since the excess of revenues over receipts had to be used to replenish the loan fund, no additional funds were transeferred to the State accounts.

The $138 million transferred in 1956, 1957, and 1958 represents the only funds transferred thus far to State accounts; no additional transfers are anticipated in the foreseeable future. These transferred funds have been used by the States primarily to buy the necessary land and construct buildings for

use in the employment security program. Thirty-eight States have obligated funds transferred to their State accounts for land and buildings, and one State (Alaska) has also spent funds for benefits.

Purpose of H.R. 6065.—Each year the Congress has appropriated funds for State administration of the unemployment compensation program; these grants have included amounts to cover the cost of rent. These portions of the $138 million transferred to the States which have been spent for land and buildings may be replenished over time out of these annual Federal administrative grants for rent, and the replenished funds may then be used again for land and buildings—but only within the period specified in the law. That period has been extended twice, and is now due to expire in 1973; H.R. 6065 would extend the period for ten years until 1983.

Mr. LONG. Mr. President, this bill is one which passed the House of Representatives and was on the consent calendar, I understand. I do not believe there is any objection to the bill.

The Senate was in conference with the House conferees. The conference was unable to agree to the unemployment insurance amendment agreed to by the Senate for the reason that the germaneness rule which was imposed upon the Senate by the Reorganization Act requires that an amendment to a House-passed bill cannot be accepted in the conference report except as a separate matter and separately voted on by the House of Representatives unless that amendment is germane to the bill under the rules of the House of Representatives.

By virtue of that germaneness rule that was imposed upon the Senate by the Reorganization Act which was recently passed by the Senate, we were unable to persuade the House conferees to agree to the trade amendments, to the unemployment insurance amendment, or to the amendment related to the Highway Trust Fund.

Therefore, Mr. President, I understand an amendment will be offered. One of the reasons the bill is being called up at this time is in order that an unemployment insurance amendment, of the nature which the Senate agreed to, may be offered to the bill, which could be regarded under the House rules, as I understand those rules.

Mr. MAGNUSON. Mr. President, I send to the desk an amendment, on behalf of myself, Senator RIBICOFF, Senator JACKSON, and Senator TUNNEY.

The PRESIDING OFFICER (Mr. BUCKLEY). The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. MAGNUSON. Mr. President, I ask unanimous consent that further reading of the amendment may be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

At the end of the bill add the following:

TITLE II—EMERGENCY UNEMPLOYMENT COMPENSATION

SHORT TITLE

SEC. 201. This title may be cited as the "Emergency Unemployment Compensation Act of 1971".

FEDERAL-STATE AGREEMENTS

SEC. 202. (a) Any State, the State unemployment compensation law of which is approved by the Secretary of Labor (hereinafter in this title referred to as the "Secretary"), under section 3304 of the Internal Revenue Code of 1954, which desires to do so, may enter into and participate in an agreement with the Secretary under this title, if such State law contains (as of the date such agreement is entered into) a requirement that extended compensation be payable thereunder as provided by the Federal-State Extended Unemployment Compensation Act of 1970. Any State which is a party to an agreement under this title may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) Any such agreement shall provide that the State agency of the State will make payments of emergency compensation—

(1) to individuals who—

(A) (i) have exhausted all rights to regular compensation under the State law;

(ii) have exhausted all rights to extended compensation, or are not entitled thereto, because of the ending of their eligibility period for extended compensation, in such State;

(B) have no rights to compensation (including both regular compensation and extended compensation) with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law; and

(C) are not receiving compensation with respect to such week under the unemployment compensation law of the Virgin Islands or Canada.

(2) for any week of unemployment which begins in—

(A) an emergency extended benefit period (as defined in subsection (c)(3)); and

(B) the individual's period of eligibility (as defined in section 205(b)).

(c)(1) For purposes of subsection (b)(1)(A), and individual shall be deemed to have exhausted his rights to regular compensation under a State law when—

(A) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period; or

(B) his rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(2) For purposes of subsection (b)(1)(B), an individual shall be deemed to have exhausted his rights to extended compensation under a State law when no payments of extended compensation under a State law can be made under such law because such individual has received all the extended compensation available to him from his extended compensation account (as established under State law in accordance with section 202(b)(1) of the Federal-State Extended Unemployment Compensation Act of 1970).

(3)(A)(i) For purposes of subsection (b)(2)(A), in the case of any State, an emergency extended benefit period—

(I) shall begin with the third week after a week for which there is a State "emergency on" indicator; and

(II) shall end with the third week after the first week for which there is a State "emergency off" indicator.

(ii) In the case of any State, no emergency extended benefit period shall last for a period of less than 26 consecutive weeks.

(iii) When a determination has been made that an emergency extended benefit period is beginning or ending with respect to any State, the Secretary shall cause notice of such determination to be published in the Federal Register.

(B)(i) For purposes of subparagraph (A), there is a State "emergency on" indicator for a week if—

(I) the rate of unemployment (as determined under subparagraph (C)) in the State for the period consisting of such week and the immediately preceding twelve weeks equaled or exceeded 6.0 per centum; and

(II) there (a) is a State or National "on" indicator for such week (as determined under subsections (d) and (e) of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970), or (b) there is neither a State nor National "on" indicator for such week (as so determined), but (1) within the 52-week period ending with such week there has been a State or National "on" indicator for a week (as so determined), and (2) there would be a State "on" indicator for such week except for the provisions of section 203(e)(1)(A) of the Federal-State Extended Unemployment Compensation Act of 1970.

(ii) For purposes of subparagraph (A), there is a State "emergency off" indicator for a week if, for the period consisting of such week and the immediately preceding 12 weeks, the rate of unemployment (as determined under subparagraph (C)) is less than 6.0 per centum.

(C)(i) For purposes of subparagraph (B), the term "rate of unemployment" means—

(I) the rate of insured employment (as determined under section 203(f) of the Federal-State Extended Unemployment Compensation Act of 1970), plus

(II) the 13-week exhaustion rate (as determined under clause (ii)).

(ii) The "13-week exhaustion rate" should be equal to—

(I) 25 percent of the sum of the exhaustions, during the most recent 12 calendar months ending before the week with respect to which such rate is computed, of regular compensation under the State law, divided by

(II) the average monthly covered employment (as that term is used in section 203(f) of the Federal-State Extended Unemployment Compensation Act of 1970) of the State with respect to the 13-week period referred to in subparagraph (B)(ii).

(d) For purposes of any agreement under this title—

(1) the amount of the emergency compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependents' allowances) payable to him during his benefit year under the State law; and

(2) the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall (except where inconsistent with the provisions of this title or regulations of the Secretary promulgated to carry out this title) apply to claims for emergency compensation and the payment thereof.

(e)(1) Any agreement under this title with a State shall provide that the State will establish, for each eligible individual who files an application for emergency compensation, an emergency compensation account.

(2) The amount established in such account for any individual shall be equal to the lesser of—

(A) 100 per centum of the total amount of regular compensation (including dependents' allowances) payable to him with respect to the benefit year (as determined under the State law) on the basis of which he most

recently received regular compensation: or

(B) twenty-six times his average weekly benefit amount (as determined for purposes of section 202(b)(1)(C) of the Federal-State Extended Unemployment Compensation Act of 1970) for his benefit year.

(f) No emergency compensation shall be payable to any individual under an agreement entered into under this title for any week prior to the week following the week in which such agreement is entered into, or if later, the first week beginning more than 30 days after the date of enactment of this Act; and no emergency compensation shall be payable to any individual under such an agreement for any week which ends after June 30, 1973.

PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF EMERGENCY COMPENSATION

SEC. 203. (a)(1) There shall be paid to each State which has entered into an agreement under this title an amount equal to 100 per centum of the emergency compensation paid to individuals by the State pursuant to such agreement.

(b) No payment shall be made to any State under this section in respect of compensation for which the State is entitled to reimbursement under the provisions of any Federal law other than this title.

(c) Sums payable to any States by reason of such State's having an agreement under this title shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which would have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

FINANCING PROVISIONS

SEC. 204. (a)(1) Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this title.

(2) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this title. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as established by section 905 of the Social Security Act) to the account of such State in the Unemployment Trust Fund.

(b) Section 3301 of the Internal Revenue Code of 1954 is amended—

(1) by inserting "(except as otherwise provided in the succeeding sentence)" immediately after "equal"; and

(2) by adding at the end thereof the following new sentence: "In applying the preceding sentence for the calendar year 1972 and the calendar year 1973, the rate of tax shall, in lieu of 3.2 percent, be 3.29 percent.".

(c) Effective with respect to wages paid in any calendar quarter commencing after December 31, 1971, section 6157(b) of the Internal Revenue Code of 1954 (relating to computation of Federal unemployment tax) is amended by striking out "0.5 percent" and inserting in lieu thereof "a percentage equal to the excess of the percentage specified in section 3301 over 2.7 percent".

(d) The first sentence of section 905 (b) (1) of the Social Security Act is amended by striking out "and in the case of any month after March 1972, to one-tenth," and inserting in lieu thereof "in the case of any month after March 1972 and before April 1974, to nineteen fifty-ninths, and in the case of any month after March 1974, to one-tenth,".

(e) Section 901 (a) (1) (B) of the Social Security Act is amended—

(1) by striking out "and" at the end of clause (iv);

(2) by striking out the period at the end of clause (v) and inserting in lieu thereof "; and";

(3) by inserting after clause (v) the following new clause:

"(vi) an agreement entered into under the Emergency Unemployment Compensation Act of 1971.".

DEFINITIONS

SEC. 205. For purposes of this title—

(a) the terms "compensation", "regular compensation", "extended compensation", "base period", "benefit year", "State", "State agency", "State law", and "week" shall have the meanings assigned to them under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970;

(b) the term "period of eligibility" means, in the case of any individual, the weeks in his benefit year which begin in an extended benefit period or an emergency extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period or in such emergency extended benefit period; and

(c) the term "extended benefit period" shall have the meaning assigned to such term under section 203 of the Federal-State Extended Unemployment Compensation Act of 1970.

REPORT BY SECRETARY OF LABOR

SEC. 206. (a) The Secreary of Labor shall conduct a continuing and comprehensive study and review of the program established by the Emergency Unemployment Compensation Act of 1971, with a view to submitting to the Congress the report required to be submitted under subsection (b). Such study and review shall be conducted with particular regard to (1) the benefit payments made under such program, (2) projections of benefit payments which will be payable under such program after the period covered by such report, (3) the desirability of continuing such program after June 30, 1973, and (4) the funding of the benefits payable under such program and the funding of benefits thereunder if such program should be continued after June 30, 1973.

(b) On or before July 1, 1972, the Secretary of Labor shall submit to the Congress a full and complete report on the study and review provided for in subsection (a). Such report shall cover the period ending May 31, 1972, and shall contain the recommendations of the Secretary of Labor with respect to such program, including but not limited to, the operation and funding of such program, and the desirability of extending such program after June 30, 1973.

Amend the title to the bill to read as follows: "An Act to amend section 903(c)(2) of the Social Security Act, and for other purposes."

Mr. MAGNUSON. Mr. President, it will be recalled that on November 12 the Senate overwhelmingly approved an amendment to the Revenue Act which I had introduced together with Senator RIBICOFF, Senator TUNNEY, Senator JACKSON, and many other Senators. That amendment would have provided 26 weeks of emergency unemployment compensation benefits to workers who have exhausted all other unemployment benefits and who live in States where unemployment is 6 percent or higher. You will also recall, Mr. President, that this amendment received the support of the distinguished chairman of the Finance Committee, and I wish at this time to thank Senator LONG for his strenuous efforts in behalf of this amendment in the conference held on the Revenue Act.

Tragically, Mr. President, some of the House conferees, working under the President's threat to veto the Revenue Act, invoked a technical House rule to strip my amendment from the Revenue Act. That was a terrible blow, Mr. President, to the 100,000 workers in my State who have exhausted all of their unemployment benefits and to the 1.78 million workers throughout the Nation who have exhausted all of their benefits. This is not to imply, of course, that this was the intent of those House conferees for I know that they are just as concerned about those unemployed people as am I.

But the desperate plight of these unemployed Americans is too great to be ignored or to be left unattended until after the Congress returns from the Christmas recess. It is to the great credit of my very good friend and colleague, Senator LONG, that he made a very special effort to bring H.R. 6065 to the floor today, so that the Senate would have an opportunity to pass this amendment prior to the recess. I can think of no action which would be more appropriate at a time when Christmas is so near than would be the Senate's approval of the amendment we are offering today to H.R. 6065.

Mr. President, with one exception, the amendment which Senator RIBICOFF, Senator TUNNEY, Senator JACKSON, and I are offering to H.R. 6065 is the same as that which the Senate overwhelmingly approved just a few short weeks ago. This is a very simple amendment and I would like to briefly summarize its basic provisions:

It would provide 26 additional weeks of unemployment compensation benefits to eligible workers.

All States that have enacted an extended unemployment compensation law pursuant to the Federal-State Extended Unemployment Compensation Agreement would be eligible.

A State unemployment rate of 6 percent, computed by counting both the insured unemployed and those who have exhausted their benefits, would trigger the emergency benefits.

To finance these emergency benefits, section 3301 of the Internal Revenue Code of 1954 would be amended to increase the tax rate from 3.2 to 3.29 percent.

Finally, under this amendment, the participating States would not be required to pay any portion of the costs of the emergency benefits. Senators will recall that the amendment to the Revenue Act would have required participating States to have assumed 20 percent of the cost in the third and following fiscal years.

Mr. President, in closing I want to emphasize three important points:

First, every State which would have been eligible to participate under the amendment which I proposed to the Revenue Act would also be eligible under this amendment.

Second, this amendment will not impose any financial burden upon participating States.

Third, and I wish to underscore this final point, the distinguished chairman of the Finance Committee and the distinguished chairman of the House Ways and Means Committee have both been consulted and both have personally assured me that this amendment will have their strong support in conference if it is passed here today by the Senate.

Mr. President, I ask unanimous consent to have printed in the RECORD a summary of the amendment and two charts.

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

SUMMARY OF MAGNUSON AMENDMENT

The Magnuson amendment would add a new emergency unemployment compensation title to the Revenue Act of 1971 with the following provisions:

1. Additional Benefits.—Provides an additional 26 weeks of unemployment compensation benefits to persons who have exhausted their rights to 26 weeks of regular benefits plus 13 weeks of extended benefits.

2. Temporary Program.—Benefits under the new program would be payable only until July, 1973.

3. Unemployment Rate Triggering Benefit.—Additional 26 weeks of benefits would be available only in State in which insured unemployment plus rate of exhausting benefits exceeds 6.0 percent.

4. Federal Share.—Additional benefits would be 100 percent Federal.

5. Financing Provisions.—Increases net Federal tax 0.09 percent in calendar years 1972 and 1973 (net Federal tax is now 0.5 percent).

6. Cost.—Estimated at $471 million for calendar year 1972.

States in which benefits would be payable under Magnuson amendment:

Alaska, California, Connecticut, Maine, Massachusetts, New Jersey, Puerto Rico, Rhode Island, Washington, Michigan, Nevada, New York, Oregon, and Vermont.

States in which benefits might be paid if unemployment rises to early 1971 rates:

Arkansas, Kansas, Montana, New Mexico, North Dakota and Wisconsin.

Mr. MAGNUSON. Mr. President, the amendment is the same amendment the Senate passed overwhelmingly, but as pointed out by the distinguished chairman of the committee, the Senator from Louisiana, it was discussed with the House conferees and they must abide by their rules.

But this is a measure they sent over and they agreed this amendment should be on this bill. I have had a long informal conference with members of the Committee on Finance and Members of the House, and the chairman of the appropriate committee over there this morning, and on Friday.

They agree that this is the proper language, and as far as I know they will accept the amendment over there, not only as being germane but as an amendment that should be on the bill.

I hope we do not need a rollcall vote on this matter; it already has been passed by the Senate overwhelmingly.

SEVERAL SENATORS: Vote. Vote.

Mr. SCOTT. Mr. President, before that is done, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

The question is on agreeing to the amendment of the Senator from Washington.

Mr. CURTIS. Mr. President, reserving the right to object, and I shall not object, may we have a brief statement in reference to this proposal?

Mr. MAGNUSON. Mr. President, I am sorry the Senator had another matter he had to take care of. This is the same amendment the Senate passed in November. The Senator will recall the trouble in connection with the germaneness rule in the House. Chairman MILLS and other members of the Ways and Means Committee in the House intimated that if we would add this amendment on the extension of unemployment insurance to a bill which would not violate their germaneness rule—which is a little different than ours, and they use it frequently—they would be glad to accept it. The particular bill that the Senator's distinguished committee reported is perfectly germane and they are willing to accept the amendment. They wanted us to pass a bill which would extend the benefits for 26 weeks. It may be that they want to recommend it for a quick conference. It will not take too long, if it goes for 13 weeks, which would be all right, because we are going to have to go into it early in the spring, anyway.

Mr. CURTIS. May I ask further, at what percentage of the unemployment rate this additional unemployment compensation will be triggered?

Mr. MAGNUSON. Six percent or over, just as it was as we passed the bill.

Mr. CURTIS. How many States will that affect?

Mr. MAGNUSON. About 15 right now. I have the list. I shall put it in the RECORD.

Mr. CURTIS. We have the basic unemployment systems in our States. Then we have the permanent law for an additional period. I take it that in the State which the distinguished Senator represents that has been exhausted?

Mr. MAGNUSON. Oh, yes. We have 1,000 a week who have exhausted their benefits in three counties. By February 1, it will be 120,000. I do not like to see them go on welfare, as I am sure the Senator does not.

Mr. CURTIS. How does the cost compare of this proposal compare with the cost if a family has to go on welfare?

Mr. MAGNUSON. All I know about welfare—I probably should know more than I do, but I know something about it, because I handle the appropriation—is that it costs us $4,025 per capita for every person in the United States on welfare. That is their figure, and the Senator knows they are pretty low. We have 118,717 employees down there, but it is hard to get that figure. I think the extension for unemployment insurance for people who want to work but are not able to get it will cost us less in the long run. Second, I just do not like to see good people pushed on to welfare, because they have no place else to go. It breaks their dignity and spirit. If a person exhausts his unemployment compensation and is at the age of 50 or 55, it breaks his spirit, and he says, "Oh, well, so what?" And he stays there. His dignity is lost.

I think this is a good compromise of the situation with the House. I think the Senator knows, and he probably wants us to do this, that come next spring, we are going to have to get into the whole matter again, and perhaps basically change the laws. This is an emergency matter. That is what it amounts to.

Mr. CURTIS. I have no further questions.

Mr. RIBICOFF. Mr. President, on November 12 the Senate approved the Magnuson-Ribicoff amendment, as modified by the distinguished Senator from California (Mr. TUNNEY), to extend emergency unemployment compensation benefits to individuals in States with high unemployment. Expanded benefits would have been provided to workers in States with an unemployment rate of 6 percent or more who have exhausted their existing regular and extended unemployment benefits.

Unfortunately, the conferees on H.R. 10947 eliminated this provision from the final version. Today, however, the need is even greater for this legislation. Last week the Labor Department revealed that unemployment in this country had again risen—from 5.8 percent to 6 percent. In many areas unemployment is far above the national average. In Connecticut, September figures revealed that unemployment now exceeds 9 percent and is over 10 percent in three of its major cities.

Today, I ask that the Senate again approve this vitally needed measure to assist American workers. The long-term economic reforms recently approved by the Senate will hopefully create thousands of new jobs. But the sad reality is that there are over 5 million unemployed men and women in this country, many of whom have exhausted their unemployment benefits.

In the first 6 months of 1971, an estimated 1,062,423 workers exhausted their benefits under the regular unemployment insurance program, a national increase of 83 percent over the same time last year. Of these men and women, 34,139 were in my home State of Connecticut. Thousands of other workers exhausted their regular insurance rights before that time. Since extended benefits run for only an additional 13 weeks, benefits have also now been exhausted for those whose regular insurance terminated before July.

Unemployed Americans without unemployment compensation face a bleak New Year unless legislation is enacted

immediately to provide emergency unemployment assistance.

I hope that the Senate will accept this vital amendment to the pending unemployment compensation legislation, H.R. 6065, which changes the formula limiting the amount obligated to a State for the administration of unemployment compensation programs.

Mr. President, the Senate has already gone on record in support of this program. Because there is no decrease in sight to the high unemployment rate, I hope that my colleagues will again act to assist those men and women who have exhausted their benefits before they could find another job.

Mr. President, I ask unanimous consent to include an article from the Hartford Times.

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

JOBLESS PAY GONE, MOMS TURNING TO WELFARE

(By James N. Mason, Jr.)

The unemployment checks have run out for Mrs. Mary Carney of 208 Farmington Ave.

A few days ago she became one of the 2,400 mothers who have applied for public welfare assistance since the fiscal year began in July. Total caseload in aid to dependent children jumped from 27,000 in June to about 29,400 in October, the State Welfare Department reports.

Mrs. Carney put off her trip to the Welfare Department as long as she could. Her last unemployment check came on Oct. 2, but she had $50 saved at the time, and got an income tax return of $102.

This money, plus $10 per week child support from her 13-year-old son's father, kept them going for several weeks while Mrs. Carney kept combing the want ads and taking babysitting jobs or brief typing jobs.

But the cupboard is now bare. She's a month behind on her $120 monthly rent. There was nowhere to go but the State Welfare Department.

Nobody knows how many men and women like Mrs. Carney have reached the end of their unemployment benefits. The State Labor Department said it was so deluged with paperwork during the heavy unemployment period that its computer could not keep up-to-date records on how many people were expiring their benefits.

But the claims for unemployment benefits have been dropping since August, either because people are finding new jobs, partly because they were on brief vacation lay-offs in August (which pushed up the statistics), and partly because benefits have run out, and they don't have jobs.

In September, the Department of Social Services in Hartford anticipated an increase in the number of residents needing emergency assistance because their benefits had run out.

So far, the number is small, but the figure for November (available in early December) may indicate a trend. In September, said a Hartford official, 19 persons who applied for emergency assistance said their unemployment benefits had been exhausted and they still couldn't find a job.

In October, the figure jumped more than twice as high, up to 52 cases.

A spokesman at the State Welfare Department said the increase in mothers receiving aid to dependent children doesn't necessarily mean that they were previously in jobs.

"They may just have been recently deserted," he said. But one of the major reasons cited for a man deserting his family is that he can't find a job to support them. He gets discouraged and takes off, assuming his wife and children will get better support from the Welfare Department.

Mr. TUNNEY. Mr. President, I am pleased to join with Senator MAGNUSON, Senator RIBICOFF, and Senator JACKSON in offering once again to the Senate an emergency program of federally financed unemployment compensation for States hard hit by joblessness.

