By Mr. FREY:

H.R. 12076. A bill to amend the Community Mental Health Centers Act to reorganize certain grant programs, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. GUDE:

H.R. 12077. A bill to amend the Gun Control Act of 1968; to the Committee on the Judiciary.

By Mr. HANLEY (for himself, Mr. UDALL, Mr. CAREY of New York, Mr. ECKHARDT, Mr. MIKVA, Mr. MINISH, and Mr. SEIBERLING):

H.R. 12078. A bill relating to comparability adjustments in pay rates of Federal employees; to the Committee on Post Office and Civil Service.

By Mr. HARRINGTON (for himself, Mr. ADDABBO, Mr. BADILLO, Mr. BINGHAM, Mr. BRADEMAS, Mr. BRASCO, Mr. BURTON, Mr. CAREY of New York, Mr. CARNEY, Mr. CLEVELAND, Mr. CORMAN, Mr. DRINAN, Mr. EDWARDS of California, Mr. EILBERG, Mr. ESCH, Mr. FASCELL, Mr. WILLIAM D. FORD, Mr. FORSYTHE, Mrs. GRASSO, Mr. HAMILTON, and Mr. HAMMERSCHMIDT):

H.R. 12079. A bill to provide for posting information in post offices with respect to registration, voting, and communicating with lawmakers; to the Committee on Post Office and Civil Service.

By Mr. HARRINGTON (for himself, Mr. HATHAWAY, Mr. HAWKINS, Mr. HELSTOSKI, Mrs. HICKS of Massachusetts, Mr. KYROS, Mr. LINK, Mr. MATSUNAGA, Mr. MAZZOLI, Mr. MOORHEAD, Mr. PODELL, Mr. RANGEL, Mr. REES, Mr. ROE, Mr. ROSENTHAL, Mr. ROY, Mr. RYAN, Mr. SEIBERLING, Mr. STEELE, Mr. STOKES, and Mr. WOLFF):

H.R. 12080. A bill to provide for posting information in post offices with respect to registration, voting, and communicating with lawmakers; to the Committee on Post Office and Civil Service.

By Mr. KASTENMEIER:

H.R. 12081. A bill to amend chapter 313 of title 18 of the United States Code; to the Committee on the Judiciary.

By Mr. LINK (for himself and Mr. ANDREWS of North Dakota):

H.R. 12082. A bill to authorize the establishment of the Knife River Indian Villages National Historic Site; to the Committee on Interior and Insular Affairs.

By Mr. MATSUNAGA (for himself, Mr. TEAGUE of Texas, Mr. UDALL, Mr. RHODES, Mr. STEIGER of Arizona, Mr. ABOUREZK, Mrs. ABZUG, Mr. ANDERSON of California, Mr. ANDERSON of Illinois, Mr. ANNUNZIO, Mr. ASPIN, Mr. BEGICH, Mr. BIAGGI, Mr. BRASCO, Mr. BROYHILL of North Carolina, Mr. BYRNE of Pennsylvania, Mr. CABELL, Mr. CAREY of New York, Mr. CLARK, and Mr. CLEVELAND):

H.R. 12083. A bill to authorize the Secretary of the Navy to provide shoreside facilities for the education and convenience of visitors to the U.S.S. *Arizona* Memorial at Pearl Harbor; to the Committee on Armed Services.

By Mr. MATSUNAGA (for himself and Mr. UDALL, Mr. RHODES, Mr. STEIGER of Arizona, Mr. TEAGUE of Texas, Mr. DANIELS of New Jersey, Mr. DANIELSON, Mr. DENHOLM, Mr. DONOHUE, Mr. EDWARDS of California, Mr. ESCH, Mr. EVINS of Tennessee, Mr. FISHER, Mr. FRELINGHUYSEN, Mr. GARMATZ, Mr. GIBBONS, Mr. GRAY, Mr. HANLEY, Mr. HANNA, and Mrs. HANSEN of Washington):

H.R. 12084. A bill to authorize the Secretary of the Navy to provide shoreside facilities for the education and convenience of visitors to the U.S.S. *Arizona* Memorial at Pearl Harbor; to the Committee on Armed Services.

By Mr. MATSUNAGA (for himself, Mr. RHODES, Mr. STEIGER of Arizona, Mr. TEAGUE of Texas, Mr. UDALL, Mr. HAWKINS, Mr. HICKS of Washington, Mrs. HICKS of Massachusetts, Mr. HOLIFIELD, Mr. HORTON, Mr. HOSMER, Mr. HUNGATE, Mr. KEE, Mr. LENT, Mr. LINK, Mr. LUJAN, Mr. MADDEN, Mr. MCCOLLISTER, Mr. MELCHER, and Mr. METCALFE):

H.R. 12085. A bill to authorize the Secretary of the Navy to provide shoreside facilities for the education and convenience of visitors to the U.S.S. *Arizona* Memorial at Pearl Harbor; to the Committee on Armed Services.

By Mr. MATSUNAGA (for himself, Mr. STEIGER of Arizona, Mr. TEAGUE of Texas, Mr. UDALL, Mr. RHODES, Mr. MILLER of California, Mr. MINISH, Mr. MORGAN, Mr. MOORHEAD, Mr. MOSS, Mr. MURPHY of Illinois, Mr. PATTEN, Mr. PEPPER, Mr. PIRNIE, Mr. PRICE of Illinois, Mr. RARICK, Mr. RIEGLE, Mr. ROE, Mr. ROSTENKOWSKI, and Mr. ROY):

H.R. 12086. A bill to authorize the Secretary of the Navy to provide shoreside facilities for the education and convenience of visitors to the U.S.S. *Arizona* Memorial at Pearl Harbor; to the Committee on Armed Services.

By Mr. MATSUNAGA (for himself, Mr. TEAGUE of Texas, Mr. UDALL, Mr. RHODES, Mr. STEIGER of Arizona, Mr. SARBANES, Mr. SCHWENGEL, Mr. SEIBERLING, Mr. SHIPLEY, Mr. SISK, Mr. STEELE, Mrs. SULLIVAN, Mr. THONE, Mr. VIGORITO, Mr. WARE, Mr. WILLIAMS, Mr. WINN, Mr. WOLFF, Mr. YATRON, and Mr. YOUNG of Texas):

H.R. 12087. A bill to authorize the Secretary of the Navy to provide shoreside facilities for the education and convenience of visitors to the U.S.S. *Arizona* Memorial at Pearl Harbor; to the Committee on Armed Services.

By Mr. METCALFE:

H.R. 12088. A bill to amend and expand the Emergency Employment Act of 1971 to reduce unemployment and stimulate noninflationary economic growth; to the Committee on Education and Labor.

By Mr. ROGERS (for himself, Mr. SATTERFIELD, Mr. KYROS, Mr. PREYER of North Carolina, Mr. SYMINGTON, Mr. ROY, Mr. NELSEN, Mr. CARTER, and Mr. HASTINGS):

H.R. 12089. A bill to establish a Special Action Office for Drug Abuse Prevention and to concentrate the resources of the Nation against the problem of drug abuse; to the Committee on Interstate and Foreign Commerce.

By Mr. ROONEY of Pennsylvania:

H.R. 12090. A bill to amend the Controlled Substances Act to move amphetamines and certain other stimulant substances from schedule III of such act to schedule II; to the Committee on Interstate and Foreign Commerce.

H.R. 12091. A bill to amend the Internal Revenue Code of 1954 to provide that the first $5,000 of compensation paid to law enforcement officers shall not be subject to the income tax; to the Committee on Ways and Means.

By Mr. SCHMITZ:

H.R. 12092. A bill to authorize testing and research on the use of nontoxic substances in the diagnosis, treatment, and prevention of cancer; to the Committee on Interstate and Foreign Commerce.

By Mr. SEBELIUS (for himself, Mr. SHRIVER, Mr. SKUBITZ, and Mr. WINN):

H.R. 12093. A bill to amend the Watershed Protection and Flood Prevention Act so as to provide necessary assistance in connection with rural development; to the Committee on Agriculture.

By Mr. THOMPSON of New Jersey:

H.R. 12094. A bill to provide incentives for the establishment of new or expanded job-producing industrial and commercial establishments in rural areas; to the Committee on Ways and Means.

By Mr. WHITEHURST:

H.R. 12095. A bill to require the Secretary of the Interior to make a comprehensive study of the polar bear, seal, walrus, sea otter, and related species for the purpose of developing adequate conservation measures; to the Committee on Merchant Marine and Fisheries.

H.R. 12096. A bill to require the Secretary of the Interior to make a comprehensive study of the wolf for the purpose of developing adequate conservation measures; to the Committee on Merchant Marine and Fisheries.

By Mr. ZWACH:

H.R. 12097. A bill to direct the Interstate Commerce Commission to make regulations that certain railroad vehicles be equipped with reflectors or luminous material so that they can be readily seen at night; to the Committee on Interstate and Foreign Commerce.

By Mr. DELANEY:

H.J. Res. 998. Joint resolution to establish a Joint Committee on Aging; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. DAVIS of South Carolina:

H.R. 12098. A bill for the relief of Chae Il Kwon; to the Committee on the Judiciary.

By Mr. JONES of Alabama:

H.R. 12099. A bill for the relief of Sara B. Garner; to the Committee on the Judiciary.

By Mr. DOW:

H. Con. Res. 477. Concurrent resolution relating to the status of Sylvia Yosifovna Zalmanson Kuznetsov, a citizen of the Soviet Union; to the Committee on Foreign Affairs.

SENATE—*Tuesday, December 7, 1971*

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

PRAYER

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

O God who has caused the light to shine out of darkness and hast revealed Thy glory in the face of Jesus Christ, let Thy light be upon us to illuminate our pathway and to give wisdom to our daily duties. May Thy kingdom come on earth beginning in us.