Senators will recall that on November 12, the Senate adopted a proposal substantially identical to the one we offer today. That proposal was an amendment to the Revenue Act of 1971, and it would have allowed 26 additional weeks of unemployment compensation in States where joblessness—weighted to take account of those who have exhausted all benefits—reached 6 percent or more. The program would have been financed through the Federal Government by an increase in payroll taxes from 3.2 to 3.29 percent.

This amendment would have reached up to 330,000 unemployed persons in California alone, who have exhausted all available unemployment benefits during the past year. It would have allowed 26 further weeks of aid at an average of $54 weekly. Without this additional help, those people who have exhausted unemployment compensation and do not yet have jobs would have no choice but the indignity of welfare.

I was deeply disappointed that the overwhelming will of the Senate, to establish this program, was frustrated by procedural technicalities in the House-Senate conference, and by the administration's threat to veto the entire tax bill. Under these pressures, this emergency program was dropped from the Revenue Act, and thousands of jobless persons in California and throughout the country were left unprotected.

Under the distinguished and imaginative leadership of Senator LONG and Senator MAGNUSON, we have been able to bring to the floor today H.R. 6065, a House-passed bill to which our amendment can be attached. The Senate can reaffirm its decision of last November 12 to establish this emergency aid program.

This program will provide a new bridge to a time of economic recovery for thousands who want jobs and can find no work. It will reduce our welfare rolls as well, and lift a disastrous financial strain from local governments and property taxpayers. As the distinguished Senator from Connecticut, Senator RIBICOFF, pointed out in discussing this proposal on November 12 over 800,000 persons were receiving welfare in June 1971 solely because the father of the family was unemployed. This represents a 53-percent increase above the number of welfare recipients in July 1970, 12 months earlier. In Los Angeles alone, one in eight persons receives welfare. We know that 1.8 million people exhausted their unemployment benefits last year and that the average cost of welfare per family of four is $3,000. Public assistance costs for putting these unemployed workers on welfare would require as much as $3 billion of local and State tax revenues. We cannot afford this burden. We cannot hold local communities hostage, because of the failure of national economic policies.

Mr. President, our amendment does the following:

Provides 26 further weeks of federally funded unemployment compensation to eligible persons, payable until July 1973;

Would be available to any State in which the unemployment rate, computed by a formula taking account of those who have exhausted all benefits, reaches or exceeds 6 percent;

Would be funded through an increase in the payroll tax rate from 3.2 to 3.29 percent;

Would be funded through the Federal Government for all years, unlike our proposal of November 12 which would have shifted some financial burden to States following the first year.

I urge Senators to join us in opening once again the opportunity for meaningful additional aid to hundreds of thousands of unemployed persons.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? [Putting the question.]

The bill was passed.

Mr. LONG. Mr. President, I move that the Senate insist on its amendment and request a conference with the House of Representatives on the disagreeing votes thereon; and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. LONG, Mr. ANDERSON, Mr. TALMADGE, Mr. CURTIS, and Mr. MILLER conferees on the part of the Senate.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

S. 1116. An act to require the protection, management, and control of wild free-roaming horses and burros on public lands;

S. 2248. An act to authorize the Secretary of the Interior to engage in certain feasibility investigations;

H.R. 3628. An act to amend title 5, United States Code, to provide equality of treatment for married women Federal employees with respect to preference eligible employment benefits, cost-of-living allowances in foreign areas, and regulations concerning marital status generally, and for other purposes;

H.R. 8381. An act to authorize the sale of certain lands on the Kalispel Indian Reservation, and for other purposes;

H.R. 8548. An act to curtail the mailing of certain articles which present a hazard to

postal employees or mail processing machines by imposing restrictions on certain advertising and promotional matter in the mails, and for other purposes;

H.R. 8689. An act to provide overtime pay for intermittent and part-time General Schedule employees who work in excess of 40 hours in a workweek;

H.R. 9097. An act to define the terms "widow," "widower," "child," and "parent" for servicemen's group life insurance purposes;

H.R. 9442. An act to authorize compensation for five General Accounting Office positions at rates not to exceed the rate for Executive Schedule Level IV;

H.R. 11220. An act to designate the Veterans' Administration hospital in San Antonio, Tex., as the Audie L. Murphy Memorial Veterans' Hospital, and for other purposes; and

H.R. 11335. An act to amend section 704 of title 38, United States Code, to permit the conversion or exchange of National Service Life Insurance policies to insurance on a modified lief plan with reduction at age 70.

NOMINATION OF WILLIAM H. REHNQUIST

The Senate continued in executive session with the consideration of the nomination of William H. Rehnquist to be Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. The Chair recognizes the Senator from Mississippi.

Mr. EASTLAND. Mr. President, I rise to support the nomination of William H. Rehnquist to be an Associate Justice of the Supreme Court of the United States. In my judgment, the hearings on his nomination conducted by the Judiciary Committee clearly demonstrate that Mr. Rehnquist is a man of great legal ability and impeccable character. I am certain that he will be a distinguished addition to the Supreme Court.

The record shows that Mr. Rehnquist has had a distinguished career in at least four areas of the law: as a law student at Stanford University, as a clerk to Mr. Justice Robert Jackson, as a successful private practitioner, and since January 29, 1969, as Assistant Attorney General in charge of the Office of Legal Counsel in the Department of Justice.

Mr. Rehnquist was born on October 1, 1924, in Milwaukee, Wis., and attended the public schools of that State. He enlisted in the U.S. Army in 1943 and served his country in that capacity for 3 years. After his honorable discharge from the Army, he enrolled in Stanford University and received his undergraduate education at that institution. In 1948 he was awarded a bachelor of arts degree "with great distinction." He received a master of arts degree in history from Harvard University in 1950. Mr. Rehnquist then returned to Stanford University and entered the law school, from which he was graduated first in his class in 1952. After graduation from law school in February 1952, he served as law clerk to Justice Jackson for about 18 months. After completing his clerkship, Mr. Rehnquist moved to Phoenix, Ariz., and actively engaged in the practice of law in that city from June 1953 until his appointment as Assistant Attorney General in January 1969. Mr. Rehnquist quickly attained the reputation of a great lawyer among the members of the Arizona bar. The esteem in which his fellow lawyers held him is attested by the fact that in 1966 he received an "a.v." rating in Martindale's Legal Directory. This rating is made by one's fellow lawyers and is the highest rating given by Martindale's. One must have practiced law for at least 10 years before receiving an "a.v." rating, and Mr. Rehnquist received it shortly after the expiration of the minimum period. This is an exceptional tribute to a young lawyer.

In January 1969, President Nixon nominated Mr. Rehnquist to be Assistant Attorney General in charge of the Office of Legal Counsel, a position he presently holds. By all accounts he has served in that office with great dedication and ability. The quality of his legal mind and his skill in presenting arguments in favor of the administration's position on legislation are acknowledged even by his opponents.

I can add my own personal testimony as to Mr. Rehnquist's great legal ability. As chairman of the Judiciary Committee, I have had occasion to personally observe his work. It is outstanding. I did not know Mr. Rehnquist until he assumed his position in the Department of Justice. Based on almost 3 years of personal knowledge of this man, I can assure the Senate that he is of the highest character and intellect.

Mr. President, those who know Mr. Rehnquist best know that he is a very fair-minded person of great legal and intellectual capacities. A number of persons have written letters to the Judiciary Committee in support of his nomination. These letters were not printed in the hearings. I ask unanimous consent that these letters be printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. EASTLAND. The opponents of this nomination cannot and do not say that Mr. Rehnquist lacks the legal and intellectual credentials which are prerequisite to becoming a great Justice of the Supreme Court.

They cannot and do not say that his nomination presents any questions or problems of ethics or conflicts of interest.

They cannot and do not say that he does not possess a high character and the proper judicial temperament.

In my judgment, there is not much left for the opponents of this nomination to go on.

The opposition to this nomination has boiled down to dislike for alleged personal and philosophical views of Mr. Rehnquist. The first series of attacks on the Rehnquist nomination were made shortly after President Nixon made the nomination on October 21, 1971. These attacks consisted of desperate and irresponsible efforts on the part of so-called "liberals" in the news media and the academic community to charge that Mr. Rehnquist, in his personal actions and associations, had shown himself to be an "extremist" and "hostile to the rights of minorities."

These charges and attacks were given wide circulation in the press and on TV. They are untrue.

First, it was charged that Mr. Rehnquist was a member of the John Birch Society.

Next, it was alleged that he had been instrumental in challenging black voters in Phoenix at various elections, including those of 1962, 1964, 1966, and 1968.

Lastly, it was charged that Mr. Rehnquist had been a member of For America and/or Arizonans for America, which were alleged to be right-wing extremist groups.

These charges were made and publicized by those in the academic community and in the news media, who are horrified at the prospect that the Supreme Court might not be dominated by liberal judicial activists in perpetuity.

The Judiciary Committee carefully investigated all of these untruths and smears. Each of these charges designed to show that Mr. Rehnquist was or is an "extremist" or a bigot were exploded.

Mr. Rehnquist gave sworn statements to the committee that he had never been a member of the John Birch Society or of For America or Arizonans for America.

I say further, Mr. President, that I have had access to the files of the FBI, and that the Bureau, after a full field investigation, completely exploded each of those charges.

Here is a letter that I received on November 20 from Phoenix, Ariz. It says:

Re William H. Rehnquist.

DEAR SIR: I was on the board of Arizonans for America from its inception to its end, and was its last president.

To my knowledge, Mr. Rehnquist was never a member of Arizonans for America. He did make a speech to us, and was subsequently put on our mailing list.

Sincerely,

GEORGE HEARN WOOD,
An Optometrist.

He also gave the same statement to the Bureau when its agents called upon him.

Mr. Rehnquist further gave testimony to the committee that he had never acted as a challenger to voters in elections. He further testified that as a legal adviser to the Republican Party in Phoenix, Ariz., he had instructed a party worker who was overzealous in challenging voters to refrain from such actions. Judge Charles L. Hardy, of Phoenix, who was chairman of a committee of Democratic lawyers in the 1962 elections, gave a statement to the committee which confirms the fact that Mr. Rhenquist did not engage in any improper activities in this respect.

There was no testimony obtained by the Judiciary Committee to support these irresponsible and baseless charges against Mr. Rehnquist. Every opportunity was given to those with any evidence to produce it before the Judiciary Committee. The fact that some members of the academic community and the news media chose not to present any evidence to the committee, but chose rather to broadcast fresh charges to the press gives a strong indication of the motivation, responsibility and veracity of such persons.

The hearings conducted by the Judiciary Committee thoroughly discredited these allegations. So now the opponents of the Rehnquist nomination have had

to fall back on the issue of the judicial philosophy of the nominee.

Each Member of the Senate has the right and responsibility to determine what weight, if any, to give the personal or judicial philosophy of a nominee in making a decision of whether to advise or consent to a nomination.

Thus, I do not quarrel with my colleagues who oppose Mr. Rehnquist on the basis of his supposed judicial philosophy.

I do think it is very important, however, to recognize that judicial philosophy can and should be a large consideration in all future nominations for the Supreme Court.

During the hearings those who wished to use what they supposed to be Mr. Rehnquist's judicial philosophy against his nomination made repeated efforts to distinguish the Rehnquist nomination from other Supreme Court nominations. What these opponents of Mr. Rehnquist's nomination said to him in essence was:

It is especially appropriate for us to inquire into your judicial philosophy because you wrote an article in the Harvard Law Review in which you stated that the Senate should carefully inquire into the judicial philosophy of a nominee for the Supreme Court before giving its advice and consent to the nomination, and because President Nixon has publicly stated that judicial philosophy was one of the criteria used by him in making your nomination.

In all honesty, I do not believe that this distinction withstands analysis. If this distinction were valid, suppose that a future nominee for the Supreme Court had written an article in which he stated his opinion that it was improper for a Senator to inquire into the judicial philosophy of a nominee for the Supreme Court, and suppose that the President who nominated such a person stated that the judicial philosophy of the nominee had no bearing on the nomination.

Would this mean that it would not then be proper for the Senate to attempt to ascertain the judicial philosophy of such a nominee? Of course not. The Senate cannot allow its constitutional responsibility to advise and consent to Supreme Court nominations to depend upon such fortuitous circumstances as the past writings of a nominee and the statements or silence of a President who makes the nomination.

As a matter of fact, it is common knowledge that Presidents usually take the judicial philosophy of nominees into account when they make nominations. Strangely enough, until the present administration there has been no outcry among so-called liberal elements of the news media and academic community against this fact of life. They appeared to enjoy having like-minded persons put on the Supreme Court.

The truth is that Presidents have taken the judicial philosophy of nominees into account even when a nomination will further unbalance the Supreme Court. The nomination speaks for itself. The President does not need to tell us that he took judicial philosophy into consideration; it is a self-evident fact.

We do not have to speculate as to the reasons President Johnson twice nominated Mr. Abe Fortas to the Supreme Court. The former President has recently written a book entitled "The Vantage Point" dealing with his tenure as President. Excerpts from this book have appeared in various newspapers. I will quote from the New York Times of October 27, 1971, which contained excerpts from President Johnson's book dealing with the Fortas appointment. First, President Johnson reveals the reason why he appointed Mr. Fortas to be an Associate Justice of the Supreme Court to succeed Mr. Justice Goldberg:

I was confident that the man would be a brilliant and able jurist. He had the experience and the liberalism to espouse the causes that both I and Arthur Goldberg believed in. He had the strength of character to stand up for his own convictions, and he was a humanitarian.

In discussing his nomination of Mr. Fortas to be Chief Justice of the United States, President Johnson tells us:

When I nominated Fortas to succeed Chief Justice Warren three years later, I did so for the same reasons I had first appointed him to the Court.

This is what the former President said of Mr. Fortas' rejection by the Senate:

In the end, Abe Fortas' chief assets—his progressive philosophy, his love of country, his frank views always spoken from the heart and his service to his President—brought his downfall.

A consideration of what appears to be the judicial philosophy of Mr. Rehnquist leads me to the conclusion that his service as a member of the Supreme Court would be highly beneficial to the Nation.

On the basis of the record of the hearings on his nomination, I believe it is fair to say that Mr. Rehnquist possesses what might be termed a conservative judicial philosophy. However, the record amply indicates that he is not the prisoner of any judicial philosophy, and that he will decide cases on the basis of the application of his first-rate legal mind to the question of the proper result as mandated by the Constitution and laws of the United States and applicable judicial precedents. He is certainly not blinded by ideology.

I would like to read from a letter written by Mr. Martin F. Richman, former law clerk to Chief Justice Earl Warren, and Deputy Assistant Attorney General in the Office of Legal Counsel under the previous administration, who gave the following assessment of the cast and quality of Mr. Rehnquist's approach to legal issues:

The key question for inquiry here, in my opinion, is whether as a Justice Mr. Rehnquist will bring to the decision of the cases not only his own views, however long held and well thought out, but an open mind. Will he approach each case on the basis of the facts in the record, the briefings by counsel, the arguments of his Brethren in conference, and his best judgment of all the available legal materials. In short, will he act like a Judge?

Based on my experience with him my own answer is in the affirmative.

* * * * *

But . . . I am confident that his votes will be based on the merits of the cases, that his opinions will illuminate the issues, and he will make a constructive contribution to the on-going work of the Court in the development of our law.

Mr. Robert H. Bork, professor of law, Yale University, wrote a letter to me as chairman of the Judiciary Committee, in support of Mr. Rehnquist's nomination. He stated, in part, as follows:

My support is based not merely upon Mr. Rehnquist's professional reputation, which is extremely high, but upon my opportunities to talk with him and to observe him in debate concerning legal matters. There can be no doubt whatever concerning his intellectual qualifications. He possesses a brilliant and analytical mind. More than that, however, Mr. Rehnquist is a deeply thoughtful man with respect for the requirements of intellectual honesty. I am sure, therefore, that in the decision of constitutional cases he will be guided not by his personal philosophy but by a commitment to the commands of the Constitution, interpreted in the light of its text and its history. This does not mean that he will be a wooden internalist but rather that he will attempt to discern the meaning of the Constitution in new circumstances by the document's fundamental principles instead of in accordance with whatever legislative views he might entertain if he were in the Congress rather than upon the Court. This is a difficult task, requiring the utmost in self-discipline and thoughtfulness. I believe that Mr. Rehnquist has those qualities in abundance.

I believe that the record as a whole validates these appraisals of the nominee. Mr. Rehnquist's own testimony clearly shows that he will approach all legal and constitutional issues on this basis.

Mr. President, in considering the personal and intellectual qualities of Mr. Rehnquist, it is very pertinent to consider the judgments of spiritual and religious leaders who have known Mr. Rehnquist and his family.

Mr. Louis B. Early, chairman of the church council and Rev. William B. Schaeffer, pastor of the Emmanuel Lutheran Church, Bethesda, Md., the church presently attended by the Rehnquist family, have written me a letter on behalf of the Rehnquist nomination, I quote from this letter:

Since the Rehnquist family became members of Emmanuel in July, 1969, they have given a clear witness to the centrality of the Christian faith in their life and home. Their regular presence on Sunday at worship services, the obvious closeness and mutual respect within the family circle, and the readiness to share in the life of the congregation reflect the values which are held in highest regard by the head of the household.

Mr. Rehnquist's unfailing kindness and innate modesty give testimony to the genuineness of his concern for others and his understanding of viewpoints contrary to his own. His clarity of thought and firmness of conviction demand respect. Such characteristics seem to us to be of special importance for one who is being considered for the highest court in the land.

The Right Reverend Joseph M. Harte, the Bishop of Arizona wrote the following letter:

DIOCESE OF ARIZONA,
Phoenix, Ariz., November 2, 1971.

HON. JAMES O. EASTLAND,
Senator, Chairman of the Judiciary Committee, The New Senate Building, Washington, D.C.

MY DEAR SENATOR: The Hon. William Rehnquist from Arizona is a man of enormous ability and, speaking as the Bishop of Arizona, I can assure you and your Com-

mittee that he is "his own man," a man of independent thought and not one to go blindly down the "Right-wing Conservative Path."

Mr. Rehnquist, with a superb judicial background, is flexible, understanding and full of compassion. He is not a person to simply follow without a rational and highly reasonable criteria. His reputation from our part of the country is unblemished and I want to speak out in his favor.

Faithfully and sincerely,

JOSEPH M. HARTE,
The Bishop of Arizona.

Based on the hearing record and all the facts available to us, I urge that the Senate overwhelmingly give its advice and consent to the nomination of William H. Rehnquist to be an Associate Justice of the Supreme Court of the United States.

EXHIBIT 1

EMMANUEL LUTHERAN CHURCH,
Bethesda, Md., October 25, 1971.

Hon. JAMES O. EASTLAND,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR EASTLAND: We, the Church Council and Pastor of Emmanuel Lutheran Church, wish to give this testimony to the integrity and Christian character of our fellow member, William H. Rehnquist.

Since the Rehnquist family became members of Emmanuel in July, 1969, they have given a clear witness to the centrality of the Christian faith in their life and home. Their regular presence on Sunday at worship services, the obvious closeness and mutual respect within the family circle, and the readiness to share in the life of the congregation reflect the values which are held in highest regard by the head of the household.

Mr. Rehnquist's unfailing kindness and innate modesty given testimony to the genuineness of his concern for others and his understanding of viewpoints contrary to his own. His clarity of thought and firmness of conviction demand respect. Such characteristics seem to us to be of special importance for one who is being considered for the highest court in the land.

We urge your approval of his nomination for the Supreme Court of the United States.

LOUIS B. EARLY, *Chairman.*
WILLIAM B. SCHAEFFER, *Pastor.*

CHRIST CHURCH OF THE ASCENSION,
Paradise Valley, Ariz., November 2, 1971.

Hon. JAMES O. EASTLAND,
Chairman, of Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: I am writing to commend to your Committee favorable action on the nomination of Mr. William Rehnquist to the United States Supreme Court.

This recommendation is based upon the enviable reputation which Mr. Rehnquist enjoys in this community as a man of integrity, intelligence and the highest moral character.

I am pleased to be able to write to you in his behalf.

Yours very truly,

THE REV. DAN GERRARD,
Rector.

GRACE LUTHERAN CHURCH,
Phoenix, Ariz., November 2, 1971.

Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: A group of persons interested in the nomination of William H. Rehnquist to the Supreme Court, and who are anxious for his approval by the Senate, and who heard the enclosed "Youth Sermonette" have asked me to submit a copy of it to you. The copy is enclosed.

Bill has always been, since I have known him for the past nine years, a good example to hold before the youth of our congregation. He and I were personal friends besides enjoying a pastor-parishioner relationship.

If there were other ways to urge his approval for the Supreme Court, I would like to make them!

If there is further information you would like from me, please feel free to call upon me.

Sincerely yours,

CHARLES L. STRUBEL.

YOUTH SERMONETTE

(NOTE.—The Youth Sermonette was given at the morning worship of Grace Lutheran Church, Phoenix, Arizona, on Sunday, October 24, 1971, as a regular part of the morning worship. A Sermonette is given each Sunday. This copy of the Sermonette was transcribed from a tape made at the time. A request was made to distribute copies to the above. The request was made by persons interested in supporting W. H. Rehnquist in his nomination to fill a vacancy in the Supreme Court.)

To all of my young friends this morning:

The Bible tells us that each one of us is a citizen of two kingdoms: first, we are members of the Kingdom of God, and second, we are members of the kingdoms of men, or, in our case, citizens of the United States of America. So, we have to learn how to be good citizens of the Kingdom of God; and that is why you attend Sunday Church School, the catechetical classes, come to Church Worship; that is why you are Confirmed. Confirmation means a prescribed course of study on the Bible, the Catechism, and on churchmanship has been completed, and you become members of the adult community of the church.

In the same way, you learn in school about our country: about its history, the philosophy behind our democracy, the Constitution and our kind of politics. You learn the laws of our land and to obey them. If you don't like the laws, you learn that they can be changed by the will of the people. Therefore, we learn to be aware of what is going on in all of the areas of our government and to vote intelligently.

Since we are members of the Kingdom of God, and citizens of the world—the United States—we are living parts of the two! We are members of both of these kingdoms at the same time!

Now, these two kingdoms, although different, with different purposes, are not separate. For instance, you are not a member of the Kingdom of God on Sunday, and then, on Monday through Saturday, drop that membership to become citizens of our country, only to change back to being a member of the Kingdom of God on Sunday!

Rather, what you learn on Sunday, and through all of our educational groups, you use every day of your life. You take the Christian values and put them into the political situation!

I have known many people in the political life who have done just that. During my seminary days, I supplied a parish in Tennessee. One of my parishoners who had been a member of the congregation since birth was the former governor of the state, Prentiss Cooper. In Louisville, Kentucky, Judge Brachy was judge of the City Court; and also, in Louisville, Marvin Sternberg is the judge of the Court of Conciliation. I have known mayors of cities, city councilmen, and so on and so on. These men and women are using their Christian values in almost all of the political positions in our nation.

This last week, President Nixon made an announcement. He stated that he was proposing two men to fill the two vacancies on the Supreme Court of our country, which Court is a most important judicial body. I was surprised to hear the name of Mr. William H. Rehnquist. When I first heard his name, I could not believe my ears; and when I heard and saw the announcement on television a little later, I could scarcely believe my eyes! But, it was true! President Nixon had asked Bill Rehnquist to serve on the Supreme Court! You remember Bill, don't you? He spoke from this Lectern many times when he was a member of our congregation. You remember the "Temple Talks" he made for several years on Stewardship, when he was the chairman of that committee.

It is difficult, even after a person has been nominated for such a position, to be approved for the position on the Court, because he must have the approval of the Senate of the United States. Sometimes that is a high hurdle to jump! Then, there are those who like to defame any person who may be selected for such a position, and sometimes, even in the case of a Christian, ugly names are called, unwarranted charges, unsustained, are made against the person. I have already heard some of these untruths and half-truths and accusations which are not documented. Yet, a Christian's place is in the political arena, to do his best for his God and for his country.

You see, if you say that politics is crooked, or that there is much graft, or anything else like that, then it is up to the likes of you and me to vote in Christian people, or support Christian people, who will change the scene, and change the scene by a witness to a faith in Jesus Christ.

I am sure that we were thrilled to hear our President's announcement! I telephoned the Rehnquists' home the evening that I heard it. Bill was not at home. But Nan was! You remember Bill's wife, Nan, don't you? She taught a class in our Sunday Church School, as Bill did, and she also taught a class in our Vacation Church School. The family was deeply involved in the life of our congregation: Bill was on our church council and he was the vice-president of the congregation for several years. Nan was very excited; she said that they were very proud that President Nixon had nominated Bill, and that she was pleased that their friends in Phoenix were thinking about them.

I do not know whether or not Bill Rehnquist's nomination will be approved; I hope so. I do know that we need some people to speak out. For sure, some of you boys and girls here this morning should be where Mr. William H. Rehnquist may be. The Bible tells you this: you are members of two kingdoms, the Kingdom of God and the Kingdom of Men—the United States of America, and you can use the values of the first to make the second a better place in which to live!

ADMINISTRATIVE CONFERENCE OF
THE UNITED STATES,
Washington, D.C., November 2, 1971.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

MY DEAR SENATOR EASTLAND: I am writing in support of the President's nomination of William H. Rehnquist as an Associate Justice of the Supreme Court of the United States. As a former law clerk to the Honorable Harold H. Burton, a law professor for many years, and a friend of a number of Justices, including the late Justices Black, Frankfurter and Harlan, I have been a keen student of the Court for many years. I have a deep conviction that appointees to the Court should be men of the personal integrity with extraordinary intellectual qualifications.

Bill Rehnquist easily surpasses these high standards. His quick wit, shining intelligence, and legal acumen are evident from the most casual contact. What emerges after deeper acquaintance, which I have had the good

fortune to have had with him, is balanced objectivity, a scholarly detachment, a rooting in the basic values of the Western tradition that are likely to make him in time one of the great Justices of the Court. The power of his intellect, when combined with his rhetorical skills and personal charm, will make an immediate contribution to the Court; and over the years he will become, I believe, one of its intellectual leaders.

I have worked closely with Bill Rehnquist since 1969 in my capacity as consultant and then as Chairman of the Administrative Conference of the United States, an independent Federal agency which has been greatly assisted by Bill Rehnquist's presence on its Council. Although Bill Rehnquist is a man of convictions—a deeply "principled man"—his convictions are reasoned ones which are likely to be highly responsive to changing conditions and circumstances. Moreover, he is a man of compassion and humanity, who will respond to the uniqueness of particular controversies with the appropriate degree of flexibility.

In short, I believe that William H. Rehnquist is admirably qualified for appointment to the Supreme Court of the United States. I hope that the Senate will confirm him promptly. If I can be of any assistance to the Committee on the Judiciary in connection with this matter, I hope you will call upon me. In any event, I ask that this letter be included in the record of the hearing on the confirmation.

Sincerely yours,

ROGER C. CRAMTON,
Chairman.

TUCSON, ARIZ.,
October 30, 1971.

Senator JAMES EASTLAND,
Chairman, Senate Judiciary Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: In reference to your Committee's examination of the qualifications of William Rehnquist as a nominee to the Supreme Court of the United States, I wish to inform you that some of the news releases emanating from Arizona covering Mr. Rehnquist's activities on the Civil Rights question are in error either deliberately or inadvertently.

During the 1965 debates in the Arizona Legislature on Civil Rights I was the Majority Leader in the Arizona House of Representatives, a majority put together at that time by a coalition of Democrats and Republicans. In my capacity as Majority Leader I was primarily responsible for the Civil Rights Legislation and headed the House of Representatives Conference Committee which dealt with the Senate on that subject.

Demonstrations did take place before the State Capitol. Some demonstrators also tried to invade the Senate side of the Capitol mall, attempted a sit-in, and were ejected by members of the State Highway Patrol. In my recollection, Mr. Rehnquist had no involvement in any of these proceedings.

The demonstrators and their cohorts including then Representative, now Senator Clovis Campbell, were determined to have a piece of legislation which was highly punitive and far beyond the language and purpose of the 1964 Federal Civil Rights Legislation which we tried to approximate. During that tense period some legislators were threatened with death; we had the building evacuated for a bomb scare; and the orderly processes of government were threatened continuously by roving radicals from out-of-state who managed to be influential among Arizona sympathizers to the view that the Federal Act was weak and insufficient and the legislature controlled by bigots and racists. Again, Mr. Rehnquist had no part in the matter either directly or indirectly.

In terms of personal evaluation I watched Mr. Rehnquist in action long enough during my career within the Arizona political scene to make the following judgment:

He is a man of tremendous balance. His judgment is not casually given and when it is given it will be humane, considerate, intelligent, and sound. Any charges that he is a racist will have been made by people who are themselves separatists, political opportunists, chronic trouble makers, or some remainder of those emotionally overcharged people of 1965 whose tunnel vision rendered them incapable of good judgment then or now.

When the Chairman of both the major political parties in this state endorse Mr. Rehnquist, it is a clear indication of the acceptance he has in Arizona. To give any important consideration to the highly personalized opposing reactions of a few of our Arizona citizens whose minds and emotions run in a very narrow channel would be an unfortunate injustice to Mr. Rehnquist. It would also result in an injustice to the well being of our country.

Very truly yours,

JOHN H. HAUGH.

BILBY, THOMPSON,
SHOENHAIR & WARNOCK,
Tucson, Ariz., November 5, 1971.

Hon. JAMES O. EASTLAND,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR EASTLAND: I have been a member of the Bar of Arizona for over thirty-five years, having served my state and its Bar Association in various capacities during that time.

I am well acquainted professionally with William Rehnquist, presently under consideration for the Supreme Court.

In my opinion, integrity, intellect and legal skill are, in that order, the essential requisites for judicial office, and Mr. Rehnquist meets the highest standards in these respects.

It would be impossible for a lawyer of Mr. Rehnquist's experience, standing in the community, and interest in his state and nation, not to have assumed some philosophical stance by the time he had attained professional maturity. In my opinion, a man is not qualified to become a judge if he has not taken a philosophical position, whether it be liberal or conservative.

I can state with confidence that there is no person in Arizona worthy of credence and familiar with his career, who would have the slightest doubt that Mr. Rehnquist could be swayed from an unbiased interpretation of the law by his personal philosophy.

I sincerely urge the Senate to approve President Nixon's appointment of Mr. Rehnquist.

Very truly yours,

H. C. WARNOCK.

SUPERIOR COURT OF PIMA COUNTY,
Tucson, Ariz., November 2, 1971.

Hon. JAMES O. EASTLAND,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR EASTLAND: I support the confirmation of William H. Rehnquist as Associate Justice of the Supreme Court of the United States. It is my feeling that he is eminently qualified for the office in every respect.

Among his colleagues in the legal profession, Mr. Rehnquist's legal scholarship and professional skill are highly respected.

It is urged that the Senate act promptly to confirm the appointment of Mr. Rehnquist as Associate Justice.

Very truly yours,

J. RICHARD HANNAH.

SNELL & WILMER,
Phoenix, Ariz., November 3, 1971.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judicial Committee,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR EASTLAND: In support of the confirmation of the nomination of William Rehnquist for the Supreme Court I wish to express my unqualified and whole-hearted endorsement. I have known him through law school, in legal practice, and personally in civic, social, and church settings for more than twenty years. He has rare legal talent in depth, humor, balance, integrity, exemplary moral character, wide practical experience, and great courage. I whole-heartedly believe him to be ideally suited in ability, temperament, and background for the office. So, I believe, will feel anyone, of whatever affiliation or group, who will look into his qualifications deeply, fairly, and objectively.

Yours very truly,

FREDERICK K. STEINER, Jr.

TOWN OF PARADISE VALLEY,
Paradise Valley, Ariz., November 2, 1971.

Hon. JAMES O. EASTLAND,
U.S. Senator, Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: William H. Rehnquist served as our Town Attorney for four years from 1965 thru 1968 when he moved to Washington, and we would like to encourage approval of this great attorney as an Associate Justice of the United States Supreme Court.

In all cases, Mr. Rehnquist handled the legal problems of our Town efficiently and effectively. Even tho this was a part-time job for him, Mr. Rehnquist never slighted any of our requests regardless of how busy he might be with his regular law practice—which reflects his helpful attitude and his sincere public spiritedness. He was industrious and thorough at all times yet never was he pedantic; he truly was a problem-solver for our Town Council and never, not even once, did he mislead us.

From our close association with Mr. Rehnquist we know that it would be a credit not only to the Town of Paradise Valley, Arizona but to the nation as a whole to have him appointed to the United States Supreme Court.

Sincerely,

JACK B. HUNTRESS,
Mayor.

O'CONNOR, CAVANAGH, ANDERSON,
WESTOVER, KILLINGSWORTH & BESHEARS,
Phoenix, Ariz., November 1, 1971.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR: I am writing to you in connection with the nomination of William H. Rehnquist to the Supreme Court of the United States, and to express my opinion as to the merits of the appointment.

Let me briefly describe my background and legal qualifications, so far as they may be pertinent to my evaluation of Mr. Rehnquist: I am a past-president of the Maricopa County Bar Association; I am a member in good standing of the following organizations: American College of Trial Lawyers, International Society of Barristers, International Association of Insurance Counsel, International Bar Association, Maricopa County, Arizona State and California State Bar Assns.; Board of Visitors, Arizona State University and University of Arizona; lawyer delegate, Ninth Circuit Judicial Conference, since 1968.

I have known Bill Rehnquist for approximately twelve years: I have known him well,

and have tried a lawsuit against him; as a friend, I have talked with him on the subject of law in general, about cases, and the practice of law. As a registered Democrat—I am not the least bit concerned about Bill Rehnquist's allegedly ultra conservative Republican views. Most significant to me as a lawyer are his two overriding characteristics—exceptional scholarly ability and complete integrity, that fit him superbly for this position.

Very truly yours,

JAMES H. O'CONNOR.

LESHER & SCRUGS,
Tucson, Ariz., November 1, 1971.

Senator JAMES O. EASTLAND,
Chairman, Senate Judicial Committee,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR EASTLAND: I am writing you with reference to Senate confirmation of Mr. William Rehnquist's nomination to the Supreme Court. I have been reading newspaper and magazine accounts of reaction to Mr. Rehnquist's nomination that have renewed in me a deep and growing concern for the whole process of Senate confirmation, which I am taking this occasion to express to you.

I am unable even in my imagination to conceive any basis for legitimate attack on this nomination or this nominee. I know enough of the man and his record to be confident that no attack can be made on his scholarship and intellectual excellence, his professional competence or his personal integrity. I now read, nevertheless, of opposition to his nomination, opposition based, presumably, on his failure to share the political, social or economic philosophies that seem to motivate his detractors. He is reportedly a "judicial conservative." So, I suspect, am I. In my lifetime I have watched Presidents nominate to the Supreme Court lawyers cherishing the most liberal judicial philosophies, and I have sat silent when, as in the case of Justice Goldberg, for example, the nominee was a man whose professional qualifications I could not challenge.

I deeply respect the function that the United States Senate performs in giving or withholding its consent to these nominations. It seems to me quite clear that any group degrades that function when it attempts to convert your hearings on a nominee's character, competence and professional qualifications into a contest of extra-judicial philosophies.

Such I take to be the nature of much of the effort now made in opposition to Mr. Rehnquist's nomination.

I believe that nomination to be a credit both to him and to the President. I hope and trust that the Senate in considering it will focus its attention on the relevant issues—the quality and competence of the lawyer nominated.

Yours very truly,

ROBERT O. LESHER.

ALLEN MCCLENNEN AND FELS,
Phoenix, Ariz., November 2, 1971.

SENATE JUDICIARY COMMITTEE
Senate Office Building,
Washington, D.C.

GENTLEMEN: Charges are being made that Mr. William H. Rehnquist should be disqualified from serving on the Supreme Court because of racial prejudice. My opinion on this question may be of assistance to the Senate Judiciary Committee.

You will need to know something about me and my knowledge of Mr. Rehnquist.

I am a life-long Democrat, and from September, 1963 until April, 1966, I was State Chairman of the Democratic Party of Arizona. I consider myself and am considered to be a "liberal" Democrat; for example, it is well known in Arizona that I supported Bobby Kennedy's presidential campaign even before President Johnson announced that he would not be a candidate for re-election. It is difficult to fully define "liberal" in the present political context, but in my case it has included unqualified support for all civil rights legislation and the Supreme Court decisions requiring integration and forbidding segregation.

I have practiced law in Phoenix since 1949 and have known Mr. Rehnquist both professionally and socially since 1953. We have had frequent contact over these years, politically, professionally and socially, and he has never given me any reason to believe that he was prejudiced in matters of race or color, and I believe that the truth is to the contrary.

I am aware that Mr. Rehnquist has opposed civil rights legislation and Supreme Court decisions in this area, but I believe that this springs entirely from his philosophical belief (which I hope has moderated) that the government should not attempt to intervene in the relationships of people.

My support for Mr. Rehnquist's nomination—and I do support it—arises primarily from the fact that Mr. Rehnquist is first and foremost a *lawyer*, and a very fine and very honest one. His devotion to the law and its proper practice is so strong that he could not possibly be other than completely impartial in trying or deciding a case before him. For example, if I were defending Angela Davis, I would be happy to have Mr. Rehnquist serve as the trial judge.

I realize, of course, that the role of the Supreme Court Justice is not that of the trial judge, and that philosophical bias can affect the Justice's opinion. However, what may be lost here (from my standpoint) will, in my opinion, be more compensated for by Mr. Rehnquist's ability, devotion to the law and complete integrity.

Respectfully,

ROBERT H. ALLEN.

BARRIE H. GROEN & ASSOCIATES,
ARCHITECTS,
Phoenix, Ariz., October 28, 1971.

Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: I had the pleasure of knowing Mr. William H. Rehnquist personally some 15 years ago when he and I were members of the same toastmasters club in Phoenix over a two-year period. During that time our club met weekly and I had the opportunity of hearing Mr. Rehnquist give many, many extemporaneous and prepared speeches on every conceivable topic. I, therefore, was exposed to a very broad spectrum of his views and philosophies of life.

Even in those early years I could not help but be impressed with Mr. Rehnquist's brilliant analytical mind. I always suspected that he was destined for a great future and time has proven me correct. He has a tremendous respect for the law and I have never detected any prejudice in his thinking. Detractors who are trying to brand him as a "racist" obviously do not know him. These charges are pure "bunk".

In my opinion President Nixon could not have picked a better man for a Supreme Court nominee. I urge you to support the president in his wise choice of Mr. Rehnquist.

Respectfully yours,

BARRIE H. GROEN.

DEMOCRATIC PARTY OF ARIZONA,
Phoenix, Ariz., October 28, 1971.

Re appointment to the U.S. Supreme Court of William H. Rehnquist.

Hon. JAMES EASTLAND,
Chairman, Senate Judiciary Committee, The U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: Although I am Chairman of the Democratic Party in Arizona, I am not writing this letter on behalf of the Party, but solely to express my own opinion regarding Mr. Rehnquist's nomination to the Supreme Court. I am writing this letter because I have been requested to state my opinion concerning Mr. Rehnquist.

So that the Committee understands my background and orientation, I offer the following. I have been a practicing attorney in Phoenix for approximately fifteen years and have served as State Chairman of the Democratic Party since January, 1970.

In addition, I have been involved in the civil rights movement in Arizona for a number of years, and especially during the first ten years of my residency here. I was one of the drafters of the Arizona Civil Rights Act and was involved in several organizations seeking improved human and race relations in the state. In the past I served as counsel for the American Civil Liberties Union, Arizona Branch, and was one of the founders of the state organization.

I know William Rehnquist personally and have debated with him on several occasions on such subjects as dissent in a free society, and the issue of civil disobedience. In essence, Mr. Rehnquist represented the conservative point of view, and I the liberal point of view on these subjects, if one can generalize in such a fashion. William Rehnquist's superb intellect and competency cannot be legitimately questioned. While I have not seen Mr. Rehnquist since he moved to Washington, when he was in Phoenix, he was regarded as probably one of the ablest lawyers and most brilliant legal scholars practicing law in Phoenix. So far as I know, he has the respect of all of the members of the bar for these legal abilities.

If I were a Senator, even given my own political biases, I would confirm the President's nomination. I have said to others, and repeat here, that I wish the President would not select conservative, "strict constructionist" Judges, but as I understand the Constitution and the custom which bears thereon, the President has a right to select nominees of his own political persuasion. William Rehnquist is a strict constructionist. He is not a radical, not a reactionary, not an extremist, and I have absolutely no evidence to suggest that he is a bigot or a racist. He is a genuine conservative without rancor, and a man of absolute honesty and integrity.

Cordially,

HERBERT L. ELY.

JERRY H. GLENN,
Phoenix, Ariz., October 28, 1971.

Senator JAMES EASTLAND,
Chairman, Senate Judiciary Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: The attached resolution was adopted by the Judges of this Court on this date.

Same is passsed on to you and your committee for your consideration.

I recall knowing quite well your good friend, Attorney General Joe Patterson of Jackson, with whom I served in the air corps.

I am,

Very truly yours,

JERRY H. GLENN,
Presiding Judge.

RESOLUTION

Whereas, William H. Rehnquist, a member of the State Bar of Arizona, has been nominated by the President of the United States as an Associate Justice of the United States Supreme Court, and

Whereas, the Judges of the Superior Court in Maricopa County are well familiar with his legal ability by reason of professional association with him or of having had the opportunity to observe him while practicing before this Court, and

Whereas, the Superior Court Judges in Maricopa County believe that Mr. Rehnquist is well qualified to be an Associate

Justice of the United States Supreme Court and believe that his nomination should be speedily confirmed by the United States Senate.

Now, therefore, it is resolved that the Judges of the Superior Court of Arizona, in and for the County of Maricopa, do hereby approve the nomination of William H. Rehnquist as an Associate Justice of the United States Supreme Court and do hereby urge the United States Senate to take speedy action to confirm his nomination.

Dated this 28th day of October, 1971.

OFFICE OF THE ATTORNEY GENERAL,
Phoenix, Ariz., October 29, 1971.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, New Senate Wing, Washington, D.C.

DEAR SENATOR EASTLAND: I am writing this letter to support the nomination of William H. Rehnquist for appointment to the United States Supreme Court.

As an attorney, I can attest to Mr. Rehnquist's capabilities as a practicing attorney of the highest caliber. Those of us who have been associated with him as an attorney recognize his ability, his dedication to the law, and the high ethical standards that he evinced in the private practice of law.

Very truly yours,

GARY K. NELSON,
Attorney General.
FRANK SAGARINO,
Chief Assistant Attorney General.

SUPREME COURT, STATE OF ARIZONA,
Phoenix, Ariz., October 29, 1971.

Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: I should like to indicate to you and to your committee my ardent support for William Rehnquist who has been nominated by the President for a Supreme Court vacancy.

I have known Mr. Rehnquist for many years and have a very high opinion of his personal integrity and ability. Not only is he an outstanding legal scholar, but he is a man dedicated to the rule of law. When I was on the trial bench in Maricopa County, Mr. Rehnquist appeared before me numerous times which gave me an opportunity to evaluate his ability. Since that time, I have also had the opportunity to see him in various other capacities in the legal field. His reputation in the Phoenix area is outstanding. He can certainly make a great contribution to the U.S. Supreme Court. I urge you and your committee to support his confirmation.

Very truly yours,

JACK D. H. HAYS,
Vice Chief Justice.

SUPREME COURT, STATE OF ARIZONA,
Phoenix, Ariz., October 29, 1971.

Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: I am enclosing a petition in support of William H. Rehnquist as Associate Justice of the Supreme Court of the United States, containing the signatures of all the members of the Arizona Supreme Court, as well as the members of the Court of Appeals. These judges and justices are members of both political parties and by signing this petition wish to indicate to your committee the high esteem in which they hold Mr. Rehnquist.

Very truly yours,

JACK D. H. HAYS,
Vice Chief Justice.

TO THE JUDICIARY COMMITTEE,
U.S. Senate,
Washington, D.C.

Each of the undersigned is a member of the State Bar of Arizona and engaged in the practice of law in that state. We have signed this petition in support of the confirmation of William H. Rehnquist as Associate Justice of the Supreme Court of the United States and as an expression of our unequivocal conviction that he is in every respect eminently qualified for the office.

Mr. Rehnquist is possessed of unquestioned legal scholarship. His academic record, clerkship for the late Mr. Justice Jackson and practice in the widest spectrum of difficult areas of legal challenge attest to this. Among his colleagues at the bar he is known as a master of professional skills.

We urge the Senate to act promptly to confirm the appointment of Mr. Rehnquist so that the important business of the Court may move forward with dispatch.

JACK D. H. HAYS,
(And 10 others).

SUPERIOR COURT OF ARIZONA,
Phoenix, Ariz., October 22, 1971.

Hon. JAMES EASTLAND,
Chairman, Senate Judiciary Committee, Senate Office Building, Washington, D.C.

DEAR SIR: The President's appointment of The Honorable William H. Rehnquist to the Supreme Court is one of the best possible.

Mr. Rehnquist is a man of exceptional legal ability and high integrity. I can think of no other member of the Arizona Bar who is better qualified than he for this important position.

I urge that prompt and favorable consideration be given to Mr. Rehnquist's appointment.