O Lord, may the memory of this day in history move us to a deeper commitment to the ways which make and keep the peace. And may this season of expectation be to us a time when we have joy as we work and peace as we pray.

In the name of the Prince of Peace. Amen.

THE JOURNAL

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

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

THIRTIETH ANNIVERSARY OF PEARL HARBOR

Mr. SCOTT. Mr. President, perhaps the saddest fact about this 30th anniversary of Pearl Harbor is that the world, which might have learned some lessons from war, seems to have learned very little, and here we are with a brandnew war between India and Pakistan beginning only a few days before this anniversary.

This is a sad and deplorable state of affairs. At least, I think we can contribute our part by not contributing to the exacerbation of the conflict and by continuing to maintain strict neutrality. Let us remember Pearl Harbor not in vengeance any more, not in bitterness any more, but as a warning, as a lesson, as a thought for the future.

Not very much came out of Pearl Harbor that was good, except something that we call victory. Not much came out of subsequent conflicts, even victory. There is a lesson to be learned. This is the only way, in some sadness, some grief and, of course, in solemn memory of those who died for their Nation and for other nations, in which we are able to commemorate this anniversary.

I have spoken simply that the time shall not go unnoticed in honor to those who lost their lives and who risked their lives for their country. But before anything else, as we remember Pearl Harbor, let us remember never to become involved in war again, if all the collective wisdom of our country and our country's leaders can be dedicated to avoiding it.

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

Mr. SCOTT. I yield.

Mr. MANSFIELD. I wish to join the distinguished minority leader. Victory is an amorphous word. It really means nothing any more. Victory does not restore the limbs of those who lost them; the lives which were destroyed; the costs which were wasted. Nobody wins anything any more; and I would hope that out of these cataclysms, these holocausts, which have primarily limited themselves to the Asian Continent in late years, would come a lesson for all mankind, so that the words of the Prince of Peace might be taken to heart, and taken to heart with good intent.

Mr. SCOTT. I thank the majority leader.

Mr. PEARSON. Mr. President I should like to associate myself with the remarks just made by the distinguished minority leader and the distinguished majority leader on this day which has been enshrined in the history of our country.

ORDER OF BUSINESS

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

INCREASE FEDERAL AID TO EDUCATION IN ORDER TO DRIVE DOWN PROPERTY TAXES

Mr. PEARSON. Mr. President, a quiet rebellion is underway throughout our Nation. It is not a rebellion based on the ideological principles of a 20th-century Karl Marx. It is, rather, a revolt of those Americans who have seen their property tax burden skyrocket in recent years and who refuse to agree to increases. The first casualty of the taxpayer's refusal to vote for increased taxes has been the public school.

Because proposals which address only the problem of relying on or limiting property taxes do not answer the equally important problem of deteriorating public school systems, I urge an alternative or supplemental program: Increased Federal aid to education.

This is not to say that State and local governments are relieved of their responsibilities to find new sources of school revenues. Indeed, increased Federal aid should be conditioned, I submit, upon the ability of State and local governments to achieve a reduction in property taxes and a more equitable distribution of funds to finance our public schools.

Mr. President, we should not be surprised by this national taxpayer's revolt because our public schools are primarily financed by local taxes on property, a tax system which is inequitable, regressive, and outmoded. It places the burden of financing increased school costs almost exclusively upon property owners. And we have reached a limit in the willingness and the ability of homeowners to pay property tax increases.

Property taxes in this country fund 52 percent of local school costs while State and Federal aid amounts to 39 and 8 percent, respectively. Ninety-eight percent of all revenues raised by independent school districts comes from property tax levies. School bond issues, however, have been failing to receive voter approval with startling regularity. According to the Investment Bankers Association, voters in 1960 rejected 11 percent of the school bond issues put before them; in 1965 the rejection rate was 33 percent; last year the rate had leaped to 52 percent.

I can think of no more convincing evidence that new sources of school revenues must be found, and found quickly.

Mr. President, the recent wave of school closings after voter rejection of school bond issues has spread from Youngstown, Ohio, to suburban Kansas City, where the schools in Independence, Mo., have had to close for several weeks. These bond issue defeats, I believe, accurately reflect the revolt of hard working, educationally minded, middle-American homeowners who sincerely believe that they cannot bear higher taxes on their property. They value and respect education as much, perhaps more, than their affluent neighbors, but they are the victims of a regressive educational tax system.

Middle-income Americans have few opportunities to ease their tax burdens with writeoffs and tax credits. They pay, and pay in full, for education and other public services. By their votes against local bond issues, they have clearly said, "Enough!" We must heed their clear signal of distress and stop treating schools on the same tax basis as sewers and street repairs. We must act now to provide an alternate system for financing education—on the State and, most importantly, on the national level.

Surely in this Nation, the wealthiest the world has ever known, we have the resources to devote to quality education. It is a scandalous sin of omission to continue to rely on a faulty tax system to provide revenues for education—the most important investment in our future.

Mr. President, there is another, perhaps more important, reason why we must change the system through which we finance our schools. Too many Americans are denied the right to adequate educational facilities, not simply because they are black, or because they are poor, or do not speak English as a native language. They are denied educational equality because of an inadequate, antiquated tax structure founded in 19th century America and incapable of financing a 20th century education for all Americans.

Mr. President, each Member of this body is aware that school districts in many of our States offer inferior educational opportunities because the value of their taxable property is low. These districts are not only in the inner cities of our country. Some of the Nation's poorest school districts are found in rural areas. Because of continued dependence on the property tax, an uneven geographic distribution of wealth promotes an uneven distribution of educational opportunity.

In one State, for example, the richest school district has a property assessment of almost $1 million per child, while the poorest has only $100 per child. Can any Member of this body believe that children living in a district which has only $100 of taxable property funds per child have an equal opportunity to compete for advanced education and jobs with children whose district has $1 million per child? The richer district has 10,000 times as much to spend on each child. Must we have further evidence of a need for reform in our educational tax structure?

Mr. President, the State courts have begun to deal with the inequities of the property tax base for education. The recent Supreme Court decision of Serrano against Priest judicially recognized a condition of which the urban and rural poor have been acutely aware for the past two decades. In that case, the Court was "called upon to determine whether the California public school financing system, with its substantial dependence on local property taxes, violates the 14th amendment." On August 30, 1971, by a

6 to 1 decision, couched in the terms of the equal protection clause, the Court cast serious doubt on the constitutionality of the property tax system of educational finance.

Mr. President, I submit that local, State, and Federal Governments cannot wait for the courts to affirm what we already know to be true—that the system of financing the primary and secondary education of American children places an unequal burden upon property owners and promotes inequality of educational opportunity. But the courts are beginning to act. And the inequities are clear. The taxpayers are demanding reform. Our children, as they all too often are, will be the victims of our inaction.

The national educational finance project, a federally funded study, asserted that—

> The time has come to seek new directions in the processes of raising and allocating revenues if we are to achieve the goal of equality in education.

In summary then, what I am saying is this: Property taxes are too high. Narrow efforts intended only to relieve this heavy burden will harm, and in some States have already materially harmed, our schools. A property-tax-supported public school system produces and preserves inequality among schools and is in imminent danger of doom for unconstitutionality. I, therefore, urge State and local governments to step up to this most important and pressing matter. Further, I propose that the Federal Government substantially increase Federal aid to education—both to drive property taxes down and to try to provide each child in this Nation with an equal and a quality education.

I believe we can do this, Mr. President. I am certain we must try. And in pursuit of a revised educational tax structure, the need to reorder our Federal spending priorities will be of critical importance. Certainly, few items in the Federal budget deserve a higher priority than a good education for all the children of this Nation.

I urge the President to act on the recommendations of this Federal study; to respond to this crisis with legislation increasing Federal assistance to public schools in areas which reduce local property taxes for educational financing. I urge the Congress to initiate its own proposals for Federal assistance to public schools. Finally, I urge responsible officials at the State and local levels of government to review their current educational tax structures.

Mr. President, I have not used all my time. I yield back the remainder of it.

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the junior Senator from Delaware is now recognized for not to exceed 15 minutes.

COMMISSION ON INDIVIDUAL RIGHTS

Mr. ROTH. Mr. President, last year, when I was a Member of the House of Representatives, I sponsored an amendment to S. 30, The Organized Crime Control Act of 1970, which ultimately became title XII of the act. That title established a National Commission on Individual Rights to be composed of 15 members, four of whom are to be Senators, four of whom are to be Members of the House of Representatives, and seven of whom are to be private citizens appointed by the President of the United States.

I bring this matter to the attention of the Senate today because under the terms of title XII the Commission is to begin functioning on January 1, 1972, less than a month from now.

I should like to review very briefly what the purpose of the Commission is and why I feel it is of such great importance that it begin to function as soon after the first of the year as possible.

The act charges the Commission with the responsibility for conducting a comprehensive study and review of Federal laws and practices relating to special grand juries, dangerous special offender sentencing, wiretapping and electronic surveillance, bail reform and preventive detention, no-knock search warrants, and the accumulation of data on individuals by Federal agencies as authorized by law or acquired by Executive action.

The act states that the Commission may also consider other Federal laws and practices which in its opinion may infringe upon the individual rights of the people of the United States. The Commission is then to determine which laws and practices are needed, which are effective, and whether they infringe on the rights of the American people.

The law requires the Commission to make interim reports and recommendations at least every 2 years and a final report to the President and the Congress at the end of 6 years. Sixty days after the submission of the final report, the Commission will cease to exist.

In recent years Congress, responding to the demands of the American people to take decisive action to combat the rising tide of crime in this Nation, has enacted several pieces of important anti-crime legislation. At the same time, certain administrative actions have been implemented to combat crime. It is no secret that a significant number of Americans—while greatly troubled about increases in crime—are seriously disturbed by what they believe to be an infringement on the constitutional rights of our people which may occur as a result of the war on crime.