Yours very truly,

CHARLES L. HARDY.

THE SECRETARY OF STATE,
Phoenix, Ariz., October 22, 1971.

Hon. JAMES O. EASTLAND,
Chairman, Judiciary Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: The nomination of William H. Rehnquist to the United States Supreme Court by President Nixon prompts me to write you.

Mr. Rehnquist was on the bar committee when the Uniform Commercial Code was adopted by Arizona, and I cannot thank him enough for the help he gave us, he did a magnificent job. Due to his work on the Code we have had no problems.

In my estimation, Mr. Rehnquist would make a very fine addition to the Supreme Court. I have found him to be highly intelligent and a very fine person in every respect. He is held in high regard by the legal profession of this State and we would all like very much to see him get the appointment.

Very sincerely,

WESLEY BOLIN,
Secretary of State.

OFFICE OF THE GOVERNOR,
Phoenix, Ariz., October 26, 1971.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: May I commend without reservation Mr. William H. Rehnquist for confirmation as Associate Justice of the Supreme Court of the United States?

His record of service in our State, his scholastic achievements, and lately his federal service all combine to affirm his qualifications for such confirmation.

During his career in Arizona, I appointed him to our Commission on Uniform State Laws in which work he rendered yeoman service.

Your favorable consideration and action will be appreciated.

Sincerely,

JACK WILLIAMS.

WITTENBERG UNIVERSITY,
Springfield, Ohio, October 26, 1971.

Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: As a citizen deeply concerned that our Supreme Court justices be men of highest character and of the finest judicial ability I hereby express to you and your Committee my unqualified support for the nomination by President Richard Nixon of William H. Rehnquist.

During the period from 1958 to 1962 I was pastor of Grace Lutheran Church in Phoenix, Arizona. During that time the Rehnquist family were regular worshippers and workers in our congregation. Their participation was not a matter of mere convention but of earnest conviction. The Rehnquist's were loved and respected by all who got to know them in our parish.

Through our numerous personal contacts, as friends visiting in their home and they in our home I got to know Bill Rehnquist very well. I know him to be an intelligent and sensitive man, one whose integrity is unquestioned, whose honesty is uncompromising and whom his fellow men can trust unreservedly. Bill Rehnquist will bring to the Supreme Court qualities of moral uprightness, thoughtfulness and fairness that will make him stand tall and respected among his associates and trusted by the citizens of our land.

Reliable, intellectually keen, a man of conscience and compassion . . . these are qualities of Bill Rehnquist. This I know from personal experience, not from hearsay. Our nation and our Supreme Court need the dedicated service of this man and to this end I support him with all my being and urge nis approval by you and the Judiciary Committee.

Sincerely yours,

DAVID J. HARTMAN,
Associate Professor, Department of Religion.

SUPREME COURT
STATE OF ARIZONA,
Phoenix, Ariz., October 27, 1971.

Hon. JAMES O. EASTLAND,
U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: As Chairman of the Senate Judiciary Committee, you probably are receiving innumerable letters regarding President Nixon's most recent nomination of William H. Rehnquist for the United States Supreme Court bench.

May I take advantage of this opportunity to endorse this recommendation. As Clerk of the Arizona Supreme Court and, prior to that, 17 years with the Clerk of the Superior Court of Maricopa County in and for the State of Arizona, I had considerable opportunity to work with and observe the abilities of William H. Rehnquist. Although I am a life-long Democrat, I can only say that this man has always had my deepest admiration and respect and will, without a doubt, be a tremendous asset to the United States Supreme Court.

Sincerely,

CLIFFORD H. WARD,
Clerk of the Supreme Court.

COURT OF APPEALS,
STATE OF ARIZONA,
Phoenix, Ariz., October 27, 1971.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: May a citizen of Arizona presume to speak on behalf of Mr. Rehnquist?

Mr. Rehnquist was admitted to the practice of law not long before I commenced my judicial service first as a trial judge and then as a member of this Court. Mr. Rehnquist appeared before me while I was on the trial bench and he has appeared in this Court. One case I recall is the complex case of Arizona Water Company v. City of Yuma, 7 Ariz. App. 53, 436 P.2d 147 (1968).

Mr. Rehnquist has always been well prepared. He has the fine capacity for objective

analysis. His presentations have been quiet and respectful and at the same time thorough and effective.

We have been neighbors, though not close friends. He has an excellent personality.

Mr. Rehnquist has devoted himself to the service of his profession. He is a past president of the Maricopa County Bar Association. The County Bar was then one of the chief financial supporters of Legal Aid. There was an important recruiting of volunteer lawyer service. As an officer of and as president of the County Bar Mr. Rehnquist gave full devotion to the needs and services of Legal Aid.

As a sidelight and as an insight to Mr. Rehnquist's personal equation with people I mention that Mr. Rehnquist and I traded at the same neighborhood gas station. The people there knew him as a man and as a customer. I bought gas there shortly after the nomination was announced. The enthusiasm of these men for Mr. Rehnquist was genuine and heartwarming.

In my opinion based upon my great respect for Mr. Rehnquist as a man and as a lawyer, it is my sincere recommendation that his nomination be given favorable consideration by the United States Senate.

Because Senator Paul Fannin and Senator Barry Goldwater, I am sure, share my views I am taking the liberty of sending each of them a copy of this letter.

Respectfully yours,

HENRY S. STEVENS.

SUPERIOR COURT OF ARIZONA,
Phoenix, Ariz., October 27, 1971.

Hon. JAMES O. EASTLAND,
Chairman, Judiciary Committee, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: Supreme Court nominee William H. Rehnquist has been known to me for approximately twelve years. I feel confident in stating that Mr. Rehnquist is a lawyer of outstanding learning and ability. He has an excellent reputation in the community and enjoys high standing in the State Bar of Arizona. His moderate temperament and willingness to consider all viewpoints equip him very well for appointment to the United States Supreme Court.

Respectfully yours,

DONALD F. FROEB.

SUPERIOR COURT OF ARIZONA,
Phoenix Ariz., October 27, 1971.

Senator JAMES EASTLAND,
Senate Judiciary Committee,
Washington, D.C.

DEAR SENATOR EASTLAND: I would like to add a word in support of William H. Rehnquist as Justice of the Supreme Court.

Mr. Rehnquist has actively practiced law in our courts and has appeared before me on various occasions. I consider him a man of absolute integrity and I believe him to possess unusual ability in the legal field.

Sincerely yours,

LAURENS L. HENDERSON.

STATE TAX COMMISSIONER OF ARIZONA,
Phoenix, Ariz., October 26, 1971.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

GENTLEMEN: Please use this letter as my unqualified support of Wm. H. Rehuquist for appointment to the United States Supreme Court based upon his recent nomination by President Richard M. Nixon.

Bill Rehnquist represented the State of Arizona in impeachment proceedings of certain of our elected officials during which trials he presented a masterful case against a very astute defense.

I feel his handling of this case and his respect for the individual rights of our citizens is terrific. I thoroughly recommend this appointment.

Respectfully submitted,

JOHN M. HAZELETT,
Member.

PHOENIX, ARIZ.,
October 28, 1971.

Hon. JAMES O. EASTLAND,
Chairman of Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: I was Bill Rehnquist's law partner for almost ten years. His appointment to the Department of Justice ended an association that was about as satisfying as could ever be hoped for.

Bill has intellectual equipment of the very highest order, a deeply felt respect for his calling, and a fundamentally judicial temperament. Our substantially divergent political views never once led me to doubt his willingness, or his capacity, to consider and decide any question, of any kind, on its own merits.

He will make an outstanding member of the Supreme Court.

If I can provide any assistance at all to the deliberations of your committee, please call on me.

Very truly yours,

JAMES POWERS.

COURT OF APPEALS,
STATE OF ARIZONA,
Phoenix, Ariz., November 2, 1971.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: I am writing this letter to express my personal support of the proposed appointment of William H. Rehnquist to the position of Associate Justice of the United States Supreme Court. I am well acquainted with Bill Rehnquist on both a professional and a personal basis.

Recent newspaper articles have made much of Mr. Rehnquist's conservative political philosophy and the statements which he has made in the past relative to his political views on various subjects. Let me express the hope that the question of Mr. Rehnquist's appointment to the United States Supreme Court does not degenerate into a political popularity contest. His integrity is beyond question. His extreme intelligence and sound legal scholarship, combined with his varied professional experience would, in my opinion, enable him to contribute immensely to the solution of matters brought before the Supreme Court.

Sincerely yours,

LEVI RAY HAIRE.

MCCUTCHEN, DOYLE,
BROWN & ENERSEN,
San Francisco, Calif., October 29, 1971.

Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, Washington, D.C.

DEAR SENATOR EASTLAND: I am writing in support of the President's nomination of William H. Rehnquist to the Supreme Court. From 1961 to 1965 I practiced law in Phoenix and knew Mr. Rehnquist. He was in my opinion an able, effective lawyer whose intellect was well respected by the legal profession in Phoenix. He was known to be a sound counsel and advocate. I believe that he has a high understanding and respect for the rule of law and the integrity of the legal process. Although my political views differ sharply from his as a lawyer I have no hesitancy in urging his confirmation.

Sincerely,

ROBERT A. MILLS.

Mr. HRUSKA. Mr. President, after long and thorough hearings, the Senate Judiciary Committee reported the nominations of William Rehnquist and Lewis Powell to the Senate for confirmation as Associate Justices of the Supreme Court of the United States. Mr. Powell has now been confirmed.

As a member of that committee who has followed the confirmation hearings carefully. I feel compelled to answer what I consider mistaken and unfair attacks upon William Rehnquist.

To begin, let me say that that there is no challenge to the legal ability or integrity of the nominee. The attack directed at Mr. Rehnquist is focused principally on his alleged shortcoming in the field of civil rights which, in the words of the Senator from Indiana, "displays a dangerous hostility to the great principles of equal justice for all people." Such a sweeping accusation must be carefully examined in light of the facts. Certainly it cannot be allowed to go unchallenged.

Mr. Rehnquist is accused of "persistent unwillingness to allow law to be used to promote racial equality in America." To support that charge, three occasions are cited on which Mr. Rehnquist opposed a civil rights proposal, ignoring altogether that the nominee had supported a public accommodations provision as well as other civil rights provisions in 1966; that he played a major role in developing the Nixon administration's Philadelphia plan to end race discrimination in the building trade unions; and that he supported school integration efforts in Phoenix until compulsory busing to achieve racial balance was suggested.

Obviously the record does not support a charge of "persistent" opposition to civil rights. At most, it suggests that the nominee was cautious and concerned about racial changes in the law, even though directed at noble ends. Too often changes which are prompted by the most praiseworthy sentiments unhappily create greater harm than good.

The first occasion mentioned on which Mr. Rehnquist opposed a civil rights measure was in 1964 when the nominee expressed grave reservations about the advisability of a public accommodations ordinance. He was not alone in his concern that a certain amount of harm in the nature of greater governmental control over an individual's life would accompany whatever good would come of the Phoenix public accommodations ordinance. He suggested that passing laws would not eliminate either the racial animosity or the indignity to the customer which arose because of that animosity.

Mr. Rehnquist argued at the time that there was no widespread discrimination in Phoenix as there may have been in the Deep South. What practical good might come of the Phoenix public accommodations ordinance in the way of "whipping a few recalcitrants into line" was far outweighed, in Mr. Rehnquist's mind, by the serious harm that could come of widening the range of governmental controls.

I urge my colleagues to note that Mr. Rehnquist has said that his opposition to the 1964 public accommodations ordinance was ill-advised, principally

because he did not fully appreciate in 1964 that the minorities wanted symbolic recognition of their right to equal treatment, if nothing more. This change of heart did not come after Mr. Rehnquist's nomination, as some have suggested. In 1966, for example, Mr. Rehnquist supported the public accommodations provision of the Model State Anti-Discrimination Act while he was serving as a member of the Arizona delegation to the National Conference of Commissioners on Uniform State Laws.

The second incident relied upon was Mr. Rehnquist's attempt in 1966 to amend two provisions of that same Model State Anti-Discrimination Act. I find the suggestion that this demonstrates "a dangerous hostility to equal justice" altogether unfair. Have we reached the point at which any opposition to a civil rights proposal, no matter how thoughtful and sound, is to be taken as opposition to civil rights and equal justice? Is it not possible that valid doubts can be voiced about the wisdom or constitutionality of a particular civil rights measure without being opposed to civil rights? I would urge those of my colleagues who are still troubled by the 1966 incident to look to the actual transcript of the proceedings of the National Conference of Commissioners on Uniform State Laws which has been inserted in the RECORD on November 24. I suggest that Mr. Rehnquist's opposition to those two provisions was thoughtful, level headed, and devoid of anti-civil-rights sentiment. It was based—as the transcript will demonstrate—entirely on the grounds that there were possible constitutional problems with the proposal as then drafted and that these sections of the act were not relevant or essential to the topic then under discussion.

It is also important to put this 1966 episode into perspective. After his initial reservations about part of the Model Act, Mr. Rehnquist joined with all other members of the Arizona delegation in voting for the entire act. The chairman of the conference, Albert Jenner, a Chicago lawyer widely recognized as a civil rights advocate, wrote to the committee on November 5 that he endorsed Bill Rehnquist's nomination. He pointed out that while the nominee was a commissioner, he actively supported the proposals of the conference once they were finally adopted.

The third occasion relied upon is Mr. Rehnquist's 1967 letter to a Phoenix newspaper criticizing a suggestion by the superintendent of the Phoenix Union High School District that compulsory busing of students might be used to achieve a better racial balance in the schools. It is not Mr. Rehnquist's defense of the concept of neighborhood schools which offends the nominee's opponents on the committee as much as his statement in that letter that—

> We are no more dedicated to an "integrated" society than we are to a "segregated" society; . . .

In fairness, the rest of that sentence said should also have been quoted. Mr. Rehnquist went on to say that—

> We are instead dedicated to a free society, in which each man is accorded a maximum amount of freedom of choice in his individual activities.

Mr. Rehnquist's opponents contend that he has never dissociated himself from this statement. Indeed, he has not. Instead he agrees with the famous statement of the elder Justice Harlan who said that "the Constitution is color blind." He also agrees with Mr. Justice Holmes that the Constitution does not embody any particular social, economic or political theory. His obligation as a Supreme Court Justice will not be to advocate a social view, no matter how laudable and widely held. His obligation will be to apply the language of the Constitution to the facts of the case before him. To go beyond that and infuse his own political or social views is to ignore the proper role of a Supreme Court Justice.

Interestingly, the four members of the Judiciary Committee who oppose Mr. Rehnquist ignore the nominee's testimony that his children receive an integrated education and benefit from it.

We have some reason to question whether every Member of this body is in that same happy circumstance.

Mr. Rehnquist demonstrates the clarity of thought and careful analysis that every judge should possess. He recognizes a distinction between what may be socially desirable or morally good, and what the Constitution requires. He does not confuse his own philosophy with the provisions of the Constitution.

When Mr. Rehnquist wrote that letter to the editor in 1967 on the subject of neighborhood schools, he was hardly displaying a "dangerous hostility to equal justice." He was insisting that there are limits to the reliance upon force and legislative edict to accomplish the goal of integration. Ultimately, the solution to race problems, he suggested, would be found in the free choices made by the citizens of this country.

The faulty reasoning of those opposing Mr. Rehnquist can be seen in the memorandum accompanying the minority views in the committee report. On page 39 in a discussion of the 1967 letter to the editor, one finds the following comments:

> The truly alarming aspect of this 1967 letter, however, is Mr. Rehnquist's statement, 13 years after *Brown* v. *Board of Education* that "we are no more dedicated to an 'integrated' society than we are to a 'segregated' society." As explained above, this statement cannot simply be written off by the nominee as made in the context of long-distance busing. It must stand on its own as representing his view of our society's obligation to its citizens. And Mr. Rehnquist has never disassociated himself from this statement. Yet at least since the Supreme Court declared that "separate is inherently unequal," this Nation has not been neutral as between integration and segregation; it stands squarely in favor of the former. And if Mr. Rehnquist does not agree, he is outside the mainstream of American thought and should not be confirmed.

I challenge the statement that "this Nation has not been neutral as between integration and segregation." Surely this country has not been silent on the subject of segregation. We have condemned segregation. But to fall into the trap of either-or reasoning is to miss a significant point. The Supreme Court has required desegregation; it has not ordained integration. It has ruled that States and local communities which have resorted to de jure segregation must now take affirmative steps to undo that segregation. Yet it has not said that racial balance is constitutionally required in classrooms or neighborhoods, for example. Congress and the legislatures of the various States have passed statutes to prohibit discrimination and to insure equal opportunities for all Americans regardless of race, sex, religion, or national origin. But no one has decreed racial balance. The predominant social view in this country certainly is that integration is desirable, but the prevailing social philosophy is not necessarily the law.

Mr. Rehnquist is not opposed because he is personally against integration, because he is not. Indeed, he chose to live in an integrated neighborhood in Phoenix and to send his children to integrated schools. Mr. Rehnquist is challenged because he has not been a civil rights activist, because he has expressed concern about the wisdom of particular civil rights approaches—although not the goal of such measures—and because he has urged caution in passing civil rights laws.

Far from being a disqualifying factor, Mr. Rehnquist's consistent refusal to permit his personal views to affect his view of the proper role of law in our society is a characteristic which suggests that he will ignore his own philosophy in interpreting the Constitution.

The Senate has already confirmed Lewis Powell.

Mr. Rehnquist's opponents on the committee chose to support Lewis Powell. I commend them for that. But these opponents fail to explain why they chose to credit the statement of one supporter of Mr. Powell as proof of his acceptability on civil rights, while on the other hand they utterly ignored the strong statements from a number of Mr. Rehnquist's supporters to the effect that he possessed a sensitivity to civil rights. Some of these supporters harbor political views diametrically opposed to those of Mr. Rehnquist.

The record of both Lewis Powell and William Rehnquist in the field of civil rights demonstrates a cautious approach, without taint of racial animosity. Both men possess the sensitivity and humanity which are essential qualities for Supreme Court Justices.

Mr. President, there is one aspect of this nomination and this debate which I would particularly like to emphasize—Mr. Rehnquist's fairness, openmindedness, and lack of bias. In doing so, I quote from the penultimate paragraph from my individual views in the committee report:

> The Committee during the course of its hearings heard from a number of witnesses on this nomination—some endorsed Mr. Rehnquist while others opposed his con-

firmation. I think it interesting to note that those who know him well including those who differ with him philosophically, have had the best things to say concerning him. In the absence of any ability to reach into a person's mind and determine with certainty his thinking and reasoning on a given subject, I submit that we must rely on the evaluations of those who are personally acquainted with him. This is certainly a more reliable guide to the objectivity and openmindedness of a man than hearsay once or twice removed. On this ground I believe that William H. Rehnquist is an extraordinarily competent, thoughtful scholar and student of the law and in addition is a most compassionate and understanding human being.

The committee report dealt at length with the favorable testimony of several witnesses, and correspondence in support of this nominee, including that from Martin Richman, formerly Deputy Assistant Attorney General, Dean Pedrick of the Arizona State University Law School, Dean Neal of the University of Chicago, Jarril Kaplan, of the Arizona Bar, U.S. District Judge Walter Craig, and Prof. Benno Schmidt of Columbia Law School. Each of these men, while indicating that they might have different philosophical views than Mr. Rehnquist, affirmed their conviction that he was a man of fairness, ability, and judicial temperament. These men who know the nominee well are the best evidence we can have of his outstanding qualities, abilities, and openmindedness.

Mr. Rehnquist has throughout his career exemplified the finest attributes of a citizen and attorney. A brilliant student, skilled and careful practitioner of his profession, involved member of his community, warm and compassionate person, Bill Rehnquist will make an outstanding member of the Supreme Court. I am confident that he will be confirmed by the overwhelming vote of this body.

Mr. BAYH. Mr. President, will the Senator yield.

Mr. HRUSKA. I yield.

Mr. BAYH. Mr. President, I have listened with great interest to my friend, the Senator from Nebraska. Inasmuch as he has referred to the Senator from Indiana in his eloquent remarks, I thought that it might be helpful for the record to show in broader perspective what the views of the Senator from Indiana are.

The Senator from Nebraska suggested that the best way to judge the nominee would be to study his attitudes and the testimony of those who have been personally associated with him.

Does the Senator from Nebraska feel that this is better than to rely on what the nominee himself has said or on what the nominee has written?

Mr. HRUSKA. Is the Senator's question whether I have taken those factors into consideration?

Mr. BAYH. Mr. President, I am just referring to what the Senator has said, that the best way to judge a nominee would be to study the testimony of those who personally associated with him. But if we can get the specific words of the nominee, we do not have to go to any intermediary, because we can see what he thinks and hear what he says.

Mr. HRUSKA. Mr. President, by all means. And the nominee was extraordinarily compliant and obedient to the wishes of one committee. All the speeches he has made are on file, as well as a number of other products of his pen and tongue. The committee considered those. That is right.

Mr. BAYH. The committee did consider them. But I must say that at least a minority of the committee, including the Senator from Indiana, have come to a different conclusion than did the majority.

The Senator from Nebraska referred to that magnanimous and open-hearted gesture that the nominee made when he supported that uniform antidiscrimination statute. Has the Senator from Nebraska read the transcript of the discussion and debate during the time that particular uniform antidiscrimination code was being formulated?

Mr. HRUSKA. I reviewed the transcript, and I read it carefully and with great interest.

Mr. BAYH. I am glad that to hear that, inasmuch as I can point to at least two significant passages in which the nominee opposed parts of that statute. I hope the Senator from Nebraska can point to at least one instance in the debate and the transcript in which the nominee was for something positive. Did he testify or argue in support of any of the provisions? If so, I would like to know. I have studied the transcript and I cannot find one instance where he used his great intellect to get his colleagues on that Commission to support such legislation.

Mr. HRUSKA. The fact is that after the report of that Commission was completed he voted in favor of it as his entire delegation did. I do not know what else the Senator from Indiana would ask him to do.

Mr. BAYH. We have ample testimony to his opposition to the antiblockbusting provision. Blockbusting is an insidious tactic which the Senator from Nebraska knows of, and which I am sure he opposes, in which realtors go into a neighborhood and play on the racial frustrations of people and make a fast buck. He was opposed to outlawing this. We have chapter and verse, and I would be glad to put it in the RECORD. The Senator heard it in the committee. There was not a single word from Rehnquist supporting any single provision of the proposed antiblockbusting statute. The Senator mentioned that in the end he voted for it. That is not much proof of anything to me. Only two votes were against it during the final tabulation, Alabama and Mississippi.

I wish the Senator would—or could—find one statement by Mr. Rehnquist in the transcript which can fairly be interpreted to say, "I am in favor of civil rights."

Mr. HRUSKA. The testimony in the transcript is clear on that. He has done that several times. Given a little time, the Senator from Nebraska will respond by page and line.

I might suggest Mr. Rehnquist's opposition to that blockbusting provision during debates on provisions of the uniform law was based on constitutionality, in the first place; and second, relevance to the legislation being considered by the Commissioners. It was not, as I understand it, based on the merits. A perfectly frank argument was made. He was outvoted and he abided by the result.

Now, perhaps the opponents of Mr. Rehnquist want someone who will respond and be in their image, and in the activist ranks of civil rights, without reference to the constitutional bases that should be considered in any civil rights legislation.

Mr. BAYH. Mr. President, will the Senator yield at that point?

Mr. HRUSKA. And they also would want him to correspond to their mold so that there would be no objection on their part.

Let me suggest that a long time ago we have come to that bridge and crossed it back and forth. The plain fact is, as the Senator from Mississippi pointed out a little while ago, that Presidents over a long period of time have made the personal philosophy and political philosophy of their nominees one of the tests as to whether they would be chosen.

Mr. BAYH. How can the Senator from Nebraska make the assessment in light of the fact that only 1 hour ago, on the Powell nomination, only one Senator dissented. I voted for Lewis Powell. He is not exactly in the mold of the Senator from Indiana, and neither is the distinguished Chief Justice, Mr. Burger, but I voted for him and Justice Blackmun. How can the Senator say you have to have someone who marches along in lockstep?

Mr. HRUSKA. Because the Senator from Indiana persists in making a big point out of the two instances in which Mr. Rehnquist opposed what eventually turned out to be the final word of the Commissioners on the uniform law. Because of his initial opposition to those two provisions he is therefore unqualified to be a President's nominee. That is the argument as I understand it.

To finish my thought, I recall when Justice Whittaker retired in the spring of 1962 and two very distinguished and well-known brothers sat down to discuss the proposition of who should be nominated as Justice of the Supreme Court. The President and the Attorney General sat down and studied the matter. This is the way James E. Clayton, in his book "The Making of Justice—The Supreme Court in Action" describes it on page 51:

> As the two brothers studied the situation, they realized that they wanted the new Justice to be one who looked at the problems he would face from the same perspective as they did. Thinking back on the process months later, the Attorney General tilted back in his chair and said:
>
> You wanted someone who generally agreed with you on what role government should play in American life, what role the individual in society should have. You didn't think about how we would vote in a reapportionment case or a criminal case. You wanted someone who, in the long run, you could believe would be doing what you thought was best. You wanted someone who agreed generally with your views of the country.

Mr. President, my purpose in reading that excerpt is simply this. It describes an effort to try to measure up a nominee by a President, with some of the thoughts

that were expressed by the man I just quoted. That is the privilege of the one who appoints the nominee. That is the proof of the proposition in the excerpt which I just read from Mr. Clayton's book.

So I say here there is opposition to a Supreme Court Justice based on statements he made in a debate during the consideration of a uniform law, raising contentions which were not finally agreed to. In the last analysis, however, he supported the final result of the Commissioners and made that report to the State of Arizona. But I think we are a little off base in asking for complete unanimity and conformance to that artificial mold in regard to qualifying a man to be a nominee for the Supreme Court.

Mr. BAYH. My colleague apparently misinterprets what I said, or maybe I cannot articulate my thoughts precisely enough for him. I have never said that the President should not consider philosophy. It is an accepted fact that he does. All Presidents do. I think we have laid to rest the proposition that the Senate should not consider philosophy; indeed, the nominee himself has stated repeatedly that he feels philosophy should be considered.

If one looks at Rehnquist's position, particularly in light of the Newsweek article and the memorandum that the then clerk, William Rehnquist, wrote for then Justice Jackson, in which he opposed overruling Plessy against Ferguson, he is far to the right of Richard Nixon. The President of the United States is against blockbusting, but Mr. Rehnquist was not.

What concerns the Senator from Indiana is that we have a situation that goes beyond getting agreement on everything, which I would not require. We have a man who has been consistently opposed to the direction which this country ought to go in the broad area of human rights.

Since the Senator from Nebraska referred to the 1966 joint meeting of the Commissioners as evidence of his support on civil rights—I suggest the record will show otherwise—let me point out he vigorously opposed two provisions of that act. I want to read what the distinguished reporter, Prof. Robert Braucher, who was a distinguished professor in Harvard and who is now on the Supreme Judicial Court of Massachusetts, had to say about the blockbusting provision Mr. Rehnquist wanted to root out of there. The majority of those Commissioners shared the opposition. He said:

> However, I would like to speak for just a moment to the merits of this. The practices that are dealt with in this provision are practices that have no merit whatever. They are vicious, evil, nasty, and bad. These are people who go around—and this is not a hypothetical situation; this is something that has happened in every big city in the United States—and run up a scare campaign to try to depress the value of real estate. They will, if possible, buy one house, and then they will throw garbage out on the street; they will put up "For Sale" signs; they will perhaps hire twenty badly clad and decrepit-looking Negroes to occupy a single-family house, and so forth; and then they go around to the neighbors and say: Wouldn't you like to sell before the bottom drops out of your market?
>
> And the notion that that type of conduct should be entitled to some kind of protection under the bans of free speech is a thing which doesn't appeal to me a tiny bit.

This is why the Senator from Indiana is concerned about the nominee. I am convinced that he is a very intellectual man. I am convinced he is honest. I am convinced he is articulate. Indeed, his appearance before the committee showed that. But everything I have seen and everything I have read indicate that there are some very unscrupulous practices that Mr. Rehnquist will not use the Constitution to prohibit, and blockbusting is one of them. I do not think that our guarantees of free speech entitle one to go down and ruin a neighborhood and put white people against black people. Yet that was Mr. Rehnquist's position. And if there is an instance in the record in this commissioners' meeting that would lead me to feel otherwise, I wish the Senator from Nebraska would ferret it out for me. I have read every word of the transcript, and there is not one word in favor of civil rights. In fact—I have not mentioned it; I do not want to beat this to death—the fact is very clear that, in addition to opposing these two provisions of the uniform act, Mr. Rehnquist led a successful effort which prohibited those two provisions from being put into a uniform act, but made it a model act. A model act does not have the same force and effect and does not represent the same unanimous, dynamic commitment to the subject of the act. There is not one single word in those hearings to controvert that, and if the Senator from Nebraska has any, I hope he can give it to me because it would certainly make the Senator from Indiana rest a bit easier.

Mr. HRUSKA. The Senator from Nebraska will just make this observation: One of the statements in his principal remarks was that the opponents of Mr. Rehnquist find fault with him because he has not been a rabid activist in the field of civil rights. They have come to expect that a nominee to the Supreme Court should be such an activist, Mr. President, and for 30 years—certainly since 1961—that has been one of the qualifications in the appointments that have been made. That is one of the propositions with which I dealt in my principal remarks.

Inasmuch as there are others who wish to speak yet tonight before the hour gets late, I shall yield the floor to give them an opportunity.

Mr. BAYH. I hope that the Senator from Nebraska will permit me to examine some of the other statements he made with reference to the Senator from Indiana.

Mr. HRUSKA. Not at this time, because obviously it is a rehash of many of the things which we have debated before. Out of consideration and out of courtesy to some of my colleagues I propose to give them a chance to make opening statements. At a later time if the Senator from Indiana still desires further colloquy with this Senator, the Senator from Nebraska will be here all week, and all next week if need be.

Mr. BAYH. And maybe the week after that. Does not the Senator from Nebraska feel that perhaps it would be more helpful to those who are trying to study this, since he has made certain charges, for the Senator from Indiana to have a chance to have a colloquy right now?

Mr. HRUSKA. I am convinced that the Senator from Indiana will embrace the situation where the debate and discussion will be sufficiently extended that he will not be foreclosed at a later time from going into enlightening briefs. For the time being I think it would be only fair to our colleagues to yield to their desire to be in on the opening statements, to which the opening hours of a debate normally are dedicated.

I yield the floor, Mr. President.

Mr. GOLDWATER and Mr. BAYH addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I thank the Chair. I do not intend to indulge in the colloquy that just went on. I am not a lawyer, but I do have some feelings about this matter, because Mr. Rehnquist is not only a resident of my State, he is a friend of mine of long standing.

To get to my point quickly, Mr. President, I wish to read paragraph D from a statement that was just given us by the distinguished Senator from Indiana. Paragraph D on page 2 reads:

> *Alleged Harassment of Voters.* There are competing affidavits before the Senate as to whether Mr. Rehnquist personally harassed voters in 1964. The factual dispute is not resolved by any evidence before the Senate. Therefore, each Senator will have to decide for himself what weight—if any—to give either the charges or the blanket denials. But this uncertainty should not obscure the fact that Mr. Rehnquist, although he has tried to disassociate himself from the tactics used, held a high and responsible position in the Republican election day apparatus during several election years which saw very substantial harassment and intimidation of minority groups voters.

Mr. President, I will just comment briefly on that. I happen to live in Arizona. I have spent my whole life there. I know something about the political processes there. I have been deeply involved in them, as have my family for over 120 years, and anybody who makes the statement "which saw very substantial harassment and intimidation of minority groups voters" does not know what he is talking about, because this is not the case. It is as far from the truth as the truth can be.

To set the stage, Mr. President, I want to read the State law and the State constitution, even though I have to admit that rightly it has been affected by the Voting Rights Act of 1964 and subsequent decisions.

Article I, section 16–101, is "Registration Requirements":

> QUALIFICATIONS OF ELECTOR
>
> A. Every resident of the state is qualified to become an elector and may register to vote at all elections authorized by law if he:
>
> 1. Is a citizen of the United States.
>
> 2. Will be twenty-one years or more of age prior to the regular general election next following his registration.
>
> 3. Will have been a resident of the state

one year and of the county and precinct in which he claims the right to vote thirty days next preceding the election.

4. Is able to read the Constitution of the United States in the English language in a manner showing that he is neither prompted nor reciting from memory, unless prevented from so doing by physical disability.

5. Is able to write his name, unless prevented from so doing by physical disability.

I will admit, and we all admit, that in a Federal election the State had to conform to the Civil Rights Act of 1964 which required that a literacy test in writing not be given unless it applied to each and every voter. Thus, it was given to no one, in practice in 1964 or later.

Continuing to read from our laws, Article II:

SEC. 16–921. GROUNDS FOR CHALLENGING VOTER

A person offering to vote may be orally challenged by any registered elector of the county upon any of the following grounds:

1. That he is not the person whose name appears upon the register.

2. That he has not resided within the state for one year next preceding the election.

3. That he has not resided within the county or precinct for thirty days next preceding the election.

4. That he has voted before at that election.

5. That he has been convicted of a felony and has not been restored to civil rights.

6. That he has made a bet on the result of the election.

7. That not being prevented by physical disability from doing so, he is unable to read the constitution of the United States in the English language in such manner as to show he is neither prompted nor reciting from memory, or he is unable to write his name.

Again, this was affected by the 1964 Civil Rights Act, which requires that the test be applied to every voter in writing, or none at all. Also, the 1965 Voting Act requires that a sixth-grade education shall constitute literacy. But it was in effect without qualifications in elections prior to 1964.

Mr. President, we do have challenges in Arizona. I imagine most States have them. I think it is very wise.

Section 16–922, entitled "Challengers Representing Political Parties," reads as follows:

At each voting place, one challenger for each political party may be present and act, but no challenger may enter a voting booth except to mark his ballot.

Mr. President, that is a matter of our law, and each election year it is customary for a county chairman to submit a list of members of his party who are willing to act as poll watchers at each polling place, some 800 in the case of the county in which I live, and those poll watchers are to be found, usually in every single polling place, and they act as interested Democrats and interested Republicans. And, Mr. President, notwithstanding the size of the State, and the fact that we have Indians, Mexican-Americans, Negroes, and other minority groups living in the State, we have had no serious disputes arising from that. I will have to admit that in New Mexico, in one election, there was a problem that arose relative to the Indian voters, but it had no bearing on Arizona.

Mr. President, I think that constitutes enough of our law to indicate that having political watchers is not something unusual. In my State, it has been practiced pursuant to law for many years.

Mr. President, I wrote a letter to the Washington Post the other day. I hope they will print it, because I would like to see the record kept clear, both in the public print and in the CONGRESSIONAL RECORD. It involved a letter that had been written by Mr. Mitchell on this supposed violation of a person's voting rights. The letter I wrote says:

Dear Sir:

The time is long past due that the lie be put to the repeated observations of people who should know better relative to the supposed action of Mr. Rehnquist in preventing a person from voting.

Contrary to what Mr. Mitchell, Senator Bayh, Mr. Rauh and others might contend, this supposed event did not take place as they describe. Mr. Rehnquist has so stated many times and furthermore, Mr. Editor, I was there so I can speak with considerably more authority than any of the supposed experts can.

And, Mr. President, I was there. I remember a few incidents we had where a team of lawyers gathered in a central office, and Mr. Rehnquist happened to be one of those lawyers, together with some other very prominent members of the Arizona Bar from both parties. The lawyers were gathered in this office so that a watcher who had a suspicion that something might be wrong could, if he challenged and the challenge met with opposition, phone into the central office and get a legal opinion.

There were occasions, not including the incident mentioned, where lawyers would drive to the polling place to settle the thing as amicably as possible.

To continue the letter:

Let's develop the history of this whole situation. Under Arizona's Constitution prior to the Civil Rights Voting Act, a man had to be literate to vote and the test generally was to read the first line of the Constitution and write one's name. Although this was a part of the Constitution, I cannot recall more than a few instances of it ever being brought into play at the polling place. The matter that both parties in Arizona became concerned with this grew from our antiquated registration laws which have long since been changed.

Under these laws a person would not have his voting precinct automatically changed when he moved from one place to another. Because of this it was possible to find some voters registered in as many as six different precincts. It was the practice in some isolated instances for these people to be looked up and taken to the places where they could vote and if they were not challenged, they could have their vote recorded as long as they were not challenged.

Mr. President, the main purpose of our watchers in Arizona has been, in the past, to determine whether or not the person voting—whether he was a Republican or a Democrat, white, black, or brown, did not make any difference—had previously voted in that election. I might say that since that time, as I shall recite, our registration setup has been changed, and now it is impossible, although we do require poll watchers to check and see if the name that is signed coincides with the name in the registration book.

To continue with the letter:

Before going into the watcher setup, let me tell of another practice that prevailed in Arizona in some precincts before we changed our paper ballot. The ballot used to be printed with the names appearing in the same order throughout, so it was a simple task for someone to take a string and tie knots in it so that when placed beside the names to be voted it would show who to vote for, and this string would be given to the illiterate voter who merely went into the voting poll, placed the string beside the ballot and marked his X where each knot appeared. This was subsequently corrected by alternating the names on about every two hundred ballots as they came off the press, so the string trick didn't work after that.

I recite that as a rather humorous illustration. It has been done in other States as well. But this is another reason why I think it is wise for both parties to provide watchers.

To get on with the letter:

Now to prevent unqualified voters from casting a ballot each party, the Democrats and Republicans, set up what we call poll watchers. At each polling place, even today with voting machines we have them and they are applied to every polling place in the State regardless of whether they may be in a predominantly Mexican-American neighborhood, Negro neighborhood or White neighborhood. We are interested in honest voting regardless of race, creed, color or location and that is the whole purpose of watching teams in each party, and they are approved by the County Board of Supervisors in Arizona.

Now to correct the allegations being brought out by his detractors concerning the specific operation in which Mr. Rehnquist was involved, he was appointed along with several other attorneys from both parties by the County Chairman of both parties to give advice and guidance to assure that voting was done only by properly registered voters. The statutes of Arizona recognized the need for polling challengers to assure that only properly registered voters cast a ballot so Mr. Rehnquist and others were seated at a central location. When a challenge was called in from a poll watcher, legal advice was given, not only by him, but by other lawyers gathered for this specific purpose.

I don't believe that Mr. Mitchell, Mr. Rauh or Senator Bayh stretching their liberal thoughts as far as they can can find anything wrong with this as illegal voting, whether it touched upon a man's right to vote because of literacy or illiteracy or his right to vote in more than one precinct or his right to use a string with knots in it. I don't believe these three gentlemen would condone dishonest voting in their precincts anymore than the Republicans and Democrats in Arizona would condone it in their precincts.

I offer this letter, and I hope you will publish it, because if I ever heard a repetition of an outright lie day after day by the newspapers and in Senate speeches, it is this, and if it is raised on the Senate floor it will be charged precisely as that.

Mr. President, to make this part of the RECORD abundantly clear—and I shall not address myself to anything else tonight—I want to move into this matter of how Mr. Rehnquist supposedly got involved in all of this.

There was an affidavit offered by a Mr. Jordan Harris, of 1825 Appache Street, Phoenix. He testified that on Tuesday, November 3, 1964:

I was present as a deputized challenger for the Democratic Party in Bethune Precinct, a predominantly black precinct in South Phoenix, and witnessed the following incident.

Keep this date, 1964, in mind. It has a great bearing upon whether we should pay any attention to this or not.

I appeared at the polling place, Bethune Precinct, at approximately 11 a.m. on the above mentioned date, deputized, by Judge Flood. When I arrived at the precinct I met with the election board committee and presented my official papers to them as a challenger for the Democratic Party. I met the Party challenger for the Republican Party, Mr. William Rhenquist at that time. I met with Mr. Rhenquist because I noticed him harassing unnecessarily several people at the polls who were attemping to vote. He was attempting to make them recite portions of the Constitution, and refused to let them vote until they were able to comply with his requests. The persons involved were Mrs. Mitchell, Mrs. Campbell and Mrs. Miller. When I noticed he was pulling these people out of the line I then approached him and argued with him about his harassment of the voters. We then engaged in a struggle and the police were called in. Mr. Bob Tate came to my assistance during the struggle. The police then escorted him into the principal's office, Mr. Rhenquist and the police then left by the side door. I know that this man was Mr. Rhenquist because the election board introduced him to me as a challenger for the Republican Party. I believe that he did not leave the polling precinct altogether because I saw him across the street a short time later. He remained at the polling place well after 5 p.m.

JORDAN HARRIS.

It is signed "Jordan Harris," and it is witnessed by a notary public. I think the notary's signature is "Jeanne Warner," but I cannot read it very well.

Mr. President, this affidavit is followed by another affidavit from Mr. Robert Tate, describing about the same actions, and I will not bother to read that at this time. But he goes on to say, in the last paragraph of his affidavit:

I now remember him from pictures I have seen lately in the papers as the same one involved in the above incident at Bethune Precinct. He did not, at that time, however, wear glasses.

That is the end of the affidavit from a Mr. Robert Tate, and it is witnessed by the same notary public.

Mr. President, it is interesting, because, as I said, Mr. Rehnquist was not at that polling place at all.

The AP had a story out of Arizona. The AP reported that Judge Hardy, who was a very prominent and fine judge of our State, said in an interview he had advised Democratic Party challengers and poll watchers in the same years that Rehnquist advised Republicans. Judge Hardy said there was an incident at Bethune precinct in which a Republican challenger got into a scuffle and was escorted from the polling place by two sheriff's deputies, but the judge said it was 1962, and not 1964, and the challenger was not Rehnquist.

Mr. President, I know it was 1962. I was there. I was called because we felt that any attempt—even though our statutes applied at that time—that involved a bodily effort to refuse the right of a person to vote would reflect badly upon the party, and we were not pleased with it. and we made public announcement of it at the time. But this is 1962; it is not 1964. In 1964, a different set of rules applied, and our Attorney General ruled the State practices must conform to the Civil Rights Act of 1964, something which all our attorneys and watchers knew.

"I have nothing to hide," Harris told the Arizona Republic, although he declined to tell his age or to answer a number of other routine questions about himself. I find nothing wrong with that. This is from the newspaper story, which continues.

Some of the details of his life came to light upon examination of files of past news stories published in the Republic and the Phoenix Gazette.

One showed that in March, 1964, Harris, then 52, admitted in Maricopa County Superior Court that he had sold beer to a 19-year-old youth. At the time Harris was the owner of the Friendly Seven Food Market, at 1853 South Seventh Avenue.

He was fined $500 on a plea of guilty to selling spirituous liquor to a minor. Judge Henry S. Stevens sentenced Harris and allowed him to pay off his fine at the rate of $50 per month.

At the time of his plea, Harris acknowledged a prior conviction for a similar offense in 1960.

Newspaper records then showed that Harris had been a railroad cook. Last night Harris said he had once worked for the Atchison Topeka and Santa Fe Railroad, but he declined to tell a reporter what kind of a job he had at the railroad.

Again, that is his right.

Another story in the Republic shed more light on Harris' past.

The article reads: "It was a September 15, 1961 news account of his being severely wounded in the abdomen by a bullet fired by an irate, 21-year-old woman whose $107 welfare check Harris cashed, withholding $81 he said the woman owed on her grocery bill.

Mr. President, I offer all this material merely as background; because if we are going to hear a repetition of the charge that Mr. Rehnquist denied or attempted to deny anyone of his right to vote, I am going to have to repeatedly stand up on this floor and challenge the veracity of it, because I was there, and it is just not true.

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

Mr. GOLDWATER. I am happy to yield.

Mr. BAYH. I had not intended to interject this incident into the debate. However, one Member of this body did include it in the RECORD. It was one point, and we said the evidence was quite inconclusive. However, since the Senator from Arizona has gone very close to suggesting that some of us were not being kind with the truth, I ask unanimous consent to put the clippings of that era into the RECORD, for all Senators to read, and then they will judge for themselves whether there was any voter intimidation or alleged harassment.

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

[From the Arizona Republic, Nov. 4, 1962]

CHALLENGERS TO WORK AT POLLS

Maricopa County voters yesterday were urged to make sure they are properly registered, and that they vote at the right polling place to avoid a slow-down in voting.

George Erhardt, director of the County Election Bureau, said election boards have been schooled in handling challenges to avoid as much delay as possible. But Republican Party officials have warned they will challenge every Democratic voter whose qualifications can be questioned.

Erhardt said inspectors have been instructed to take any challenged voter from the line so it can continue to move while the judges handle the challenge.

Meantime, Democratic Party officials said they will have watchers at the polls for the purpose of seeing that voters' rights are protected.

A spokesman for the Republicans said a return address letter has been mailed to many registered Democrats in some areas of Maricopa County, and the challengers will be on hand to question eligibility of every voter where this letter came back undelivered.

Vince Maggiore, Democratic county chairman, an attorney said the Democrats have organized a committee of some 100 attorneys to try to protect the right of every citizen to vote, and he accused the Republicans of using the challenge to delay voting and keep Democrats from the polls.