As Members of Congress, we have an obligation to see to it that that delicate balance is maintained; that we provide our law enforcement officers with all the tools necessary to control crime, but that we make certain that in the process of conducting the battle we do not trespass on the basic rights of innocent individuals.

I believe we have attempted to maintain that balance in the laws we have enacted in recent years, but I recognize, too, that a vigorous difference of opinion on that point may exist. It is essentially for that reason that I offered the amendment to establish the Commission on Individual Rights to the Organized Crime Control Act of 1970. I also recognize that the implementation of laws may bring about results or practices not anticipated by the lawmakers.

I should point out here that I do not view this Commission as just another commission, but rather one which will in some way affect every man, women, and child in our Nation. The Commission is necessary if we are to have a broad view of the effects of both crime legislation and administrative attempts to control crime in this country. If we were to attempt to review each piece of legislation individually, we would miss the impact that an overall study would provide. But in reviewing all these areas, their effects upon each other and their interrelationship with each other, the Commission will be able to study these laws to determine how each affects the use of the other and whether there is a resulting violation of rights.

Not only will this Commission aid the Congress in reviewing the effect of the legislation which it has provided for the control of crime, but it is important for two other reasons.

This Commission will be of immense aid to the courts, which will have to rule on the validity of these laws and practices which the police will establish in their use. The Commission will provide a body of trained experts neutral in their approach to the problem and able to point out to our judicial officers what effect their rulings will have in the broad spectrum on other laws and practices as they affect the individual rights of the people.

Second, the Commission will be important in bringing to light intrusions on our individual rights which although protected by the Constitution have been violated seemingly without our knowledge. I have in mind here the reported collecting and data-banking or personal information about civilians who are active in politics or who belong to organizations which are or might be active. Although such data banks have supposedly been destroyed, how could the collection and storage of such information have been anything but an intrusion upon the personal lives of certain individuals?

But little is known about Government data gathering and its effects on constitutional rights. Further there have been no guidelines determined by Congress on how the executive may keep records and statistics on individuals. Congress, and not the executive branch, should establish basic policies on these matters.

I believe that the answer to this area is, first, to find out what type of information is being stored, then to determine the relative necessity of its being maintained and the way it could be used to subvert the individual. At that point I believe definite guidelines could be determined. It is my belief that the Commission on Individual Rights is the proper vehicle to make such an inquiry and to furnish recommended guidelines to the Congress. Since the Commission is taking an overall approach on the subject, it cannot only report to the Congress the context in which such data keeping is obtained, but also how it is used in relation to the other laws we have enacted.

January 1 is rapidly approaching. Six years does not seem to me to provide an excesive amount of time for the Commission to undertake its wide-ranging and important studies. Congress needs this help. I urge President Nixon and the designated congressional officers to promptly name their appointees to the Commission and Congress to promptly consider such appropriations as may be necessary to give the Commission an early start in 1972 to evaluate all facets of our criminal laws.

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order the Senator from Massachusetts is to be recognized.

Mr. BYRD of West Virginia. Mr. President, if the Senator from Delaware will retrieve his time, I would like to suggest the absence of a quorum and utilize that time for the quorum without prejudice to the Senator from Massachusetts who is to be recognized under the next order.

Mr. ROTH. I make that request.

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

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

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

The legislative clerk proceeded to call the roll.

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

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

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to reverse the sequence of the two orders recognizing the distinguished Senator from Massachusetts and the junior Senator from West Virginia.

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

GASIFICATION OF COAL

Mr. BYRD of West Virginia, Mr. President, on December 3, 1971, the Senate passed the supplemental appropriations bill in which was contained $10,280,000 for accelerating coal gasification research. Although much has already been said about future energy problems which this country will face, I want to speak about an energy shortage which is already here—the shortage of natural gas—and the necessity of this country's taking immediate steps to provide additional domestic sources of this clean burning fuel.

The natural gas consumption of the United States increased from about 13 trillion cubic feet per year in 1960 to around 22 trillion in 1970. Allowing for normal growth—presently considerably accelerated by environmental protection regulations—the demand for natural gas is expected to be about 33 trillion cubic feet by 1980. If maximum production from present reserves is projected, plus a substantial production from future—not yet found—reserves, plus maximum foreseen supply from Canada and Alaska—this latter not yet assured—the total foreseeable continental gas available to the United States in 1980 will be about 21 trillion cubic feet. This is less than is available today and represents a shortage of around 12 trillion cubic feet per year.

We are approaching the situation of having only a 10-year available reserve of natural gas. Perhaps it may be argued that, because it has taken several years for the reserve ratio to decline by 1 year, we will have no real problem for perhaps 15 years—allowing for new discoveries.

Even with optimistic projection of future new reserves and supplies from the Arctic, neither of which is assured today, the future presents a dismal picture.

The indication of a 10-year reserve supply of natural gas, however, is misleading. Increasing population plus increasingly stringent air pollution controls are forcing an ever-increasing demand for natural gas. In many applications, gas is the only fuel which can satisfy air pollution regulations. A second factor is that as natural gas is removed from a proven reservoir, subsequent removals must be at a slower rate. It may take from 20 to 30 years to gain access to a present 10-year reserve supply. The shortage is undoubtedly already with us, as evidenced by many pipelines announcing curtailed deliveries, the refusal of many gas distribution systems to accept new industrial gas consumers—and in some cases new residential consumers located on existing systems—and even the lack of gas for existing household heating systems in cold weather.

For many commercial and small industrial users, natural gas—aside from a perhaps relatively expensive No. 2 fuel oil—is the only possible fuel which will permit them to met air pollution regulations. Alternate fuels require large capital investment and additional manpower to meet such regulations. Thus, it appears that a natural gas shortage will be most detrimental to the small businessman and, ultimately, the individual homeowner.

Some relief from the impending shortage will be provided in two ways—the importation of liquefied natural gas—LNG—from foreign sources by tanker ships, and the building of plants to convert petroleum liquids to synthetic natural gas using existing technology. Some major companies appear to have firm plans for the gasification of naphtha while at least one is planning to import LNG. The plans of four other companies for gasifying naphtha or crude oil, or importing LNG, appear to be in various stages of development.

These alternatives require very large capital investments in new facilities, and even the most optimistic estimates do not foresee them filling more than 20 percent of the 1980 shortage. Even with very low prices at the foreign wellhead, largely in North Africa, the cost of LNG when it enters the U.S. pipelines will be 400 to 500 percent higher than present domestic wellhead prices. There is no assurance that the foreign wellhead price will remain low and, of course, this supply, because of its source, is subject to other uncertainties.

The conversion of petroleum liquids to gas has the same disadvantages. The price will increase 400 to 500 percent, and because of our increasing national shortage, the petroleum raw material will be largely imported from uncertain overseas sources.

A third alternate is to manufacture synthetic natural gas from coal. Coal represents by far the Nation's largest fossil fuel energy reserve; and, as such, it is the resource from which most of our future energy requirements will have to be met. It is technically feasible to manufacture synthetic natural gas, as well as synthetic petroleum from coal. Our coal reserves are sufficient to provide all of our gas and liquid fuel requirements through the 21st century. All estimates indicate that gas produced from coal will be less costly than the first two alternates I have mentioned. The production of hydrocarbon fuels from coal is the only method by which the United States can become self-sufficient in its vital energy requirements.

Some industrial firms have already announced plans concerning coal gasification, and one company is reportedly hoping to have a coal gasification plant—based on the German Lurgi process—in operation by 1976. Although the Lurgi gasification process is commercially available, there are certain characteristics of this technology that are not conducive to producing an early, large, low-cost supply of supplemental natural gas.

It seems quite apparent that the companies which have announced Lurgi plant plans, but have not yet committed themselves to construction, regard it as a stopgap measure, since these same companies have also pledged substantial funds to support the Interior-American Gas Association gasification program. It is significant that the announcements by these companies did not come out until after the President's clean energy message of June 4, 1971.

The Department of the Interior-American Gas Association accelerated gasification program was announced in that message, and a supplemental budget request of $10,280,000 to start the program in fiscal year 1972 was submitted to the Congress shortly thereafter.

This program calls for an expenditure of $30 million per year, for 4 years, to accelerate and expand the existing Office of Coal Research gasification development program. Approximately $20 million each year is to be provided by the Government, and $10 million is to be provided by AGA. The House of Representatives did not include any funds for this program in H.R. 11955, the supplemental appropriations bill. The Senate Appropriations Committee, at my request, included the full supplemental estimate of $10,280,000.

I have mentioned that gasification of coal is technically feasible and that one promisingly commercial process is available. It is universally agreed that the commercially available process is far from the best answer for American conditions and that, for coal gasification to satisfy our country's requirements, one or more of the processes which have been under development in the United States must be brought to the point of

full commercial application. This is a difficult and expensive thing to do. For each process, a multimillion-dollar pilot plant must be built and operated over a period of years. The necessity for several pilot plants is that, until they have operated, no one can be sure which process is commercially practical. Also, the parallel operation permits evaluation of alternate methods for similar subprocesses such as gas cleanup, methanation, and so forth. This country's nuclear power and space industries would not be in the position they are in today if similar, and sometimes more expensive, parallel efforts had not been followed in the beginning. A number of those projects were abortive—as some of the gasification processes may be—but success was assured by numbers.

If a time sequential method were followed for all research efforts planned in the accelerated coal gasification program, it would require upward to 30 years to complete. Clearly, in view of the developing gas shortage this would be much too long.

I am aware of the technological difficulties involved in providing the people with a secure, clean gaseous fuel. However, I believe that these difficulties can be overcome and that the Interior-AGA program has the greatest potential for assuring the earliest, least costly, and most reliable supply of synthetic pipeline gas.

The Government, on August 3, 1971, acting through the Department of the Interior, entered into a cooperative agreement with the American Gas Association to develop coal gasification processes. The plan is to develop a joint Government-industry effort to establish a coal gasification industry which can serve a vital role in helping to solve the energy and pollution problems facing the Nation today. This can be accomplished by converting coal to clean-burning gas for distribution in our existing networks of transmission and distribution lines.

The first 4 years of this program are aimed at obtaining firm data, so that engineering for a demonstration plant can be undertaken by the mid-1970's. With an allowance for completion of engineering and construction, a commercial-scale plant would be available for operation late in the 1970's. The research and development program will accelerate the pilot plant stage of coal gasification methods presently under active study by OCR and will culminate with the construction and operation of a technically feasible demonstration plant in the shortest possible time. The best process may prove to be one presently under development, but it is more likely that it will consist of an optimum selection from various process elements developed at the pilot plants included in the overall program.

The proposed program will have as a base three coal gasification projects under contract by the Office of Coal Research. The most advanced project is the Hygas project in Chicago, Ill. This research is being carried out by the Institute of Gas Technology, and the American Gas Association has been partially funding the project for several years. The second project is the CO_2 acceptor process for which a pilot plant is being completed in Rapid City, S. Dak. Shakedown operations should begin in the spring, and plant operations later in the year. An integrated operation is projected for next summer. The third major project is being researched by Bituminous Coal Research, Inc., a subsidiary of the National Coal Association. It is called the Bi-Gas process. This work has been carried on in Monroeville, Pa., and construction of a pilot plant is planned for Homer City, Pa.

The processes being investigated differ with respect to the method of gas-solid contacting, supply of heat to the steam decomposition reaction, the gas cleanup method, and methanation system. A broad technical base has been established to proceed with the accelerated program. Administrative procedures have been established to obtain maximum results with minimum cost. Good results can be exploited, and unfruitful investigations will be dropped. This will eliminate duplication and minimize development time. A highly skilled independent and disinterested engineering organization will be retained to continuously evaluate all phases of the program. This will assist the decisionmaking process.

The goal is to establish the best process elements for a demonstration plant in 4 years. The exact size of this unit has not yet been decided, but it would probably handle about 5,000 tons of coal per day and produce about 80 million standard cubic feet per day of pipeline quality gas—gas having a minimum thermal value of 950 B.t.u.'s per cubic foot.

Upon successful completion of the pilot plant stage leading to a demonstration plant, it is obvious that this Government research will have a rapid payout. It is expected that commercial coal gasification will move forward very rapidly in the 1980's, and that the funds expended to develop the technology will be returned manyfold in the form of taxes and many other attendant side benefits. Jobs will be created in many rural areas of the country, since each commercial-scale coal gasification plant can be expected to employ 1,200 to 1,800 people. Having a firm supply of gas will allow our pipeline and distribution companies to service thousands of small-scale industries and businesses which need gas for commercial development but which cannot obtain it in periods of short supply. Commercial coal gasification plants will also reduce our dependence on foreign sources for something as basic as natural gas.

Industry has secured firm commitments from its members for their $10 million share of the program. The AGA contribution will become available to the Department of the Interior as soon as the requested supplemental appropriation becomes available to the Department.

The agreement with AGA provides that all information and data developed in the program are in the public domain, and all patents of inventions made during the program belong to the Government. A cooperative organization of both Government and AGA representatives has been established to guide the program even though the legal contracting officer will be a Government employee and the contracts will be standard Government documents. AGA will reimburse the Government for one-third of the cost of the work but will retain no property rights in the results or pilot plant equipment. All results, data, and engineering designs will be made freely available to the public.

The plain fact is that a gas shortage exists, and it will get worse. The first to suffer seriously from the shortage will be the small businessman and then the homeowner. Big business can afford to shift to alternate fuels—if they are available, which in itself is not entirely certain. Small businesses may go bankrupt. The homeowner will freeze.

The accelerated coal gasification research program presents the only available alternative for a permanent solution to our gas supply crisis. It provides for a much larger proportional financial contribution from industry than to other similar projects. The only domestic, and thus dependable, source of clean gas fuel—including perhaps automotive fuel—needed to meet our requirements lies in our coal reserves. In addition to being the only adequate domestic source, it is the least expensive source. The cost-benefit ratio to be found through the successful completion of this program is enormous. A reduction in the cost to the consumer of 10 cents per million B. t. u.'s is a conservative estimate of the possibilities. Spread over the estimated 1980 demand, this represents a saving to the consumer of over $3 billion each year, and this will increase.

Past delays have created our present predicament, a real shortage of the Nation's lifeblood—energy fuel. This accelerated gasification research program is urgently needed to solve a vital national problem. If a program such as this is not started at once, our future as a nation could be put in needless jeopardy.

Mr. President, I want to urge that the conferees on the supplemental appropriations bill carefully consider the need for accelerating our coal gasification research efforts and that the House conferees accept the Senate amendment adding funds for this purpose.

Mr. President, how much time do I have remaining?

The PRESIDENT pro tempore. The Senator has 1 minute.

Mr. BYRD of West Virginia. I yield the 1 minute to the distinguished Senator from Massachusetts.

The PRESIDENT pro tempore. Under the previous order, as previously modified, the Senator from Massachusetts (Mr. KENNEDY) is recognized for not to exceed 15 minutes.

Mr. BYRD of West Virginia. And the Senator now has 1 additional minute.

Mr. KENNEDY. I thank the distinguished Senator from West Virginia.

U.S. POLICY TOWARD THE CRISIS IN SOUTH ASIA

Mr. KENNEDY. Mr. President, the administration's policy toward the crisis in South Asia defies understanding.

After 8 months of escalating violence and military repression—after hundreds of thousands of civilians have been killed in East Bengal and 10 million refugees have fled into India—suddenly our national leadership recognizes that war has swept over South Asia. But when did this war begin? Who started it? What should be condemned? And what should we and the international community do about it?

Perhaps in the mind of many Americans is the thought that India has created this crisis. But the facts, Mr. President, show that this war began not last week with renewed military border crossings, nor last month with the escalating crossfire of artillery between India and Pakistan: this war began on the bloody night of March 25 with the brutal suppression by the Pakistan army of the free election it held in East Bengal. A review of events since March 25—a quick jostling of our memory—reminds us that the problem in South Asia is today, and has been from the very beginning, a political problem between the ruling military elite in West Pakistan and the Bengali opposition elected in East Bengal.

The facts documenting the beginning of this war, and who started it, are too grim and well reported to be in doubt, even by an administration that attempts to ignore them. Hundreds of articles have now been written and thousands of pictures have been taken by countless eyewitness foreign observers testifying to the bloody terror that has swept over East Bengal since March 25. Indeed, suppressed field cables to the Department of State in the beginning characterized the actions of the Pakistan army as "genocide." Foreign journalists were expelled by military authorities lest they record the holocaust, and film of foreign cameramen was confiscated.

It was only after refugees began to pour out of East Bengal in April that the story of repression could be slowly pieced together. Even now, the full dimension of the tragedy is not really known. Nevertheless, as troops descended upon Dacca at night, they indiscriminately shelled residential areas, attacked the university's student hostels, and imprisoned or executed all suspected Awami Leaguers they could round up. Thousands of East Bengalis have simply disappeared and never been heard of again. Thousands died. And many thousands more sought refuge in the countryside. Dacca became a ghost town in less than 24 hours, and remained subdued and empty for weeks thereafter.

The Pakistan army followed the people into the countryside. Systematically, troops began—according to a Pakistani journalist loyal to the Yahya regime—to liquidate the Awami League's "insurgency" and to crush the Awami League militants throughout East Bengal.

As the Pakistan army moved out into the countryside to crush the Awami League, all evidence—including the simple fact that the bulk of the refugees in India are Hindu—suggest this objective was coupled with a policy of terror directed primarily at the minority Hindu population.

In some areas, according to eyewitness reports in late summer, Pakistan troops were painting large yellow "H" signs on Hindu shops, so as to identify the property of the minority which had become a special target. To show they were not Hindus, members of the Muslim majority—although not fully exempt from the army's terror—were painting signs saying "All Muslim House" on their homes and shops. In turn, the small community of Christians were putting crosses on their doors and stitching crosses in red thread on their clothes. Not since Nazi Germany were so many citizens of a country publicly marked with religious labels and symbols.

Fear has gripped East Bengal since the devastating night of March 25. The World Bank mission, after spending several days traveling throughout East Bengal in early June, was forced to conclude:

> Perhaps most important of all, people fear to venture forth and, as a result, commerce has virtually ceased and economic activity generally is at a very low ebb.
>
> Clearly, despite improvements in some areas and taking the province as a whole, widespread fear among the population has persisted beyond the initial phase of heavy fighting. It appears that this is not just a concomitant of the army extending its control into the countryside and the villages off the main highways, although at this stage the mere appearance of military units often suffices to engender fear. However, there is also no question that punitive measures by the military are continuing; even if directed at particular elements (such as known or suspected Awami Leaguers, students, or Hindus). These have the effect of fostering fear among the population at large.

Report after report over the summer months echoed the findings of the world bank report—as did hundreds of interviews with refugees in India, including new arrivals—interviewed by myself and members of the field team of the Subcommittee on Refugees this past August.

Throughout this period our national leadership watched this tragedy in silence, at no time has any official of our Government, including the President, condemned the brutal and systematic repression of East Bengal by the Pakistan army—a repression carried out in part with American guns and bullets and aircraft. And even in the last few weeks, as the Pakistan army dramatically escalated its terror and repression, our Nation sat in numbed silence.

Now the administration tells us—8 months after March 25—that we should condemn, not the repression of the Pakistan army, but the response of India towards an increasingly desperate situation on its eastern borders—a situation which our Nation calculatedly ignored. Certainly condemnation is justified; but what should we condemn?