Under the law, Arizona voters who change their place of residence from one precinct to another before the deadline for registration and do not reregister are disqualified, but if the residence change occurred after the deadline, they may vote in their old precinct.

Under general procedure, a challenged voter is questioned by the election board officials, and he may be required to sign an affidavit that he is a resident of the precinct and eligible to vote under threat of prosecution for perjury.

Republican officials denied any intent to hold up or delay voting, and said they are merely seeking to prevent abuse of voting laws.

[From the Phoenix Gazette, Nov. 6, 1962]

CHALLENGERS TEST VOTERS' LITERACY

(By Bill Herman)

Balloting was slowed down for a while this morning in at least three South Phoenix precincts by challengers who demanded that voters read from portions of the U.S. Constitution to prove they were literate.

Two assistant U.S. district attorneys, an FBI agent, a deputy county attorney, and attorneys for both political parties investigated the incidents.

The challenges were based on an Arizona law which requires a person to be able to read and write in the English language as a condition of voting.

There were no arrests, and the challengers withdrew after conferring with the lawyers.

The county elections bureau said the incidents were reported at Bethune Precinct, 1510 S. 15th Ave.; Okemah, 3146 E. Weir, and Sky Harbor, 3801 E. Washington. There was also an unconfirmed report that similar activity took place at Broadway Precinct, 1701 W. Roeser.

George Erhardt. county elections chief, called the challengers "over zealous."

At Bethume School precinct, Carl Sims, 1821 W. Madison, a former state legislator, said a Republican challenger "was trying to disenfranchise our citizens down here by subjecting voters to a literacy test."

When the U.S. attorney's representatives arrived, Sims told them: "If you don't get that man out of there I'll get some people up here to get him out. He's stopping us from voting."

Mrs. Bessie Bass, 1213 S. 12th Ave., the election marshal, said 13 voters out of 565 had been challenged by 11:30 a.m.

Another voter was challenged on the literacy basis by Jordan Harris, 1825 W. Apache, a Democratic challenger.

Twelve voters were challenged, most of them on their ability to read the U.S. Constitution, by Wayne Bentson, a Republican challenger, of 3550 W. Seldon Lane.

Mrs. Lillie Mae Hall, 1317 W. Pima, an inspector, said none of the challenged voters failed the test though one did refuse to take it and left the polls.

"We also did not hold them to exact pronunciation of the harder words, like tranquility,' Mrs. Hall said.

Mrs. Bass said many of those challenged were upset or angered by the request.

The precinct has a total registration of 1,119.

Most of those being challenged were Negroes and persons of Mexican descent.

J. D. Holmes, a Negro and member of the Arizona House of Representatives, charged that Republicans were "using Mississippi tactics."

He said they were trying to "thwart the minority vote in the state."

Holmes claimed 15 to 20 persons, angered at the delay, left the polls without voting.

[From the Arizona Republic, Nov. 7, 1962]

VOTER CHALLENGES BRING PROBE

A number of Negroes and Spanish Americans attempting to vote in south Phoenix yesterday were challenged on their literacy and residential qualifications.

The challenges, made by Republicans, led to a brief scuffle in one precinct.

The challengers in seven south side Phoenix precincts were so aggressive that Sen. Carl Hayden, D-Ariz. asked the FBI and the U.S. district attorney's office to investigate.

A Democratic official claimed such tactics have been used in Maricopa and Pima counties for several years. Challengers demanded that would-be voters read a portion of the U.S. Constitution to prove their literacy and show proof of legal residence.

Some persons said the challenging obstructed their right to vote and caused delay for those waiting to vote.

The scuffle came at the polling place in Mary McLeod Bethune School, 1510 S. 15th Ave., where opposing party pollwatchers struggled briefly inside and an angry crowd gathered outside.

Police hustled the combatants inside the nurse's office and Mrs. Ellen Jane Greer, deputy county attorney, restored order.

The U.S. district attorney's office made two checks at the polling place after receiving repeated complaints. The first was made at 11 a.m., and the second—at the request of Sen. Hayden—at about 4:30 p.m.

The first investigation was made by William J. Poudsen Jr. and James J. Brosahan, assistant district attorneys on reports that the voting line was being delayed by the challenge.

Several of the voters, mostly Negroes, declared they felt discrimination was involved, it was reported.

About 17 potential voters had been challenged. Witnesses said many were asked to read parts of the U.S. Constitution.

Shortly after the first inquiry, word of the situation reached Sen. Hayden in Washington.

Carl Muecke, U.S. district attorney here, said last night that his office was then contacted by Hayden's Phoenix office. The latter relayed Hayden's request to join the FBI in a further check of the incidents.

Muecke said he and two FBI agents went to the school and "talked to people who wished to make statements." He said the investigation included talking to those involved "on both sides."

The district attorney said it was reported that 50 would-be voters had turned away from the polls without casting ballots. He said their reasons were not known. They apparently did not include rejection for failure to pass the literacy test, however.

Muecke said the FBI is continuing the investigation and should make its report to his office by the weekend. He said his office will then evaluate the report to see if any federal law or laws have been violated.

In the middle of the fracas at The Bethune School were Wayne C. Bentson, 3550 W. Seldon Lane, a Republican challenger, and Pat Marino, 6439 S. Fourth Ave., a Democratic party representative.

Bentson told police he wanted to file an assault complaint. He insisted Marino intercepted him as he left the nurse's office after making a phone call to party headquarters.

"He grabbed me by the arm and twisted me around," Bentson said. "He grabbed me by the belt and pulled me up against the wall. I hit at him and I meant to."

Marino claimed it all happened when Bentson shoved him as he was entering the nurse's office.

"He hit me in the mouth," Marino said. "I didn't lay a hand on him."

Police made no arrests, suggested both see the county attorney today.

Mrs. Greer, making her second call of the day at the precinct, advised the election board it could exclude anyone of either party who was causing a disturbance.

The board voted to exclude both men, along with another Democrat and another Republican challenger. Both challengers were quickly replaced with substitutes acceptable to the board.

Republican challengers were reported active in seven south side precincts. Mrs. Greer reported she responded to complaints from three others. Sky Harbor, Parkview and Okeman.

Other troubles were quickly settled.

Richard G. Kleindienst, state GOP chairman, guessed that 90 per cent of some 300 challengers in Manicopa and Pima counties were Republican.

"These challengers are the same persons, under the same instructions, who have been doing this is Maricopa and Pima counties since 1956," he said.

But Vince Maggiore, county Democratic chairman, insisted that some Republican challengers were assuming authority reserved to election board officials.

"The tactics being used by Republican challengers in minority areas reflect discredit on a great national party," he said.

"There should be no place in Arizona for deliberate attempts to impede the voting of groups which have fought so hard for their rights."

Responded Kleindienst:

"We challenge in precincts where it has been demonstrated in the past that some parts of the Democratic organization in Maricopa County try to crowd into the polls at the last minute people who are not qualified to vote.

"Our success is the thing that's got them upset. I should think they'd be a little bit embarrassed to point at us."

He challenged Democrats to show where one qualified voter was kept from the polls by challenges.

Democrats claimed that in one or more precincts Republican challengers were calling upon voters to read sections of the constitution "containing a lot of big and difficult words."

They also were demanding an explanation of the word "tranquility," and challenging voters who hesitated, Democratic poll watchers claimed.

Under state law, voters must be able to read from the U.S. Constitution unless they are physically unable to do so. Typed passages are provided for election officials, who are the sole judges of the voter's qualifications.

[From the Arizona Republic, Nov. 8, 1962]

TEMPERS COOL, PROSECUTIONS FADE IN WAKE OF INCIDENTS AT POLLS

Nobody asked for prosecution yesterday in the wake of interparty incidents at the polls during Tuesday's election, Ellen Jane Greer, deputy county attorney, said.

"I guess tempers cooled when the polls closed," she said.

Mrs. Greer said the law prohibits anyone from illegally interfering with the election process.

She declined to say whether anything reported to her during the hectic events of Tuesday would be deemed unlawful.

Meanwhile, the FBI had nothing to report on its investigation into claims of intimidation of electors by one or more Republican challengers at one polling place.

Carl A. Muecke, U.S. attorney, said he hadn't received an investigation report from the FBI. He ordered the probe at the request of Sen. Carl Hayden, D.-Ariz.

In Tucson, the chairman of the Pima County Democratic Central Committee charged harassment and abuse of the right of challenge by Republicans Tuesday.

But the Republican county chairman defending it, and the county attorney reported finding no law violations.

Joe Huerta, Democratic chairman, claimed Republicans challenged as a "slow-down tactic" to discourage voters waiting at heavy turnout precincts.

In Spanish-American areas it drove many voters from the polls, he claimed.

"They are proud people," Huerta said, "and this embarrassed many of them."

The GOP chairman in Tucson, John Leonard, denied the law was abused while saying that 30 to 45 challengers were successful in one area.

County Attorney Jack Podret of Tucson said his office investigated dozens of complaints from both parties, "just the same complaints we get every election day."

Most challenges were made on the voters ability to read the U.S. Constitution, as required by state law, or the claim the voter no longer lives in the precinct he wants to vote in.

[From the Arizona Republic, Oct. 21, 1964]

BALLOT SECURITY OFFICER NAMED

William H. Rehnquist, Phoenix attorney, has been named chief ballot security officer in the Nov. 3 election by the Maricopa County Republican Committee.

"We intend to challenge voters in some of the precincts in which claimed irregularities have occurred in the past," said Wayne E. Legg, committee chairman.

Rehnquist, cochairman of the 1960 ballot security program, said schooling sessions have been scheduled for Oct. 29 and 30 to train workers who will be assigned to the polls.

[From the Phoenix Gazette, Oct. 22, 1964]

GOP PLANS CHALLENGE SCHOOLING

Voters will be challenged in some precincts where irregularities have been claimed in the past, Wayne E. Legg, chairman of the Maricopa County Republican Committee, declared today.

Legg announced the appointment of William H. Rehnquist, Phoenix attorney, as the chief ballot security officer.

Rehnquist, who is also general counsel for the county GOP committee, said two schooling sessions have been scheduled to train workers who will be assigned to various precincts for challenging purposes. He said one school will be held Oct. 26 and the other Oct. 29.

In 1960 Rehnquist was cochairman of the ballot security program and in 1962 headed a committee of lawyers formed to protect legal ballot procedures. Don Froch heads the lawyer group this year and Fritz Randolph, also a Phoenix lawyer as well as a former aide to Senator Goldwater, is serving as coordinator of the program.

[From the Arizona Republic, Nov. 4, 1964]

MOST MARICOPA VOTERS PLAY THE WAITING GAME—BALKING MACHINES CAUSE COMPLAINTS

It was a waiting day and night of aching feet and frustration at many polling places in Maricopa County yesterday.

Voters stood in line for as long as four hours as election officials grappled with the problem of malfunctioning voting machines and charges of harassment of voters.

At 10 p.m., at least 500 voters still waited to cast their ballots at a half-dozen precincts in Phoenix and suburbs, all that were left after as many more quit the waiting game in disgust when their radios projected Lyndon Johnson as the presidential winner.

Attendants at Glendale Precinct 4 said the discouraged voters went home, convinced that their votes were not needed to determine the winner.

Precinct 4 was still pushing a line at 10:30 p.m. with more than 200 voters to go. Some had waited since shortly after 6 p.m. Many had not eaten their evening meal and lightly clad women complained of the evening chill. One couple said they had come to the polls, in the Civic Center, three times during the day in hopes of avoiding the long lines.

At Tempe No. 7, there were 253 voters lined up at 10:30 p.m. and voting was expected to continue for at least three hours.

Everywhere during the evening, reporters and election officials said voters were fighting the boredom of waiting with guessing games and good-natured joking, while they swallowed hot coffee from thermos jugs and snuggled in coats and parkas to ward off the cold.

Democratic Party leaders Charged "substantial harassment of Democratic voters" in six Phoenix precincts. State Chairman Robert H. Allen said reports reached his office indicating the harassment consisted mainly of "indiscriminate mass challenging of voter residency."

He named the precincts as Murphy, Riverside, Butler, Sierra, Vista, Sullivan and Glendale No. 4, all with a substantial percentage of voters in Negro and Mexican-American categories. He indicated that most of the trouble caused by the complaints was resolved.

Republican voters in Brown Precinct were among the first to charge that a voting machine was not registering properly. A woman voter said that when she pulled the lever for Goldwater, the Johnson lever kicked out and she presumed her vote went to Johnson. The next voter in the booth came out without complaint.

The third voter made a complaint similar to the first—the machine voted Democratic when the Republican lever was pulled. The trouble was soon corrected.

At the West High Precinct, more than 100 voters were forced to wait when one machine would not function at all. * * *

Complaints of malfunctioning were fairly common. Republican headquarters in Phoenix said many elderly persons had to stand in line for two hours at Youngstown Precinct because of trouble with the machines.

By scheduled closing time, only 1,302 of 1,800 registered voters had pulled the levers at the Sungold Precinct in Palo Verde School.

Avalon and Suncrest Precincts had long lines at closing time and the two machines at Deer Valley Precinct in Church of the Nazarene had not yet served more than 200 voters at 7 p.m.

At Deer Valley, the two machines handled 35 voters an hour during the long day and election judges complained they had no access to telephones so they could call out for help—presumably for more machines.

Some precincts reported smooth sailing all day with no complaints or problems. Long Precinct had only 350 voters to go at 2:30 p.m. out of 948 registered, and Alhambra Precinct had only 300 out of 1,060 voters on the yet-to-vote list by 3:30 p.m.

The Maricopa County Registration and Elections Bureau looked at the day of heavy voting and some confusion with a less-than-worried air.

Complaints were "unusually light," officials said, in view of the tremendous outpouring of voters. The chief complaints involved voters whose affidavits had not been filed with the bureau. The bureau blamed registrars for the oversight.

Mr. GOLDWATER. I will put them into the RECORD at a further point. In case the Senator cared to dwell on this at greater length, and he evidently has intended to——

Mr. BAYH. The Senator brought it up.

Mr. GOLDWATER. Mr. President, I have the floor.

He outlines that as one of the reasons, and has three pages on it in his minority report memorandum. I want to establish a firm understanding among Senators as to what took place. There are some allegations that I cannot support because I do not have any knowledge of them. But I do know in this case what happened, and, from personal knowledge, know that nothing happened that could in any way reflect on Mr. Rehnquist.

Mr. BAYH. The Senator from Arizona said there was no voter harassment.

Mr. GOLDWATER. That is right.

Mr. BAYH. Is the Senator not aware, since he was there, that there was sufficient harassment to have the FBI called into the Bethune precinct? If he would like to read the FBI field report—it is about a 36-page document—I am sure the chairman of the Judiciary Committee will make it available. If there was no harassment, why did the FBI do that?

Mr. GOLDWATER. The Senator does not understand what I have been trying to talk about. We have had the right in Arizona—and I think most States have it—to appoint two poll watchers to every precinct or to any precinct we care to. If these poll watchers see some person in line who they suspect has voted before or is voting not in consonance with the law, they have the right to challenge. This will happen. The entire line stops while that challenge is corrected.

But I will say this: We have found in the predominantly Republican districts at times, not often—neither side has abused this—the Democrats would challenge a Republican because they knew the whole line was going to vote Republican. When we challenged down in these districts, or up north in the districts where we had reason to believe, in the days before the 1964 Civil Rights Act and the 1965 Voting Act, that a man could not read or write, we had the legal right to challenge that. I think it was demanded upon us to make sure that no illegal votes were cast.

I will go back one more step: There may have been incidents at Bethune—the only case I can recall was a case of a man—certainly not Mr. Rehnquist—being moved out of the polling place by the police. There is no record of this man ever having been booked; there is no record of any charge being made against him. It was merely to settle an argument that had arisen between a Democratic watcher and a Republican watcher, before either took the trouble to call into headquarters and say, "What should we do?"

Mr. BAYH. Looking through some of the statements supporting Mr. Rehnquist, I find the name of Judge Charles Hardy. Is the Senator from Arizona familiar with Judge Hardy?

Mr. GOLDWATER. I know him very well.

Mr. BAYH. What is his capacity? Could the Senator tell the Senate what it is now?

Mr. GOLDWATER. He was judge of the superior court at that time, I believe. I think he possibly has been elevated now, but I would not swear to it.

I have great confidence in him. He is a Democrat. We think very highly of him. He is the one that stated, and I read it, that the alleged incident in question took place in 1962 and not 1964.

Mr. BAYH. I would like to read the statement in the brief that was referred to by the Senator from Arizona. In fact I was sufficiently unimpressed with this particular incident compared to everything else that I have not included it in my speech which I shall make tomorrow. I rise only because the Senator from Arizona takes issue here, and this is the only point he stressed. He seems to have indicated that anyone who thinks otherwise is not telling the truth. If there was no intimidation during the period in which Rehnquist was involved as a ballot security officer, then why did Judge Hardy write this?

In 1962, for the first time, the Republicans had challengers in all of the precincts in this county which had overwhelming Democratic registrations. At that time among the statutory grounds for challenging a person offering to vote were that he had not resided within the precinct for thirty days next preceding the election and that he was unable to read the Constitution of the United States in the English language. In each precinct the Republican challenger had the names of persons who were listed as registered voters in that precinct but who apparently had not resided there for at least thirty days before the election. In precincts where there were large numbers of black or Mexican people, Republican challengers also challenged on the basis of the inability to read the Constitution of the United States in the English language. In some precincts *every* black or Mexican person was being challenged on this latter ground and it was quite clear that this type of challenging was a deliberate effort to slow down the voting so as to cause people awaiting their turn to vote to grow tired of waiting and leave without voting. In addition, there was a well organized campaign of outright harassment and intimidation to discourage persons from attempting to vote. In the black and brown areas, handbills were distributed warning persons that if they were not properly qualified to vote they would be prosecuted. There were squads of people taking photographs of voters standing in line waiting to vote and asking for their names. There is no doubt in my mind that these tactics of harassment, intimidation and indiscriminate challenging

were highly improper and violative of the Spirit of Free elections.

That is not BIRCH BAYH, that is Judge Hardy.

Mr. GOLDWATER. The Senator made a very important observation when he quotes Judge Hardy's letter in 1962; but that was in 1962, remember. And Judge Hardy made clear that Mr. Rehnquist never attempted to challenge voters at any polling place. The Republican watchers—not Mr. Rehnquist—had made challenges. We had to challenge them to get the Democratic boards of supervisors to approve of the watchers, and we finally did. Remember that in 1962, under the Arizona constitution and statutes, a man could be challenged as to whether he could read or write or there was reason to question whether he was registered in more than one precinct. I do not know Judge Hardy well enough to know what he would call harassment. There was only one incident that I can recall, and it may have been in Bethune where one man, I do not remember whether he was a Democrat or a Republican, was questioned and the police got him outside.

The Senator will notice, if he reads Judge Hardy's letter, that in 1962 the statutes of Arizona at that time had not been changed by the Civil Rights Act of 1964, so it still prevailed. The Republican Party, being the minority party in those days by, I would judge, 3 to 1, wanted to see that no votes were cast against us that should not legally be. We wanted to make every vote count, naturally, just as the Democrats put watchers in Republican districts.

Mr. BAYH. The Senator is relying on the rather strong letter from Judge Hardy. He does not question the judge's qualifications when he suggests that Mr. Rehnquist should be on the Supreme Court.

Mr. GOLDWATER. That is right.

Mr. BAYH. That same man testifies here about the blatant and unauthorized intimidation. Yet the Senator from Arizona says is a lie to make the accusation that there was intimidation going on in the precinct.

Mr. GOLDWATER. It is definitely a lie that Mr. Rehnquist was ever involved. I can only take Judge Hardy at his word, and can only rely on my own personal observations. He thinks highly of Mr. Rehnquist and has approved of him for the Supreme Court. I have respect for Judge Hardy. I do not know him intimately. I am not a lawyer, but I have great respect for him. If my memory serves me correctly, I believe I voted for him, even though he was a member of the other party. Occasionally we do that.

I would say this as to what the Senator says, which I believe to be correct, that this will not be made an issue so that we have then eliminated one little facet of this debate and perhaps we can close the door on that, if the Senator will tell his comrades in arms who want to debate this. If he will do that, I will be happy to sit down and say that this evening has been well spent.

Mr. BAYH. I believe that both sides have presented this clearly. The only reason I rose to engage in this colloquy was that I thought I heard the Senator say that he would say it was a lie if anyone on this floor said there had been any voting harassment in those precincts.

Mr. GOLDWATER. I intend to do that every time Mr. Rehnquist's name is brought into it. Mr. President, I ask unanimous consent to have the entire letter from Judge Hardy printed in the RECORD.

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

PHOENIX, ARIZ.,
November 11, 1971.

Hon. JAMES EASTLAND,
Senate Office Building,
Washington, D.C.

DEAR SENATOR EASTLAND: I am informed that at a hearing conducted by the Senate Judiciary Committee on Tuesday, November 9, 1971, Mr. Clarence Mitchell appeared in behalf of the National Association for the Advancement of Colored People and testified in opposition to the confirmation of the appointment of the Honorable William H. Rehnquist as an Associate Justice of the Supreme Court. I am also informed that in the course of his testimony Mr. Mitchell stated that Mr. Rehnquist had in the past been guilty of improper challenging of black voters during a general election a number of years ago and that his organization had received information from me which contradicted the statements which Mr. Rehnquist may have made regarding this matter.

In fairness to all concerned, I feel that I should inform you of my recollection of the events in question. I have also inquired of a number of friends who were Republican party workers in an effort to obtain further information.

To my knowledge, no one representing the National Association for the Advancement of Colored People has ever discussed Mr. Rehnquist with me.

I am informed that Mr. Mitchell testified that the events in question occurred during the general election of 1964. It is my recollection and the recollection of a number of others, both Democrats and Republicans, that actually 1962 was the correct year.

In 1962, for the first time, the Republicans had challengers in all of the precincts in this county which had overwhelming Democratic registrations. At that time among the statutory grounds for challenging a person offering to vote were that he had not resided within the precinct for thirty days next preceding the election and that he was unable to read the Constitution of the United States in the English language. In each precinct the Republican challenger had the names of persons who were listed as registered voters in that precinct but who apparently had not resided there for at least thirty days before the election. In precincts where there were large numbers of black or Mexican people, Republican challengers also challenged on the basis of the inability to read the Constitution of the United States in the English language. In some precincts every black or Mexican person was being challenged on this latter ground and it was quite clear that this type of challenging was a deliberate effort to slow down the voting so as to cause people awaiting their turn to vote to grow tired of waiting and leave without voting. In addition, there was a well organized campaign of outright harassment and intimidation to discourage persons from attempting to vote. In the black and brown areas, handbills were distributed warning persons that if they were not properly qualified to vote they would be prosecuted. There were squads of people taking photographs of voters standing in line waiting to vote and asking for their names. There is no doubt in my mind that these tactics of harassment, intimidation and indiscriminate challenging were highly improper and violative of the spirit of free elections.

Arizona Statutes provide grounds for challenging voters, appointment of challengers, proceedings on challenge and rules for determining the residence of a voter upon challenge. In addition to having a challenger at each voting precinct, each political party is also entitled to have a party representative present at all times. In every general election disputes arise concerning the interpretation of the Arizona Statutes or their application.

During the past several years both of the major political parties have had a committee of lawyers available at party headquarters on election days to assist in resolving any disputes which arise. Usually when a party headquarters is notified of a dispute in a voting precinct, one of the lawyers is dispatched to the scene to discuss the matter with the party representative there and to provide him with legal advice and assistance.

In 1962 I was in charge of the lawyers who acted in behalf of the Democratic party and Mr. Rehnquist in charge of the Republican lawyers.

I never observed Mr. Rehnquist attempting to challenge voters at any polling place. I understand that there was testimony that he had challenged voters at Bethune and Granada precincts. I can state unequivocally that Mr. Rehnquist did not act as a challenger at Bethune precinct. Because of the disruptive tactics of the Republican challenger at that precinct I had occasion to be there on several occasions. The same Republican challenger was there continuously from the time that the polls opened at 6:00 o'clock a.m. until about 4:00 o'clock in the afternoon. About that time, after a scuffle, he was arrested and removed from the polling place by sheriff's deputies. Thereafter there was no Republican challenger at Bethune.

With respect to Granada precinct, I cannot give credence to any charge that Mr. Rehnquist was challenging black voters there. In 1962 there were relatively few black voters residing within that precinct.

Challenging voters was not a part of Mr Rehnquist's role in 1962 or subsequent election years, nor did he have anything to do with the recruitment of challengers or their assignment to the various polling places. The person who was in charge of recruitment and assignment was Mr. Gordon Marshall who is not a lawyer and obviously was not under Mr. Rehnquist's direction as a member of the committee of lawyers. I have confirmed this by talking to Mr. Marshall.

I am informed by Mr. Marshall and others that before election day, Mr. Rehnquist met with all of the challengers to explain the voting laws to them. All of these persons insist that the instructions given by Mr. Rehnquist did not in any way suggest that challenging be conducted in a manner to prevent properly qualified persons from voting.

A day or two after the election Mr. Rehnquist and I had lunch together and discussed the events of election day. He expressed strong disapproval of the tactics which I have mentioned above. I felt then and I feel now that his expressions of disapproval were genuine.

Yours very truly,

CHARLES L. HARDY,
Judge, Superior Court.

Mr. COOPER. Mr. President, I am very much interested in this colloquy. I am sure that this sort of thing goes on in many States of the Union, and possibly in the State of the Senator from Indiana. I have served as an election officer and a challenger at polling places in Kentucky. We do that to protect the interests of our

own party. So do the Democrats. There is nothing wrong with that.

Mr. GOLDWATER. There is nothing wrong with that. It is done, in my opinion, in most of the States of the Union. It is customary.

Mr. COOPER. I may say that I had to make some difficult challenges many years ago. We did not make many friends doing that, but it was our duty to do so. I recall in a precinct in western Kentucky where there were not many Republicans and in some counties there were less than 100 Republicans. Of course, we had to protect ourselves and we depended upon the honesty, in many cases, of the other party, to preserve the purity of the election, and in other counties we had to send people in from other precincts and sometimes people from other precincts would come into ours. There were precincts where we had to have poll watchers. That is true in every State, unfortunately.

The adoption of voting machines has helped in that regard to remedy many of those conditions, but I repeat that poll watchers and challenging are not only common practices but are proper practices.

Mr. GOLDWATER. The Senator is so correct. I can recite one instance that took place in a State adjoining ours where some Indians were allowed to vote merely by making a mark with their thumb print, or an X, and one of the Republicans who spoke their language very well stood the legal distance from the polling place and in a loud voice told the Indians that the man they were going to vote for had destroyed their horses. I do not say that that was right, but had there been a Democratic challenger there he would have challenged that. The man made the statement.

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

Mr. COOPER. I yield.

Mr. BAYH. Mr. President, the Senator from Kentucky is such a legend across the river from my home State of Indiana that I wonder if I might ask him a question. He has been a judge, an ambassador, and a Senator.

I am very well aware of the fact that we all have to take certain precautions to keep the other side from stealing the election. I wish I could say that our side is pure on this matter. However, it is not.

When I first ran for the Senate, I became very distressed that in the small towns they would say that the big cities are stealing all the votes and in the cities they would say that the small towns are stealing the votes.

It seems to me that we have to have protection in both places. In the case to which the Senator from Kentucky alluded, has there ever been anything that in his judgment could be categorized as a well-organized campaign of outright harassment and intimidation to discourage persons from attempting to vote?

Mr. COOPER. I am sure that the Senator from Indiana has been in many races. I do not know how many but, he has been in a number of them. I think I have been in 20 campaigns, beginning with my race for the State legislature.

I have been through elections where we used to come to the precincts and bring the ballot boxes back to the courthouse. I have been in elections when we had voting machines.

I have never seen an election when there was not some feeling and some emotion. Of course, there is a great interest in the candidates and in the parties. However, we come sometimes to situations where passions are aroused and fights take place at the polls. I am sure that the Senator knows that this happens. There are great feelings on the part of both parties to protect their rights.

There have been times when efforts would be made to transport voters, who would first vote in their own precincts, and try to have them vote in a second and third precinct. Unfortunately, those practices have occurred.

I suppose that in many cases one side or the other does feel itself being harassed. If the poll watchers are doing their duty, it cannot be properly called harassment. I should note that Kentucky voting laws did not require a test—such as a literacy test. The use of poll watchers and the practice of challenging at the polls can be called an effort to protect the rights of both parties and to insure their equal treatment.

Mr. GOLDWATER. Mr. President, one important part of Judge Hardy's letter which has not been read aloud states:

> A day or two after the election, Mr. Rehnquist and I had lunch together and discussed the events of election day. He expressed strong disapproval of the tactics which I have mentioned above. I felt then and I feel now that his expressions of disapproval were genuine.

Thus, Mr. President, these practices may have existed, but it had never been under Mr. Rehnquist. He has never been associated with it. And he has expressed strong disapproval of any challenge that might involve any physical force or intimidation at any time that I can think of. There is only one time in my memory that this took place and he definitely was not involved.

Mr. BAYH. Mr. President, I appreciate the statement, but there was a time when Judge Hardy's letter makes it rather clear that it did occur.

Mr. FANNIN. Mr. President, I could speak at length on the outstanding qualifications of William H. Rehnquist and also of his record which refutes all the accusations that have been made against him. But I think it would be repetitious. The CONGRESSIONAL RECORD is replete with this coverage. I will just speak for a few minutes this evening.

President Nixon has stated that Mr. Rehnquist has "one of the finest legal minds in the whole Nation." In the past few weeks since his nomination this conclusion has been overwhelmingly seconded by his former professors, his colleagues in private practice and in public service, and significantly, from those who have been his legal and political adversaries through the years. Throughout his career this relatively young man has demonstrated again and again that he has exceptional intellectual and professional competence. In addition, those who have been the closest to him attest to his strong character, fairness, and objectivity.

His intellectual excellence was first demonstrated by outstanding academic accomplishments as an undergraduate and as a law school student. When he received his B.A. degree from Stanford in 1948, it was "with great distinction" and as a member of Phi Beta Kappa. He also received an M.A. in political science from Stanford in 1949 and an M.A. in government from Harvard in 1950.

He returned to Stanford to attend law school from which he graduated first in his class in 1952. While there he served as an editor of the Law Review and was elected to the Order of Coif. In its report to the Judiciary Committee, the American Bar Association's standing Committee on the Federal Judiciary stated of his law school record:

> "[H]e was highly respected by the faculty and fellow students as a gifted scholar. A classmate who is now a partner in a leading west coast firm, at our request, interviewed several other members of Mr. Rhenquist's class. Their evaluation, in part, is as follows:
>
> "Mr. Rhenquist is of exceptional intellectual and legal ability. He was a law student among law students, * * *. From the standpoint of intellectual and legal ability, there cannot be question among reasonable men on his exceptional qualifications.
>
> "His personal integrity is not subject to challenge. While various of the interviewees, including myself, by no means agree with some of the political and social views of Mr. Rehnquist, each of us is completely satisfied, that he will approach his task with objectivity, that he will decide each case that comes before him on the thorough analysis of applicable law and a careful study of the facts."

Mr. Rehnquist's former professors share the opinions voiced by his fellow classmates. One has stated that "he has that all important capacity for steady continual growth" and another that "He was the outstanding student of his law school generation." Among the several letters to the Judiciary Committee on behalf of Mr. Rehnquist the following one from Phil C. Neal, a former professor at Stanford, and now dean of the University of Chicago Law School, is typical:

> Rehnquist was a student of mine at Stanford Law School. He was not only the top student in his class but one of the best students in the School over a number of years. He has remained in my mind as one of the most impressive students I have had in some twenty-two years of teaching.
>
> I believe he would be an independent judge and that he would bring to the Court an unusual capacity for understanding and responding to all dimensions of the difficult problems the Supreme Court must confront. In my judgment his appointment would add great strength to the Court.

Following law school, Mr. Rehnquist came to Washington where he served as law clerk for Mr. Justice Robert H. Jackson during the years 1952–53. Typically, the ABA found that his fellow clerks during this period respected his ability.

In 1953, Mr. Rehnquist moved to Arizona and entered private law practice in Phoenix. He was a partner in various Phoenix law firms from 1955 to 1969. In addition to his varied legal practice in Phoenix, Mr. Rehnquist was quite active in bar association activities. These in-

cluded a term as president of the Maricopa County Bar Association which includes the Phoenix area and at that time had a membership of approximately 1,200. He was also active in the State bar association and its many activities including the Arizona Law Institute and membership on the Committee on Uniform Laws. When he left Phoenix his rating in Martindale-Hubbell was the highest, and as the ABA report states:

He was clearly a person of recognized professional quality who, for his age, was highly regarded.

This conclusion is supported by the statements of fellow practitioners who came to know and admire Mr. Rehnquist's legal abilities during his 16 years as a practicing attorney in Phoenix. C. A. Carson III, a former law partner and a member of the ABA board of governors and House of Delegates, characterized the nominee as "a wonderful man, a great lawyer, and a scholar with a fine mind." Another former law partner, James Powers, described Mr. Rehnquist as "a first rate legal scholar," adding:

He is the ultimate reasonable man. * * * I'm sure he'll make an excellent Justice.

I think that the views of the Arizona legal community are aptly summarized by the statement to the Judiciary Committee of Howard Karman, president of the Arizona State Bar Association:

I have known Bill Rehnquist professionally for a number of years. After his nomination by President Nixon, I talked to a great many people in Arizona, Republicans and Democrats, liberals and conservatives. To a man they had nothing but praise for Bill Rehnquist. I was surprised that no lawyer I spoke with had an unfavorable comment to make, even those who find themselves at the opposite end of the political spectrum.

He concluded his statement as follows:

I believe that Mr. Rehnquist is admirably qualified by virtue of intellect, temperament, education, training and experience to be confirmed * * *.

The collective views of Arizona attorneys on this nomination are also reflected in the unanimous endorsement given Mr. Rehnquist by the board of governors of the State Bar of Arizona. They praised him for having "continually demonstrated the very highest degree of professional competence, integrity, and devotion to the ends of justice."

At the national level, the conclusion of the American Bar Association's standing Committee of Federal Judiciary speaks for itself:

The present conclusion of the Committee, limited to the area described above, is that Mr. Rehnquist meets high standards of professional competence, judicial temperament, and integrity. To the Committee, this means that from the viewpoint of professional qualifications, Mr. Rehnquist is one of the best persons available for appointment to the Supreme Court.

The qualities that earned these plaudits for Mr. Rehnquist from practitioners were also known to the academic community in Arizona. Dean Willard H. Pedrick of the Arizona State University College of Law felt that these qualities would make him an excellent professor of law and approached him on the subject about a year ago. Because of his commitment to the Department of Justice, Mr. Rehnquist declined to consider such a post. Dean Pedrick wrote to notify the Judiciary Committee of the intelligence and integrity of the nominee and warmly endorsed his nomination to the Court. He stated:

The qualities that would, in my judgment, have made him an excellent law professor should make him an excellent Justice of the United States Supreme Court. On that Court, charged with responsibility to serve the interests of all of the people in interpreting the Constitution of the United States and the laws of Congress, I am confident he will serve his country with great distinction.

In addition to the support of colleagues who have worked closely with him in the daily practice of law, public officials throughout the State of Arizona have added their warm support for Mr. Rehnquist. Arizona Gov. Jack Williams described Mr. Rehnquist as a "real scholar, an outstanding attorney." Vice Chief Justice Jack D. H. Hays, of the Arizona Supreme Court, noted that Mr. Rehnquist is "a very outstanding young man, a tremendous legal scholar." Former Arizona Supreme Court Judge Charles Bernstein stated:

I couldn't think of a better choice. * * * He has an extremely well-balanced philosophy. * * * A sense of feeling for human beings, especially for the little man.

Gary Nelson, attorney general of Arizona, noted:

I was ecstatic at the announcement of his nomination. * * * I think he's outstanding.

State Senator Sandra D. O'Connor, a law school classmate, stated:

He has the potential to become one of the greatest jurists of our highest court.

She noted that as a law student:

He quickly rose to the top of the class, and, frankly, was head and shoulders above all the rest of us in terms of sheer legal talent and ability.

Arizona State Republican Chairman Harry Rosenzweig remarked:

The President * * * has made a very fine selection. He is not only a lawyer but a student of the law.

Herbert L. Ely, the State Democratic chairman, also supports the confirmation of William Rehnquist as do the Arizona Republic, the Phoenix Gazette, and the Tucson Daily Citizen newspapers.

As the hearings and the letters to the Judiciary Committee on this nomination make clear, the tributes to Mr. Rehnquist from his fellow Arizonans go on and on. It is also clear that the tributes have flowed equally from those who have worked with him in his capacity as Assistant Attorney General in the Office of Legal Counsel. The principal area of expertise of this Office is in matters of constitutional law. As you know, the Office—often called the President's law firm—assists the Attorney General in serving as legal adviser to the President and his staff. It also drafts the formal opinions of the Attorney General and gives informal opinions and advice to agencies within the executive branch of the Government. In short, Mr. Rehnquist is, as President Nixon described him, the President's lawyer's lawyer.

As I indicated earlier the endorsement by the people who have worked with the nominee in this position is as strong as that given by those who knew him in Phoenix. Mr. Rehnquist's first assistant in the Office of Legal Counsel, Martin Richman, a former clerk to Chief Justice Earl Warren, and who was in the Office during Ramsey Clark's tenure as Attorney General, but who stayed on during the first 4 months when Mr. Rehnquist came to the Office, had this to say:

I need not dwell on Mr. Rehnquist's legal abilities. He has an incisive grasp for the key issues in a complex problem, the ability to learn a new subject quickly and an exceptional gift for expressing legal matters clearly and forcefully in writing. Though long out of the academic atmosphere, he has a fine scholarly bent, with an inquiring mind on subjects ranging beyond legal matters.

In terms of character, he is strong, honorable, straightforward in his actions and positions. I thought he showed exceptional sensitivity and decency in his decisions on administrative and personnel matters within the Office. While these traits do not necessarily bear on legal ability, they speak deeply of the character of a man.

Mr. Rehnquist approaches legal problems thoughtfully, with careful personal study. He is responsive to persuasive argument, and contributes to it by the articulate presentation of his own views. He brings his considerable legal ability to bear when the issues are broad questions of constitutional law, as well as on more technical matters.

Mr. Richman's successor as first assistant, Thomas E. Kauper, who is now a professor of law at the University of Michigan Law School, also notified the committee that he believed Mr. Rehnquist to be "exceptionally well qualified" for the Court, adding:

William H. Rehnquist is as fine a lawyer as I have encountered. He has a scholarly, intellectual approach to legal problems which is not found in many practicing lawyers. While he and I did not always agree on the resolution of legal issues, I always received a fair hearing and found him eager to learn all that he could before making a decision. In addition to a powerful legal mind, and perhaps equally as important, Mr. Rehnquist has abiding interest in and concern for the development of the law and legal institutions. He has all the qualities to become a truly great judge, and to assume a substantial degree of intellectual leadership on the Court for a number of years to come.

These conclusions are echoed by members of the career legal staff in the Office of Legal Counsel.

Mr. President, I think it is worth emphasizing that those who have known the nominee personally and have worked closely with him throughout his legal career have been unanimous in their praise. Whether they are former classmates, former professors, fellow practitioners in Phoenix, or colleagues in the Justice Department, these people, regardless of political or philosophical persuasion, have given their full support to his nomination and recommend his speedy confirmation.

Mr. President, the qualifications, character, and philosophy of William H. Rehnquist have been under microscopic examination for more than a month. Members of the Senate Judiciary Committee had ample opportunity to probe his background and his performance as

an attorney and as an administration official.

The most ardent of investigators and investigative reporters have left no stone unturned in examining Mr. Rehnquist's past.

There has been a concerted effort by opponents of the nomination to turn up some tangible evidence why Mr. Rehnquist should be rejected.

These efforts have failed.

Nothing has been put forward that casts any doubt on the qualifications of William H. Rehnquist to be an Associate Justice of the Supreme Court. His qualifications are superb.

It has been proven that William Rehnquist has not involved in any voter harassment as has been alleged by his opponents. Mr. Rehnquist has denied the charge. Others who were connected with the elections in question also have said that Rehnquist could not have been involved.

Allegations that William H. Rehnquist was a member of an extremist group in the early 1960's are without foundation. He has denied belonging to the group in question, and no evidence has been offered to support the vicious rumor spread by opponents of the nomination.

There has also been a thorough investigation of the legal philosphy of William H. Rehnquist.

Opponents say he lacks an appreciation of civil rights and that he is prone to support more police powers for the government.

Mr. President, neither of these is true.

Mr. President, some interesting observations concerning the debate over the Rehnquist nomination were made by Tom Wicker in the Sunday editions of the New York Times. He places in perspective the question that we are considering here today.

I ask unanimous consent to insert Mr. Wicker's column in the RECORD at this point:

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

IN RE REHINQUIST

(By Tom Wicker)

WASHINGTON.—The Senate apparently will confirm Lewis Powell next week as an Associate Justice of the Supreme Court. After that, it will either face up to or delay the far more controversial and difficult matter of William Rehnquist, President Nixon's other nominee to the Court.

As it now appears, Mr. Rehnquist will be confirmed, too, unless those who oppose him are determined enough and able to put together something like the filibuster that, in 1968, prevented confirmation of Abe Fortas as Chief Justice.

This is at least a long-shot possibility because of Mr. Rehnquist's comparative youth (47) and his reputation as a skilled, active and intent champion of strongly conservative causes. Liberals fear he may become for many years the vigorous leader of a reactionary Court, but their dilemma is that no ethical or professional charges sufficient to warrant Mr. Rehnquist's rejection have so far been proved.

That means that the battle has to be fought, if at all, on the tricky ground of Mr. Rehnquist's political views—whether it is called his "judicial philosophy" or his "constitutional approach." The view was put forward in this space on Nov. 11 that this kind of opposition was "dangerous business"—that it suggested the existence of a kind of political orthodoxy, would tend to politicize the Court, would punish some people for their ideas while frightening others out of having any and would lead inevitably to political retaliation.

On balance, with full awareness that Mr. Rehnquist's views on the Bill of Rights seem antilibertarian, and despite weighty arguments from many who disagree, it still is "dangerous business" to reject him for his political views. Is it seriously to be asserted that conservative—even arch-conservative—views disqualify a man for service on the Supreme Court? If so, then what prevents some other Senate from disqualifying a man for strongly liberal views or for being a "new leftist" or a "neo-isolationist" or some other stereotype?

This is not to deny that the Senate has a duty to consider the qualifications of a nominee to sit upon the Court. Or that among the qualifications it ought to consider is his general political, constitutional and judicial view of things. Judge Carswell, for instance, was judged to be lacking in intellectual and legal competence, a judgment that could be solidly documented.

But can it be shown that Mr. Rehnquist lacks fidelity to the Constitution? No, only that in his view it allows more power to the state and less to the individual than many other Americans believe to be the case.

Can it be shown that Mr. Rehnquist's views are factually in error or substantively wrong? No, it is a matter of interpretation, and it is late in the day for liberals to start asserting that the Constitution is an absolute document not subject to interpretation or differing ideas. It is, in fact, the prime duty of the Supreme Court to decide what the Constitution means, on given subjects at given times in history.

Nor is the political aspect of the Rehnquist nomination an open-and-shut affair. No doubt Mr. Rehnquist will be a formidable conservative force on the Court (although that remains a supposition that only time can justify). Even so, the damage he might do to liberal causes could well be less than the political consequences of a third rejected Nixon nominee, a third defeated conservative, in a Senate dominated by liberal Democrats. Just as the Court itself must sometimes practice "judicial restraint," so it may be that the Senate ought to practice some political restraint. This, of course, is a value judgment that each Senator must make for himself.

That also is true of the really crucial question about Mr. Rehnquist, which can best be explained by reference to Mr. Powell. Those who know the Virginia lawyer, a former American Bar Association president, concede that his views in many ways are as conservative as those of Mr. Rehnquist—and that fact was documented in an article by Mr. Powell recently reprinted on this page.

But Mr. Powell, it is said, is an experienced and fair-minded man of judicial temperament who, in deciding legal and constitutional questions, will put aside any personal or political preferences and prejudices that can't be squared with the law and the facts of a case. He might, for instance, generally approve wiretapping as a law-enforcement tool—yet be willing to rule against it when, in some particular case, the facts showed that the law and the Constitution had been violated.

It is to be hoped that that is true—of Mr. Powell and of any nominee, liberal or conservative. Whether or not it is true of William Rehnquist is the vital question about his nomination, and one that each Senator must judge for himself. If Mr. Rehnquist can put his personal views aside when they can't be fairly justified by the law and the facts, then those views should not be the deciding factor; but if any Senator feels that Mr. Rehnquist, or any other nominee, could not so discipline himself intellectually, voting to reject him would surely be a duty.

Mr. FANNIN. Mr. President, William H. Rehnquist is a very human person. A man who has a deep respect for human rights and human dignity. If anyone is in the mainstream of American thought when it comes to the rights of man, it is William H. Rehnquist.

He has stated clearly that he believes in the Bill of Rights. He has said that the Government must be restrained in exercising police powers which could threaten our rights as free men.