We should condemn, Mr. President, the silence of our leadership. Are we so insensitive to what our country stands for that our Government can actually support as well as apologize for a military regime's brutal suppression of democracy? Are we so blind that we can ignore a government that jails a political leader whose only crime was the winning of a free election?

Mr. President, we should also condemn the world's silence and apathy towards the massive human suffering caused by the refugee flow into India. From the beginning, the international community's response has been unconscionably lethargic and wholly inadequate. It has been characterized by little sense of urgency and a low priority of concern for a tide of human misery unequaled in modern times. By ignoring the needs of the refugees we have also alienated the people of India, endangering the economic stability and well-being of the world's largest democracy.

We should also condemn the neglect and insensitivity that is causing the death each day of 4,300 refugee children for the lack of food and shelter. We should condemn the circumstances that have caused the death and suffering of millions more because insufficient funds have been made available to relief agencies in India.

Mr. President, the administration has justified its refusal to condemn Pakistan in the name of keeping leverage with Islamabad. Over and over again—in hearings before the Subcommittee on Refugees, and elsewhere—Congress and the American people were told to be patient while our leverage and diplomacy took effect. Regrettably, there is little on the record—publicly or otherwise—to indicate that many "levers" were pulled. And in the case of a notable exception—the revocation of licenses for the shipment of American military supplies—the lever was pulled belatedly just a month ago, but only in full agreement with Islamabad.

And so the record is clear that—over the months of growing crisis—our Government was supporting a regime that not only suppressed an election but destroyed in the process all the principles for which our country sacrificed so much for so long only 2,000 miles away in Vietnam. Perhaps the only difference between Vietnam and Pakistan is that in Pakistan we have made no pretense of acting in support of principles—so that, in effect, no principles can be violated.

And now—in sharp contrast to our deference to Pakistani sensibilities over these past months of violence in East Bengal—our national leadership suddenly denounces India. We have made her the scapegoat of our frustrations and failures, and of the bankruptcy of our policy toward Pakistan. We have not only cut off military aid to India—over which no one will quarrel—but we are threatening to cut off economic and humanitarian aid as well.

In fact, yesterday our Government suspended some $87.6 million in development loans, in what can only be interpreted as a punitive gesture.

This administration has rightly taken pride in its effort to reestablish contact with one-fifth of mankind's population in China. But are we going to simultaneously alienate one-sixth of mankind in India—a democratic nation with whom we have had years of productive relations?

Mr. President, over the weekend the administration has belatedly turned to the United Nations, asking it to imple-

ment its peace-keeping machinery—an initiative many of us supported months ago. All of us hope that our country will finally do whatever it can to help bring peace and relief to South Asia.

Mr. President, I ask why we were not going to the United Nations at the time these refugees were being created. Why were we not going to the United Nations at a time when there was systematic repression and persecution of a people within East Bengal? Why did we not bring this up and pursue it with all the kinds of statements we have seen over the period of the last 36 hours, in the third committee, of the United Nations? Why did we not identify ourselves at that time with the humanitarian needs of the Bengali people? Why were we not at that time condemning the repression that meant many hundreds of thousands of more people killed or executed? Where were we at that time? Now we go to the United Nations in terms of condemning the actions of India.

These ends we seek are not being served by the resolutions we have supported in the Security Council. None of these resolutions—including the one sponsored by our Government—dealt with the causes of the refugee movement, nor with the kinds of things necessary for their voluntary repatriation from India.

That is the basis for the conflict that exists now—the reason for the creation of 10 million refugees, the tremendous burden the refugees present in terms of diverting funds for economic purposes in that part of the world, as well as the social and political problems that are involved. Not one word was uttered with respect to the reasons behind this massive refugee flow. That is the basis of this problem. In our resolution before the United Nations, there was not one word about how the refugees were created.

The problem is that none of the resolutions we have supported recognize the root of the crisis, the interests of the Bangladesh forces, or the urgent need for a negotiated political settlement between Islamabad and its Bengali opposition. In the main the resolutions have merely appealed for a cessation of hostilities between India and Pakistan, with the inevitable result that the war continues—that the source of the conflict still festers.

It is such a cruel irony that we talk about self-determination in Southeast Asia and in Vietnam. We have lost some 55,000 Americans who have been killed there because we want the people in South Vietnam to be able to decide their own future.

We know that the people of East Bengal went to the polls. The election was held under martial law. Sheikh Mujib and the Awami League won 167 out of the 169 seats. It was a democratically held election, with a mandate sufficient to elect him as the Prime Minister of all Pakistan. Yet, what happened? He was thrown into jail because he won the election. Now we are identifying ourselves with the military rulers who put him in jail. Fifty-five thousand Americans went to their deaths in Vietnam to secure such a free election there. Yet we are now identifying ourselves with a regime that has put a duly elected official in jail without any pretense of a civil trial or without any recognition of his success at the polls.

Mr. President, our Government and the United Nations must come to understand that the actions of the Pakistan Army on the night of March 25 unleashed the forces in South Asia that have led to war.

No observer of the situation in South Asia today can come away without the impression that these forces—nationalism and self-determination—can ever be successfully resisted by the force of arms. The right of self-determination for East Bengal—for which the East Bengalis elected Sheikh Mujibur Rahman, and for which they now fight and die—will no doubt be attained eventually. Only the form and the circumstance remain in doubt.

As early as last May, official reports to our Government said that the great bulk of the population of East Bengal had been alienated, perhaps forever, from the central government in West Pakistan. Events since then have more than confirmed the accuracy of these early reports. And because so much blood has been shed, there can be little doubt that the people and leadership of East Bengal will never accept again the political system that prevailed before March 25.

It is time for all of us to recognize the fact that "Bangladesh" now exists, not only in the minds of the majority of the Bengali people, but in the reality of current events.

If we truly recognize this fact—and if we are to avoid escalating vast human suffering and a bloodbath of reprisals throughout East Bengal—the requirements for peace and relief must include the following interrelated steps.

First, we must seek an immediate standstill ceasefire on all fronts sanctioned and supervised under international auspices. A time limit of 15 to 30 days should provide the "cooling off" period necessary to undertake the other diplomatic initiatives necessary to settle the outstanding issues among all parties involved.

Second, we must seek immediate and simultaneous negotiations between India and Pakistan, and between West Pakistan and its Bengali opposition within East Bengal—led by Sheikh Mujibur Rahman.

The purpose of the Indo-Pakistan negotiations should be to restore the 1965 Cease-fire agreements on the western front, and to resolve the new issues resulting generally from the current military confrontation. The purpose of the West Pakistani-Bengali negotiations should be to determine the future status of East Bengal, and the circumstances which will permit the voluntary repatriation of the 10 million East Bengali refugees in India.

And let me stress here, Mr. President, that whatever the future status of East Bengali—whether it be some form of independence or autonomy—it is critical that agreement should be reached between all parties during negotiations for the voluntary repatriation of all opposition political forces. There are "hostages" caught on all sides of this conflict. The Pakistan Army now holds in East Bengali under its control countless Bengali guerrillas and elected Awami League officials. In turn, it is conceivable that the Bengali guerrillas may soon hold within their control elements of the Pakistan Army. In addition, 7 to 8 million members of the minority Bihari Muslim community remain in East Bengal, while approximately 10 million Bengalis, including, of course, Sheikh Mujib in West Pakistan.

If a terrible, mindless bloodbath of reprisals and communal-religious violence is to be avoided, all parties in this conflict must protect these "hostages" of the conflict and abide by the Geneva Conventions and the wisdom of compassion and restraint. The Government of India has made a first step in this direction by announcing it recognizes the applicability of all Geneva Conventions.

Third, we must urge the immediate revival of the United Nations relief mission in East Bengal for the sake of the hapless millions threatened by famine or displaced by war.

The international relief effort in East Bengal has always been more a hope and aspiration than a functioning field operation. The urgent need to change this, will only come when peace has been restored to the Bengali countryside.

Nonetheless, our Nation and the international community must now recognize our responsibility to help in the reconstruction of East Bengal by beginning to think now of the coming problems of rehabilitation and relief. At a time when our Government seems more interested in condemning and cutting off economic aid to South Asia, I hope we will have the foresight to understand that our national interest will soon find the future development and economic stability of all nations in the region an important factor in our foreign policy and in our humanitarian concerns.

Mr. President, for 8 long months our national leadership stood silent and almost idle as the spectre of human deprivation and violence stalked South Asia. It is now a late stage in the crisis—with even more refugees now fleeing because of the escalated violence throughout the area—but I feel the opportunity still exists for our Government to make a positive contribution to the peace and relief of the area. And so I urge the administration to turn its policy around. They must consider the source of the violence, and move toward a fundamental political settlement in East Bengal. Anything short of that means more war, more refugees, more senseless death.

Mr. President, how much time do I have remaining?

The PRESIDENT pro tempore. Two minutes remain to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I ask unanimous consent to have the opportunity to extend my remarks and I also ask unanimous consent that certain provocative editorials and articles published in many of the Nation's newspapers, particularly the lead editorial in the Washington Post this morning on the whole

situation in South Asia be printed in the RECORD.

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

[From the Washington Post, Dec. 7, 1971]

THE U.S. PURSUIT OF DISASTER IN SOUTH ASIA

Suppose President Nixon had deliberately set out: to aggravate tensions in South Asia; to identify the United States with a military regime almost universally condemned for its abuse of its own people; to shred American ties with the most populous and powerful nation of that region, a democracy and a traditional friend; to help drive that dominant state into a waiting Soviet embrace; and, once war had erupted, to diminish possibilities of political compromise and undermine what moderates might remain. What would he have done differently with respect to the developing conflict between India and Pakistan over the last eight months? In our view, not much.

The whole rationale of American policy eludes us. Some payment was owed Pakistan for helping arrange Henry Kissinger's first trip to Peking. And Mr. Nixon evidently has long had a soft spot in his heart for Pakistan, at one time a model military anti-Communist regime. But at some point as the tragedy grew, cold calculations of power politics should have overtaken these largely sentimental considerations. Sound policy dictated an effort to maintain friendship with both India and Pakistan; if that were not possible, why put all the American chips on a discredited failing regime in much the smaller and more trouble-ridden of the two nations involved? If the answer lies somewhere in the political geometry of the Moscow-Peking-Washington triangle, we fail to perceive it.

The announcement yesterday that the United States had suspended development aid in the pipeline is equally puzzling. The stated grounds, that such aid contributes to short-term economic welfare and war-making potential, are laughable: the gesture was purely punitive and the party that is to be punished is not the government nearly so much as the impoverished people of India. A more telling abuse of foreign aid—at a more delicate moment, when a new aid bill is hanging by a thread in conference—could not be imagined.

As we have said before, India deserves sharp criticism for its calculated use of the refugee crisis to promote the dismemberment of Pakistan, although such criticism ill befits any government, such as the American government, which tolerated Pakistan's manufacture of that crisis. Where was the quick clampdown on arms aid to Pakistan then? India's invasion of West Pakistan and its now-open designs on Pakistan-held Kashmir are entirely unsupportable. But the source of the present crisis is Pakistani policy in East Pakistan. Only there can a solution be found. That the United States should not only be failing to contribute to such a solution but could be making one more difficult to attain is a measure of how far we in fact have traveled under the much trumpeted Nixon Doctrine toward a new foreign policy. In South Asia, we have moved backward—if we have moved at all—toward those early postwar cold war attitudes that gave us CENTO and SEATO and the heavy-handed employment of foreign aid as a bludgeon or a bribe.

[From the Washington Post, Dec. 6, 1971]

AS THE INDIA-PAKISTAN WAR DEEPENS

As the terrible war between 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-Pakistani 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 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 purpose of relieving Pakistan. No resolution so unbalanced and onesided 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 the 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 the real tragedy that exists in the subcontinent. Empty words no longer serve.

[From the New York Times, Dec. 6, 1971]

THE WRINGING OF HANDS

(By Anthony Lewis)

LONDON.—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 politicans, 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 xenophobic 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. First-hand 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 border. 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 free-

dom. 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.

[From the Washington Post, Dec. 7, 1971]

UNREALISM ON NEW WAR

(By Joseph Kraft)

A bizarre combination of moral blindness and political unrealism has characterized the handling of the Indo-Pak crisis by the Nixon administration. Even so, the United States is relatively immune from the consequences of this folly.

For with the Communist world divided, almost nothing that happens in South Asia can adversely affect American security in a serious way. But similar folly in other areas could well blow the President's hopes for a generation of peace.

The present round of trouble in the subcontinent goes back to the decision made by the Pakistan government in mid-March to suppress by force the separatist movement in East Bengal. The result of that decision was moral crime on the grand scale. Hundreds of thousands of innocent people were murdered by Pakistani troops, and millions were forced across the border into India as refugees.

Moreover, the decision was not only a crime, it was a blunder. With its government and forces centered in the western part of the country, Pakistan was unable to sustain repression a thousand miles away in East Bengal. Among the refugees in India, there began to grow up an insurgency force—the Mukti Bahini—determined to separate East Bengal from Pakistan in a new nation to be called Bangla Desh.

These developments presented a golden opportunity to Indian nationalists eager to settle old scores with Pakistan once and for all. They had rebuilt their army since the debacle of the war with China in 1962, and were confident they could whip Pakistan in an all-out encounter. Thus secure, they saw in the East Bengal situation an opportunity to put steadily increasing pressure on Pakistan.

To that end they armed and trained the insurgent East Bengali forces. They brought their own armies up to the frontier of Pakistan. They were thus acting as a kind of escort force for growing incursions by the insurgents against the Pakistanis in East Bengal.

At that point the United States still had some leverage. This country is the mainstay of the international groups that provide foreign aid critical to the development of both India and Pakistan, and there was an obvious way to avert the developing trouble. That was to have President Yahya Kahn of Pakistan open negotiations with the West Bengali leader, Mujib Rahman, who had been jailed back in March.

But Washington was never sensitive to the moral enormity of Pakistan's behavior. Hence, the willingness to let military spare parts go there for months after the massacres of East Bengal got under way.

Neither was the administration alert to the cold-blooded logic driving the Indians towards war. Thus the administration did not apply truly heavy pressure on Pakistan for an opening on negotiations between President Yahya and Sheik Mujib—not even after Prime Minister Indira Gandhi of India visited Washington and named that as a price for peace.

With Washington going less than all-out on the negotiating front, Mrs. Gandhi had little reason to control the Indian hawks. Slowly and deliberately, they applied pressure around Pakistan's borders. In the end, Pakistan felt obliged to respond with what is now open warfare.

Containing the fighting now devolves upon the other great powers in the area—the Russians who are backing the Indians; and the Chinese who support Pakistan. The duel between the Communist Big Two thus dominated the United Nations debate, and whatever the result (and the most likely outcome is for a new Bangla Desh state) it will not cause any serious trouble for this country.

Still, there are some hard questions the Nixon administration should be asking itself. Wasn't the administration blind and deaf to the moral crimes committed by Pakistan? Didn't the administration miscalculate what India would do? Weren't both these judgments an expression of President Nixon's personal prejudices and preferences? Weren't these personal inclinations enormously weighted because of the emasculation of the State Department?

More important still are some long-range questions. Couldn't such a woeful performance yield serious trouble in coming encounters with the Communist giants? Even if the United States is insulated from the worst difficulties by the division in the Communist world, what role should this country be playing in the southern continents of the Third World? Does this country want forever to be the patron of regimes in Asia, Africa and Latin America that make up the pillars of the unfree world?

[From the Washington Post, Nov. 25, 1971]

INDO-PAKISTAN CLASH

(By Joseph Kraft)

The sudden increase in tension between India and Pakistan asserts two realities that have been neglected by American diplomacy. Both have now to be taken seriously even by those whose only aim is to help Pakistan.

One is that Pakistan is on weak ground, militarily as well as morally. The other is that, except for the humanitarian instinct of Prime Minister Indira Gandhi, the cold logic of the situation in India argues for all-out war.

It is now apparent that the Pakistani regime of President Yahya Khan bit off more than it could chew when it imposed military rule over East Bengal last March. Though taking a terrific toll in lives and displacing refugees by the millions, the Pakistani forces have not been able to secure full control over East Bengal. Nor has arresting the chief Bengali leader, Mujibur Rahman, enabled the Pakistani military men to throttle the Bengali independence movement.

In India, the Pakistani moves have bred a mood—and a logic—that favors war. The Indian army has been modernized and expanded since the disastrous encounter with China back in 1962. Virtually everybody in New Delhi believes that in an all-out encounter their forces could lick the Pakistanis. Indian losses, as measured in a population of 450 million, living on the edge of misery anyhow, would not even be very high.

Given the negligible cost, national interest argues powerfully in New Delhi for a settling of old scores by force. As the Indians see it, they have been attacked twice in the past by the Pakistanis, and would be attacked a third time whenever the military balance changed.

Moreover, the 9 million refugees who have come over from the East Bengali part of Pakistan are believed in New Delhi to pose a direct threat to Indian development. Not only do they burden India's scarce resources, they also comprise a potential seed bed for Communist subversion and the development of a Bengali separatist movement in India. And the only sure way to get the refugees back to East Bengal is to rout the Pakistani army.

Finally, internal politics are forcing the Indians towards war. Most of the refugees are Hindu. Their plight has been taken up by India's conservative opposition party, the Jana Sangh. In daily assaults in parliament and the press, the opposition is pushing the government to stand up and fight for Hindu rights.

Under the force of these pressures, Mrs. Gandhi's government has made some concessions to the Indian hawks. It has moved the Indian army up to the frontier with Pakistan. It has supplied arms, transport, and protective cover for the East Bengali guerrilla forces—the so-called Mukti Bahini. These insurgents are now operating against Pakistan with mounting intensity.

Mrs. Gandhi personally, however, has committed herself about as powerfully as is possible to the cause of peace. She has argued the humanitarian case at all times and in all places. She has claimed that all the adjustments that have to be made for a political solution can be achieved through diplomatic pressure on Pakistan. It was in that spirit that she visited Washington and saw President Nixon early this month.

President Nixon has in fact been using his good offices to foster new policies in Pakistan. It was in order to maintain leverage on President Yahya that he allowed the flow of American military to Pakistan to continue until just before Mrs. Gandhi's visit.

But the President has fond memories of cooperation with Pakistan in the anti-Communist pacts of the Dulles era. He was able to work on a confidential basis with Yahya in arranging his trip to China. And whatever his feelings about Indians may be, he is not keen on their supporters in the United States—notably Sen. Edward Kennedy.

So the President has been searching for some small concessions that President Yahya could swallow easily. Mr. Nixon has suggested the stationing of United Nations forces on either side of the border. Mr. Nixon has hinted at political negotiations with Bengali leaders of lower stature, and more dubious honesty, than Mugibur. Mr. Nixon has avoided the central issue—the issue of the future status of East Bengal.

In fact, there is no escaping that issue. "The only lasting solution," as Prof. John P. Lewis of Princeton who once served in the American embassy in New Delhi has recently written in a brilliant article, "is some large measure of autonomy for East Bengal." An easing of tension can come in the subcontinent only by an explicit commitment to that target. Anybody serious about averting war will have to take as a starting point negotiations between Yahya and Mugibur for a new understanding to govern relations between Pakistan and East Bengal.

[From the Washington Star, Dec. 3, 1971]

COST OF REFUGEES SPURS INDIA'S FIGHT

(By Henry S. Bradsher)

CALCUTTA.—India's basic justification for using its armed forces against East Pakistan in undeclared war is that it cannot go on indefinitely bearing the burden of refugees from the region.