Mr. President, I could go on at great length and delve into the reams of material that have been produced in the past month concerning the nomination. I do not think that this is necessary. It is obvious that the overwhelming mass of the material produced makes it clear that the nomination should be confirmed.

William H. Rehnquist is equipped as legal scholar, and as man of human compassion to be an outstanding Associate Justice of the Supreme Court.

It is with great pleasure that I recommend his confirmation.

MR. WILLIAM REHNQUIST AND BROWN AGAINST BOARD OF EDUCATION

Mr. BAYH. Mr. President, new and disturbing information concerning Mr. William Rehnquist's commitment to equal justice in this country was revealed today. According to Newsweek magazine, Mr. Rehnquist, while a law clerk to Mr. Justice Jackson, wrote a memorandum which argued that the rule of "separate but equal" of *Plessy* vs. *Ferguson* should be "reaffirmed." Fortunately for the Nation, Mr. Justice Jackson disregarded his law clerk's advice and voted with the rest of the Court to overrule Plessy and hold in *Brown* vs. *Board of Education* that segregation in the public schools was "inherently unequal."

That case, Mr. President, was perhaps the most significant decision the Court made this century. It was the decision which at long last made the great promise of the 14th amendment—"no State shall deny to any person the equal protection of the laws"—into a realizable goal. And, importantly, it was a unanimous decision.

Mr. Rehnquist was a 28-year-old law clerk when he wrote to Mr. Justice Jackson a memorandum entitled "A Random Thought on the Segregation Cases." In it, he argued that Plessy "was right and should be reaffirmed." He responded to the appellant's argument—made by the present Mr. Justice Thurgood Marshall—this way:

To those who would argue that "personal" rights are more sacrosanct than "property" rights, the short answer is that the Constitution makes no such distinction. To the argument made by Thurgood, not John, Marshall that a majority may not deprive a minority of its constitutional right, the answer must be made that while this is sound in theory, in the long run it is the majority who will determine what the constitutional rights of the minority are. One hundred and fifty years of attempts on the part of this Court to protect minority rights of any kind—whether those of business, slaveholders, or Jehovah's Witnesses—have all met the same fate. One by one the cases establishing such

rights have been sloughed off, and crept silently to rest. If the Court is unable to profit by this example, it must be prepared to see its work fade in time, too, as embodying only the sentiments of a transient majority of nine men.

I realize that it is an unpopular and unhumanitarian position, for which I have been excoriated by "liberal" colleagues, but I think *Plessy* v. *Ferguson* was right and should be reaffirmed. If the Fourteenth Amendment did not exact Spencer's *Social Statics*, it just as surely did not exact Myrdahl's *American Dilemma*.

It is distressing indeed that Mr. Rehnquist placed property rights on the same plane as human rights in this memorandum. But it is more distressing that he had the same view 10 years later when, in 1964, he opposed a local public accommodations ordinance on the ground that it was an unjustified imposition on the property rights of owners who wished to discriminate on racial grounds. And Mr. Rehnquist insisted even at his confirmation hearings that property rights are as important as human rights.

Perhaps even more distressing, however, is Mr. Rehnquist's view that the Court's efforts "to protect minority rights of any kind" were doomed to failure. His prediction about the Brown case itself—that the Court "must be prepared to see its work fade in time, too, as embodying only the sentiments of a transient majority of nine men"—was, fortunately, quite inaccurate. But the plain implication of the statement is that Mr. Rehnquist does believe the Supreme Court has a significant role to play in protecting the rights of individuals and minority groups. This sadly fits into the later pattern of Mr. Rehnquist's actions with respect to civil rights. He has persistently been hostile to efforts by court or legislature to use law to correct the racial injustices of the past two centuries.

Mr. Rehnquist realized even in 1953 that his was "an unpopular and unhumanitarian position." And so it was. But more important, it is a position which reflects a cramped and narrow view of the role of the Supreme Court in modern American life. It reflects a view of the Court inconsistent with its high role in the protection of the constitutional rights of every American citizen.

Mr. President, I ask unanimous consent that the full text of the memorandum by Mr. Rehnquist to Mr. Justice Jackson which has been made public by Newsweek be printed in the RECORD.

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

A RANDOM THOUGHT ON THE SEGREGATION CASES

(Memorandum by Mr. Rehnquist to Mr. Justice Jackson)

One-hundred fifty years ago this Court held that it was the ultimate judge of the restrictions which the Constitution imposed on the various branches of the national and state government. *Marbury* v. *Madison*. This was presumably on the basis that there are standards to be applied other than the personal predilections of the Justices.

As applied to questions of inter-state or state-federal relations, as well as to interdepartmental disputes within the federal government, this doctrine of judicial review has worked well. Where theoretically coordinate bodies of government are disputing, the Court is well suited to its role as arbiter. This is because these problems involve much less emotionally charged subject matter than do those discussed below. In effect, they determine the skeletal relations of the governments to each other without influencing the substantive business of those governments.

As applied to relations between the individual and the state, the system has worked much less well. The Constitution, of course, deals with individual rights, particularly in the First Ten and the Fourteenth Amendments. But as I read the history of this Court, it has seldom been out of hot water when attempting to interpret these individual rights. *Fletcher* v. *Peck*, in 1810, represented an attempt by Chief Justice Marshall to extend the protection of the contract clause to infant business. *Scott* v. *Sanford* was the result of Taney's effort to protect slaveholders from legislative interference.

After the Civil War, business interest came to dominate the Court, and they in turn ventured into the deep water of protecting certain types of individuals against legislative interference. Championed first by Field, then by Peckham and Brewer, the high water mark of the trend in protecting corporations against legislative influence was probably *Lochner* v. *NY*. To the majority opinion in that case, Holmes replied that the Fourteenth Amendment did not enact Herbert Spencer's Social Statics. Other cases coming later in a similar vein were *Adkins* v. *Children's Hospital*, *Hammer* v. *Dagenhart*, *Tyson* v. *Banton*, *Ribnik* v. *McBride*. But eventually the Court called a halt to this reading of its own economic views into the Constitution. Apparently it recognized that where a legislature was dealing with its own citizens, it was not part of the judicial function to thwart public opinion except in extreme cases.

In these cases now before the Court, the Court is, as Davis suggested, being asked to read its own sociological views into the Constitution. Urging a view palpably at variance with precedent and probably with legislative history, appellants seek to convince the Court of the moral wrongness of the treatment they are receiving. I would suggest that this is a question the Court need never reach; for regardless of the Justice's individual views on the merits of segregation, it quite clearly is not one of those extreme cases which commands intervention from one of any conviction. If this Court, because its members individually are "liberal" and dislike segregation, now chooses to strike it down, it differs from the McReynolds court only in the kinds of litigants it favors and the kinds of special claims it protects. To those who would argue that "personal" rights are more sacrosanct than "property" rights, the short answer is that the Constitution makes no such distinction. To the argument made by Thurgood, not John, Marshall, that a majority may not deprive a minority of its constitutional right, the answer must be made that while this is sound in theory, in the long run it is the majority who will determine what the constitutional rights of the minority are. One hundred and fifty years of attempts on the part of this Court to protect minority rights of any kind—whether those of business, slaveholders, or Jehovah's Witnesses—have all met the same fate. One by one the cases establishing such rights have been sloughed off, and crept silently to rest. If the present Court is unable to profit by this example, it must be prepared to see its work fade in time, too, as embodying only the sentiments of a transient majority of nine men.

I realize that it is an unpopular and unhumanitarian position, for which I have been excoriated by "liberal" colleagues, but I think *Plessy* v. *Ferguson* was right and should be re-affirmed. If the Fourteenth Amendment did not enact Spencer's *Social Statics*, it just as surely did not enact Myrdahl's *American Dilemma*.

THE NATIONAL CONFERENCE OF BLACK LAWYERS OPPOSES THE NOMINATION OF WILLIAM REHNQUIST

Mr. BAYH. Mr. President, I received today an eloquent and persuasive statement by the National Conference of Black Lawyers in opposition to the confirmation of William Rehnquist to be an Associate Justice of the Supreme Court. The group concluded:

There exists today a great crisis of confidence in the American judicial system. If those who are striving for justice through the use of the legal system are to continue to hope, that system must give them reason to hope. In these critical times, such hope is not served by placing on the Nation's highest court a man of Mr. Rehnquist's background and views.

I commend to every Senator this entire statement, and I ask unanimous consent that it be printed in today's RECORD.

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

STATEMENT OF THE NATIONAL CONFERENCE OF BLACK LAWYERS ON THE SUPREME COURT NOMINATION OF WILLIAM REHNQUIST

The National Conference of Black Lawyers (NCBL) wishes to go on record as firmly opposed to the confirmation of Mr. William Rehnquist as an Associate Justice of the United States Supreme Court. NCBL is an organization of Black attorneys formed to challenge racism in our legal system and to provide the legal expertise necessary in the Black American's struggle for justice. We number in our ranks attorneys representing the entire spectrum of both the private and public bar, as well as elected government officials from the local, state and national levels. It is the view of our organization that Mr. Rehnquist is fit neither professionally nor personally to sit on the nation's highest court.

Perhaps to a greater extent than any other single community of persons in the United States, the Black community knows the need for persons of quality on the bench. We have known judges without humanity or wisdom who could look at fellow human beings and find them less than human because their skins were Black. We have suffered the predations of greedy slaveholders who had as their ultimate support the approval of the highest court in the land. We have been long suffering. We suffer still. But we have also known the power of justice in this country. We have felt the exhilaration of seeing the courts vindicate truth crushed to the earth. In our struggle we have on numerous occasions been heartened by the performance of the Supreme Court, which through the wisdom and courage of some of its judges has dared to protect the rights of the poor, the Black, politically unpopular in the face of hostile national opinion.

Mr. Rehnquist, in our view, does not possess the qualities we have a right to expect from a member of the United States Supreme Court, in whose hands may rest the freedom of future generations. He is a man of technical intelligence without sound judgment; a man of deeply held prejudices, apparently, without the capacity to recognize them. In short, this proposed appointee to the high bench is a man without vision. In support of this judgment we ask that the Senate take note of the following examples of Mr. Rehnquist's views and actions.

In 1964, the City Council of Phoenix, Arizona was considering passing an ordinance guaranteeing to all minority groups equal rights of access to public accommodations. Mr. Rehnquist's position vis a vis the ordi-

nance was that it would be an indignity to the proprietors of such public facilities to require them to open their doors to Black people. Said he, "It is, I believe, impossible to justify the sacrifice of even a portion of our historic individual freedom for a purpose such as this."

Despite this position, Mr. Rehnquist purports to be dedicated to a free society in which every person is equal before the law. These professions of belief in equality, however, do not stand up very well in the light of the relative weights Mr. Rehnquist accords to the white proprietor's right to discriminate racially, as against the right of Blacks to equal access to public accommodations. When confronted with this conflict, Mr. Rehnquist has made it quite clear that it is his view that if the white man desires to discriminate against the Black, it is acceptable because "each man (should be) accorded a maximum amount of freedom of choice in his individual activities." (Letter to the Editor, Arizona Republic, September 9, 1967.) What of the Black man's rights? What of the rights of the Mexican-Americans, the American Indian, the Puerto Rican, the Chinese, Japanese or Filipino-American?

Even if, in the face of controversy over his nomination, Mr. Rehnquist has now modified his public views on the question of race and the law, his overall record and long standing insensitivity in this area make him an inappropriate choice for the Supreme Court of the United States.

Mr. Rehnquist's lack of vision is not limited to the area of race. Nor is the damage such lack of vision can do confined to Black Americans. Consider his views on First Amendment freedoms. Mr. Rehnquist has expressed his view in support of government surveillance of persons engaged in political expression—including lawfully protected activity. The "Big Brother" state in which the decision to engage in surveillance of anyone and everyone is secret and unexamined will not, Mr. Rehnquist maintains, "chill" political dissent (See, Speech, "Privacy, Surveillance, and the Law," March 19, 1971). Since we operate in this society on the theory that more police "surveilling" neighborhoods will deter or chill crime, it is difficult to see why surveillance would not have a similar effect on political dissent. Apparently, Mr. Rehnquist's answer to this is that political dissenters have nothing to fear since dissent itself is not outlawed. But this is an insufficient response. The specter of more unlawful arrests such as those involved in the May Day Demonstrations, where mass arrests were in Mr. Rehnquist's view justifiable (although his would-be brothers in the District of Columbia Courts strongly disagreed) would in fact "chill" almost anyone. Secondly, even assuming that the demonstrators' fear of unlawful prosecution is unjustified, the question remains whether the government may use fear of prosecution, even if not the reality of it, to stifle protest. The heart of the Constitution centers around the First Amendment freedoms. This government is built on the right of the people to petition the government for change when that government no longer serves them. To "chill" or destroy this is to destroy the very foundation on which this society is supposed to be built. If Mr. Rehnquist does not see and honor this, the society should not dare take the risk of letting him play havoc with our democratic form of government.

Consider, as well, Mr. Rehnquist's views in the criminal justice area. Basically his formula for dealing with the complexities of this country's burgeoning crime and law enforcement problems is only to strengthen the hand of the people. No one disputes, least of all Black people who are most frequently the *victims* of serious crimes, that crime is a dread malignancy which must be cut from the body politic. The question is how to do so. Any thinking person, any unbiased person, sees that there are several levels of problems involved and that fairness cannot be attained simply by giving more power to the police. Furthermore, preventive detention and curtailment of bail privileges for "dangerous" offenders (whoever they are and however identified) is no answer to the underlying ills which cause crime.

The experience of many Black Americans in this society is that of deprivation, disrespect by whites, social ostracism, and political persecution. Can it seriously be expected that in any scale of values that a Black person treated so lawlessly will respect the very law he views as an instrument of his oppression? And what of the lawlessness which police operating without meaningful constraints engage in and foster? Is there no value to be placed on keeping the hands of the state clean? Little or no consideration is given these concerns by Mr. Rehnquist in any of his writings. Instead his views in this area betray more blind spots, more lack of vision.

It is the view of NCBL that it is imperative that a Justice of the Supreme Court have the capacity to analyze and weigh competing values fairly, with an eye to doing justice. Through his prejudice, his authoritarianism, his mechanical approach to serious social problems Mr. Rehnquist has demonstrated that he lacks this capacity—this judgment. We do not maintain that opinions which vindicate civil liberties are *ipso facto* opinions reflecting vision, but we do insist that a person who sits as a Supreme Court Justice possess that critical faculty necessary to judge issues openly and freely. A person as wedded to ideology as Mr. Rehnquist does not possess that faculty. Under the guise of not "rewriting" the Constitution, he misconstrues its function in an evolving society, and seeks the solace of a simpler day when simple shortsightedness such as his dictated simplistic analyses of events and laws.

There exists today a great crisis of confidence in the American judicial system. If those who are striving for justice through the use of the legal system are to continue to hope, that system must give them reason to hope. In these critical times, such hope is not served by placing on the nation's highest court a man of Mr. Rehnquist's background and views. Those who have historically suffered the pains of legally sanctioned and legally implemented class, caste, and political bias, view with alarm the possible ascendance to the bench of a man so cruelly insensitive to the legal rights of the poor, the Black and the politically unpopular. Those who, throughout the world, respect the American effort at constitutional democracy look on in wonder as the nation appears to be moving in a direction that will diminish the stature of the Supreme Court and diminish the role of the Supreme Court as an Institution on the side of liberty.

For all the foregoing reasons, the National Conference of Black Lawyers vigorously urges the Senate of the United States to disapprove the nomination of William Rehnquist as an Associate Justice of the United States Supreme Court.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

H.R.11334. An act to amend title 38 of the United States Code to provide that dividends may be used to purchase additional paid-up national service insurance;

H.R. 11651. An act to amend title 38 of the United States Code to liberalize the provisions relating to payment of disability and death pension, and for other purposes; and

H.R. 11652. An act to amend title 38 of the United States Code to liberalize the provisions relating to payment of dependency and indemnity compensation.

LEGISLATIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

ORDER FOR ADJOURNMENT TO 9 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 9 o'clock tomorrow morning.

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

ORDER FOR RECOGNITION OF SENATOR KENNEDY TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, following the remarks of the Senator from Kansas (Mr. PEARSON) tomorrow, the distinguished Senator from Delaware (Mr. ROTH) be recognized for not to exceed 15 minutes.

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

ORDER FOR RECOGNITION OF SENATOR KENNEDY TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of the remarks by the Senator from Delaware (Mr. ROTH) tomorrow, the distinguished Senator from Massachusetts (Mr. KENNEDY) be recognized for not to exceed 15 minutes.

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

ORDER FOR RECOGNITION OF SENATOR BYRD OF WEST VIRGINIA TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of the remarks by the distinguished Senator from Massachusetts (Mr. KENNEDY) tomorrow, the junior Senator from West Virginia, now speaking (Mr. BYRD), be recognized for not to exceed 15 minutes.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of the remarks by the junior Senator from West Virginia (Mr. BYRD) tomorrow, there be a period for the transaction of routine morning business for not to exceed 15 minutes, statements limited therein to 3 minutes.

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

ORDER FOR EXECUTIVE SESSION TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of morning business tomorrow the Senate go into executive session to resume its consideration of the nomination of Mr. William Rehnquist for the office of Associate Justice of the Supreme Court of the United States.

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

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

Mr. BYRD of West Virginia. I yield.

Mr. BAYH. For the information of the Senate, as well as the Senator from Indiana, will our distinguished deputy majority leader be so kind as to give us a rundown on the parliamentary situation tomorrow? I have had several Senators inquire whether it would be possible for them to make speeches which would not be germane to the subject of the executive matter before the Senate.

Mr. BYRD of West Virginia. In response to the inquiry of the distinguished Senator from Indiana, once the 3 hours under the Pastore rule have elapsed—if my understanding of the rules and procedures of the Senate is correct—the Senate could not proceed, while in executive session, to the consideration of legislative business without unanimous consent or by motion. However, one can speak on a nongermane subject in executive session without a point of order being raised, after the Pastore rule of germaneness has expired.

Mr. BAYH. I thank the Senator. I am just trying to be in a position to advise Senators. So that 3 hours after the speaking orders, anyone who wants to make a speech on India, for example, it would be the perfect time for speaking. Is that correct?

Mr. BYRD of West Virginia. It is not necessarily 3 hours after the conclusion of orders for the recognition of Senators to make 15-minute speeches. It is 3 hours following the triggering of the Pastore germaneness rule, whatever the trigger may be—the transaction, for example, of some business by unanimous consent on the legislaitve calendar the first thing tomorrow morning; if the leader calls up and disposes of a bill on the legislative calendar by unanimous consent, that would trigger the Pastore rule, and the 3 hours would start to run; or if no business is transacted until the conclusion of the routine morning business and the Senate then goes into executive session to resume debate on the Rehnquist nomination, at that point the 3 hours under the Pastore rule would be triggered. During the course of that 3 hours one could not speak on a nongermane subject, except by unanimous consent; but once the Pastore rule expires, as I stated—and I would like to ask the Chair if I am correct—although one could proceed in executive session to take up legislative business only by unanmious consent or by motion, there is no rule of germaneness in executive session and one may speak on a nongermane subject at that time without unanimous consent.

May I ask the Chair if I am correct?

The PRESIDING OFFICER. The rule of germaneness would apply in the first 3 hours, whether it be an executive session or a legislative session.

Mr. BYRD of West Virginia. That is what I have stated.

The PRESIDING OFFICER. That is what the Senator from West Virginia stated. The Senator is correct.

Mr. BYRD of West Virginia. And once the Pastore rule has expired, is there any rule of germaneness in executive session?

The PRESIDING OFFICER. There is no rule of germaneness at that point.

Mr. BYRD of West Virginia. Although legislative business cannot be taken up in executive session except by unanimous consent, or by motion, a Senator may speak on a nongermane subject once the Pastore rule of germaneness expires.

The PRESIDING OFFICER. The Senator is correct.

Mr. BAYH. I thank the Senator.

QUORUM CALL

The PRESIDING OFFICER. What is the will of the Senate?

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 assistance 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.

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 two leaders have been recognized under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes, and in the order stated: Mr. PEARSON, Mr. ROTH, Mr. KENNEDY, Mr. BYRD of West Virginia; at the conclusion of which orders there will be a period for the transaction of routine morning business for not to exceed 15 minutes, with statements limited therein to 3 minutes.

When morning business has been concluded, the Senate will go into executive session to resume consideration of the nomination of Mr. William Rehnquist for the office of Associate Justice of the Supreme Court of the United States.

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 o'clock tomorrow morning.

The motion was agreed to; and (at 6 o'clock and 33 minutes p.m.) the Senate adjourned until tomorrow, Tuesday, December 7, 1971, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate December 6 (legislative day of December 4), 1971:

SUPREME COURT OF THE UNITED STATES

Lewis F. Powell, Jr., of Virginia, to be an Associate Justice of the Supreme Court of the United States.

DEPARTMENT OF THE TREASURY

Romana Acosta Banuelos, of California, to be Treasurer of the United States.

Edgar R. Fiedler, of New York, to be an Assistant Secretary of the Treasury.

U.S. DISTRICT COURTS

Richard A. Dier, of Nebraska, to be a U.S. district judge for the district of Nebraska.

U.S. POSTAL SERVICE

The following-named persons to be Governors of the U.S. Postal Service for the terms indicated, to which offices they were appointed during the last recess of the Senate:

Elmer T. Klassen, of Massachusetts, for a term of 1 year.

Frederick Russell Kappel, of New York, for a term of 2 years.

Theodore W. Braun, of California, for a term of 3 years.

Andrew D. Holt, of Tennessee, for a term of 4 years.

George E. Johnson, of Illinois, for a term of 5 years.

Crocker Nevin, of New York, for a term of 6 years.

Charles H. Codding, of Oklahoma, for a term of 7 years.

Patrick E. Haggerty, of Texas, for a term of 8 years.

M. A. Wright, of Texas, for a term of 9 years.

HOUSE OF REPRESENTATIVES—*Monday, December 6, 1971*

The House met at 12 o'clock noon, and was called to order by the Speaker pro tempore, Mr. TEAGUE of Texas.

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

DECEMBER 6, 1971.

I hereby designate the Honorable OLIN E. TEAGUE to act as Speaker pro tempore today.

CARL ALBERT,
Speaker of the House of Representatives.

PRAYER

The Reverend Mrs. James Wyker, D.D., the Union Church, Berea, Ky., offered the following prayer:

Our Father, we thank Thee for responsible freedom, for a nation demanding its right to worship, assemble, and speak, according to the dictates of conscience.

We ask Thee today to hallow our freedom of yesterday in the enactments of tomorrow. May we dedicate our wealth and leadership to one world, under God.

We pray for our Representatives in the Congress as daily they must make far-