By increasing the pressure of both its own army and of East Pakistani insurgents on government forces in the region, India hopes to achieve independence for the region under the name of Bangla Desh and then have the refugees return to their homes there.

How big is this burden and how realistic is the hope that the refugees will be willing to go home?

According to P. N. Luthra, the Indian official in over-all charge of the refugee problem, it is costing the government more than $2½ million a day to care for the refugees.

Luthra, an experienced civilian administrator known by his old military title of colonel, said in an interview there are now 9.733 million refugees in India. About 7 million of them are living in government camps and the rest with friends and relatives.

REFUGEE FLOW DOWN

The Pakistani government disputes the total figure, insisting about 2 million persons

left East Pakistan when the army began its crackdown on the Bengali nationalist movement March 25.

International relief agencies accept Luthra's figure as being roughly correct, however. The figure is based on issued ration cards and other controls.

The flow of refugees now is down to about 10,000 daily, Luthra said.

The fighting along Pakistan's borders is presumed to be one reason for the decline of the flood that totaled more than 100,000 daily in late spring.

Two and a half million refugees came into a single district of India's West Bengal State just east and northeast of Calcutta.

A visit to that area in July showed refugees squatting by the roadside and camping in fields with little shelter against the monsoons while more continued to walk across the border, hungry and dazed.

A return visit to the area the other day found the roadsides cleared. Camps, no longer flooded from rains looked fairly neat and orderly. But their inhabitants showed listless signs of depending too long upon relief.

They are forbidden to work because the densely populated West Bengal State already had an unemployment problem and local people do not want competition from newcomers.

Luthra said the impact of refugees remains strong in some districts such as West Dinajpur where there are as many refugees as original inhabitants.

India's Tripura State on the east side of East Pakistan also has been flooded by almost as many people fleeing across the border as lived there before.

Many camps have been rebuilt since the monsoon ended, Luthra said, to make them more livable. New camps are being built further back from the border to house more refugees in consolidated units with common food and hospital facilities.

Luthra said the equivalent of 13.6 U.S. cents is being spent daily on nonrecurring expenses such as building camps—for each of the million refugees in camps. Recurring daily costs are 23.3 cents each.

BIG PROMISES

In addition to this burden on the Indian government there is foreign aid. Right now the most noticeable aspect is blankets, especially for refugees in mountainous areas north of East Pakistan.

Luthra said the total aid promised from abroad was about $157 million. About $37 million reached refugee headquarters in Calcutta, but some went directly to the Indian government in New Delhi.

The United States has promised more than $70 million in cash and food.

Despite foreign assistance, India is bearing the main financial and social burdens of refugees.

The cost is hurting India's economic development efforts but the extent of this varies according to whose estimates are used. The United States also has made a special $20 million development loan to offset this impact.

Luthra and other Indian officials take some pride in the way this country has coped with the burden.

Absence of major epidemics, even during the heaviest monsoon to hit India for many years, and avoidance of starvation among refugees is regarded as a considerable accomplishment.

The Indian government is quite firm in saying refugees must go home.

But will they? Especially, will more than three-fourths of the refugees who are Hindus want to leave predominantly Hindu India and return to Moslem Pakistan after the Pakistani army singled out the Hindus for special persecution?

Luthra leans back from his neat desk, taps his fingertips together, smiles and says "I think they will go back."

Even now, some refugees are going to see what the situation is in areas from which Bangla Desh forces have cleared the Pakistani army, Luthra said.

People want to return to their own land. Even Hindus will want to return to their land, Luthra said. The fact that several millions have never left East Pakistan shows that the Hindus can survive there.

Others are not so sure. Well-informed Indians in New Delhi say Prime Minister Indira Gandhi's government is prepared privately for several million refugees to remain despite its public insistence that all must leave.

There have been reports that the government would simply quit providing food rations if necessary to force the refugees out once Bangla Desh is independent, or would move points at which food is issued against ration cards to areas of Bangla Desh.

Asked about such coercion to get rid of refugees, Luthra declined to answer directly but left it as a possibility.

Whatever the tactics followed, whether use of the Indian Army to free East Pakistan from control of the Pakistani government or use of force to make the refugees go home afterward, India now seems determined that it cannot and will not go on taking care of the largest refugee problem in history.

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

POLITICS IGNORED FOR NOW—HATRED UNITES BANGLA DESH

(By Henry S. Bradsher)

CALCUTTA, INDIA.—The Bangla Desh forces fighting with the Indian army against the Pakistan army are composed of diverse elements united for the moment by passionate hatred.

They include middle-class lawyers from small towns of East Pakistan who formed the core of the Awami League, the political party that won 72 percent of the vote in the region last December, soldiers of the Bengal Regiment and the border police, the East Pakistan Rifles, who defected en masse when the army crackdown on regional nationalism began March 25, students with vaguely radical ideas and youthful hotheadedness, and other Bengalis.

Their only common political viewpoint is the desire to rid their homeland of what they consider to be a long period of colonial exploitation by West Pakistan and now the brutal repression by an alien army of the West Pakistani elite.

DIFFERENCES SUBMERGED

Widely varying political attitudes on questions other than independence for Bangla Desh have been temporarily submerged in the common struggle.

The unifying figure in East Pakistani politics has been Sheikh Mujibur Rahman. To an incredible extent he personally came to symbolize Bengali grievances and hopes and his Awami League focused both these elements into a powerful political force.

Thoughtful Bengalis now say that Rahman remains—even in West Pakistani prison—the only real hope of keeping Bangla Desh forces united. And should independence be achieved, it will only be a question of time before political fragmentation comes—even if Rahman should lead the new nation.

In Rahman's shadow, no other strong leaders developed in the Awami League. "There is only a third-line leadership behind him, without any second line," one Awami League member commented.

The most prominent of these is Syed Nazrul Islam, 46, who is now the acting president of the Peoples Republic of Bangla Desh in the absence of Rahman. A lawyer from Mymensingh, he had led the party during the earlier imprisonments of Rahman.

The prime minister is Tajuddin Ahmed, also 46. As a student leader of East Pakistani agitations against the domination from West Pakistan shortly after the country was formed in 1947, he took his law degree while in jail.

The other three cabinet members are Khandaker Moshtaque Ahmed, 53, in charge of foreign affairs, Finance Minister Mansoor Ali, also 53, and Kamaruzzaman, 45, who is responsible for home affairs, relief and rehabilitation. All are lawyers.

GOALS OF REPUBLIC

The goals of the republic which they declared after March 25 include a "socialistic pattern of economy." But they are conservative people and the Awami League generally has a cautious middle of the road attitude.

Their statements of goals throws doubts on how far they would be prepared to go to achieve economic equality in the badly overpopulated agricultural region. It specifies that there will be no land tax on holdings up to 8 acres—which is a very large amount in the rice lands economy of the region.

Many international economists feel one basic reason for the failures of underdeveloped agricultural countries to bring rapid economic progress has been the refusal of middle class politicians running them to hurt their own personal interests by taxing agriculture adequately.

The Awami League position on this might be challenged eventually by some of the leftist elements which have failed to show any significant popular strength in elections, but nonetheless loom importantly in the region.

CONSULTATIVE PANEL

These include leftists oriented toward Moscow and toward Peking and freelance ones. India, which is sponsoring the Bangla Desh cause, has at Soviet instigation forced the Awami League to accept the creation of a political consultative committee including Moscow-line leftists. But Awami Leaguers are determined to keep them at arm's length.

Probably a more important political element will be students.

STUDENT VIEWS

In March interviews in Dacca, student leaders like Abdul Rab and Nurll Alam Siddiqi talked much more seriously about socialistic answers to the region's economic problems than Awami League leaders talked. Both Rab and Siddiqi were leading students and other young people in guerrilla operations.

These student guerrillas are more emotionally dedicated to Rahman personally than other elements of the Bangla Desh movement. But for them Rahman is a figure who only mirrors what they want.

It is doubtful that Rahman in power as head of independent Bangla Desh, subject to pressures of practical politics, would for long be satisfactory to radical-minded youths.

Members of the East Pakistan Rifles, a paramilitary force, are originally alleged by the Pakistani government to have been planning mutinies against their West Pakistani officers shortly after March 25.

SLAUGHTER ALLEGED

This was one of the allegations the government used in its initial efforts to justify its savage crackdown on East Pakistan. Another allegation was that tens of thousands of non-Bengali residents of the East had been slaughtered by Awami League terror before March 25 which the government had to halt.

Both these charges have been quietly dropped by the government, although they still echo in Pakistani propaganda.

In fact, EPR men seemed then to be essentially non-political. But they are Bengalis, and after the army attacked them on the night of March 25 as part of breaking all Bengali resistance, they fought back. Most fled to fight again.

They were among the men whom the In-

dian army organized into Bangla Desh, military units.

Another large element, also essentially non-political patriots, are troops from the Bengali regiment.

Mr. KENNEDY. Mr. President, we hear our Government speak of cutting off aid to India at a time when it has suffered its most severe economic test—as it struggles to provide for 10 million refugees, costing it nearly $800 million. The cost of the refugees is more than all the foreign aid India receives. Yet, we talk about cutting off aid.

To illustrate the burden India has carried over these past 8 months I ask unanimous consent to have printed at this point in the RECORD excerpts from my report to the Judiciary Subcommittee on Refugees, submitted last month.

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

CRISIS IN SOUTH ASIA

REFUGEE RELIEF PROGRAM—THE COST TO INDIA

For India, the direct cost of coping with the massive influx of refugees is staggering. The indirect cost—the refugees' impact upon India's long-range development program and economy—is even worse. Because the areas in India around East Bengal where the refugees have fled already have substantial unemployment and underemployment, no addition to the force of unskilled labor—whether refugee or Indian—can contribute much if anything to output. Under these circumstances the refugees represent dead-weight on an already underdeveloped area. They drain resources from the Indian economy without any compensating increase in output.

It is not surprising, therefore, that in many ways the indirect cost to India may even be greater than the direct cost—although less defined. More easily estimated is the direct cost of supporting the refugees. For just one year, this cost is truly staggering.

According to estimates assembled both in Washington and in New Delhi, the direct cost for maintaining 9 million refugees for one year is, at a minimum low estimate, $800 million. Per capita, the refugees will cost between 20 to 25 cents a day, or about two Indian rupees.

The low and high estimates presented in the above table differ because of varying assumptions about the amount of food, the kind and extent of shelter, the quality and degree of medical care, and other such factors relating to the care and maintenance of the refugees. However, USAID's estimate of direct cost is based on a conservatively figured average "inventory" list of requirements for one million refugees in camps.

Most officials agree that these figures are conservative estimates, and USAID/New Delhi has tended to opt for "low estimates" in planning U.S. contributions. So the fact remains, that even with the most sanguine assumptions, the total direct cost to India, caused by the refugees, amounts to nearly $800 million for the India fiscal year ending March 31, 1971—and to more than $800 million for the U.S. fiscal year ending the following June 30.

This figure takes on greater significance when it is realized that it represents between one-sixth to one-fifth of the total outlay that India spends annually on development programs. It is equivalent to nearly one-third of the country's total imports. And it almost matches the annual gross non-food aid that the dwindling "Aid-India Consortium"[1] has been able to give in recent years. Because of the inexorable increase of India's principal and interest payments on these past loans, the Consortium's net yearly input to the Indian development effort, aside from the diminishing U.S. PL480 contribution, is no more than $300 million. In short, maintaining the refugees for one year will directly cost India $500 million more than the net foreign aid it receives from all the Western nations.

The drag that the refugee problem is placing upon the Indian system can be understood only in this broader perspective; for most of the specific commodities that refugees are consuming are Indian products, as, of course, are the administrative and other services they are monopolizing. Since India feels it is already fully budgeted and has no safe room for additional deficit financing—and since the refugees, for the time being, provide no additional productive capacity but, instead, cause displacement of scarce transport and other facilities—the funds that the Government of India now allocates to them tend to be gouged out of the Nation's development budget. Moreover, the encroachment is not just on development finance—it also drains the nervous energy of the nation's leadership. The Prime Minister, her advisors, the Finance Ministry, the Planning Commission—indeed most of the developmental leadership and bureaucracy of the central and state governments—are consumed with the ramifications of the refugees from East Bengal. And a war with Pakistan could be disastrous.

1. Impact on India's Development. These distractions of resources and effort could not have come at a more inopportune time for India. At the moment the disaster struck East Bengal—literally a fortnight before—India had achieved her best hope for material and social progress in 24 years. The first, the so called "green revolution", came after years of sluggish economic and political progress. From 1962 to 1967 India was shaken by two short wars, lost two Prime Ministers, and was wracked by two unprecedentedly severe droughts, contributing to a general economic recession. Indeed, Indian politics appeared to be becoming unglued. But these traumas, instead of demoralizing the leadership, had the effect of shock therapy in 1965 and 1966. A sensible and comprehensive set of new economic and agricultural policies was adopted that, in particular, provided thrust and incentive for a new foodgrains technology involving improved seeds, better fertilizer, and assured water supplies.

This new agriculture policy was spurred by a more effective indigenous research establishment and reinforced by improved foreign supplies, rural credit and other facilities, and it has continued to spread throughout India. And it shows no signs of subsiding now. The result has been that the annual rate of growth in food production since 1966–67 has doubled the previous average. The rapid closure of the old food deficits, which had persisted since the 1950's, created the best base yet for a general economic acceleration—and for a concerted attack on the cruel inequalities of low-end poverty and left-over people that had accumulated unchecked through the 1960's.

From the 1967 election onward, when the ruling party's Parliamentary majority was further eroded, fresh policy initiatives were politically stalemated. Thus the second half of the new hopefulness has come only in the first days of March 1971 with the landslide electoral victory won by the government of Prime Minister Indira Gandhi. The Prime Minister won a rousing mandate for a new brand of populism. When the votes were counted on March 10, the specific content of that populism naturally remained somewhat unspecified. But it was clear that efforts to generate additional incomes and jobs for the poor were sure to encounter financial difficulties, especially as to the provision of sufficient foreign exchange in an age of diminishing foreign aid. Still, there was no question that, added to its on-going agricultural breakthrough, the political breakthrough represented in Mrs. Gandhi's mandate, presented India with its best chance yet for combining faster economic advance with a genuine attack on mass poverty.

Then came the staggering economic burden and the disruptive political impact of the masses of refugees. As they poured into India, the refugees brought local government in many areas to a complete standstill, freezing public works projects and other economic development programs. West Bengal, and more particularly the area around Calcutta, has been an area hardest hit, and provides a depressing illustration of what the impact of the refugees has been on India.

2. The Death of Calcutta. For more than 10 years Calcutta has been generally regarded as one of the world's sickest cities. Created during British rule as the port for eastern India and a united Bengal, it received its first death blow in 1947 with the partition of British India. Again, it was an unprecedented wave of refugees that first pushed Calcutta down the road of uncontrolled growth and decay. After partition, over 3,000,000 refugees fled the newly created East Pakistan to settle in or near Calcutta. And until last year many of these first refugees could still be seen encamped at the Sealdah Railway Station. For many years they have been the largest part of the street population of Calcutta. Thus long before the recent refugee influx, at least a million of the Calcutta metropolitan area's 7 million inhabitants slept in alleys and on sidewalks.

The general depression of Calcutta can be seen in other statistics as well. For example, of its 1.4 million households, only 12% have exclusive use of a latrine and only 14% have their own water tap. There is vast unemployment and under-employment. Local government seems hopelessly fragmented, both functionally and territorially. For a generation, Calcutta, as compared with other major Indian cities, has been unable to raise local resources effectively. Public facilities and services have rapidly deteriorated. Labor unrest is endemic. The city breeds India's most extremist urban politics, where violent demonstrations, tramcar burnings, and thuggery are routine forms of persuasion. Industry has been fleeing the city. In short, even before the recent flow of refugees, the economic center of all of eastern India looked mortally wounded.

There can be little doubt today that the refugee problem threatens to bring to an abrupt halt, whatever upward trends exist in Calcutta's development. For example, the logistical requirements of refugees support are hobbling the city's construction program. One hundred railway wagons are needed to keep the current requirements of cement, crushed stone, steel and other materials flowing. But the current allotment, due to the competing pressure of the refugee program on India's strained railway system, is now down to 35. Other public works projects have come to a standstill because the attention of the leadership has been distracted. And each day a few more refugees trickle into the Calcutta slums, increasing the burden on the city's already impoverished services and facilities.

The crisis of Calcutta was created, in part, by the arrival of refugees two decades ago. Its further descent into decay and death may be brought by the arrival of the latest refugees, unless outside resources are mobilized to rescue it and all of eastern India.

RESPONSE OF THE INTERNATIONAL COMMUNITY

The international community's response to the refugees has been unconscionably lethargic and wholly inadequate. It is characterized by little sense of urgency and a low priority of concern for a tide of human misery unequaled in modern times.

As recently as October 13, the "focal point" for international refugee relief in India, the United Nations High Commissioner for Ref-

[1] This includes the World Bank, the U.S., Britain, West Germany, Japan, Canada, France, and several smaller bilateral European contributors.

ugees (UNHCR) was moved to warn the world that it has "to fight against apathy". He told a press conference in Geneva that for the last several weeks there had been no new funds committed to the refugee program in India. In a typically understated fashion, he said that "if no further contributions were received there would be a risk of a gap in supplies in two months' time, and "the situation might become extremely dramatic".

What the UNHCR means, in strictly human terms, is that, unless funds are forthcoming, predictions will come true that nearly 4,300 children will be dying each day—bringing the cumulative total since April up to 200,000 by the end of the year. He means that millions of blankets necessary for the winter months will not be purchased—for a lack of funds. Urgently needed shelter materials for more than half the refugees will remain unavailable—for a lack of funds. Adequate medical supplies will not be obtained—for a lack of funds. And the list of needs will go on—all for the lack of funds.

Red-tape and procrastination in too many quarters, including the United Nations, have all but immobilized the international response to the staggering refugee needs created by the repression in East Bengal. As of October 19, only a total of $210,200,000 had been contributed to the "focal point" for refugee assistance in India. Of this, approximately $12 million had been in cash and transmitted to the Government of India, while another $26 million worth of goods had already been delivered. The rest—nearly $172 million, or over 75% of the total thus far pledged—is still to be delivered. These goods are on the high seas, or being loaded or purchased, and only by the end of the year, or ten months after the crisis began, will they be delivered. Meanwhile, India carries the burden.

Worse, of course, is the fact that even after all the material aid thus far pledged arrives in India, the total—$210.2 million—is far short of the documented needs of the Indian government to support over 9 million refugees for even one year. Pleas for additional aid have been made. Most recently the U.N. made a strong and urgent appeal to the international community for substantial contributions to the refugee relief effort, since "the inflow of cash and kind had tended to dry up during the last few weeks."

The American record, unfortunately, has been little better than the rest of the international community in the speed with which we have responded. Although the United States has to date pledged $89.2 million—or 44% of the total refugee aid to India—it has come inexcusably slow and long after the full needs were known. The rate of refugee movement and the growth of refugee needs, has far outpaced the rate of American aid and our country's traditional leadership in humanitarian affairs.

The first U.S. contribution of $2.5 million was announced on May 11th, after there were nearly as many refugees recorded in India as dollars pledged—and after American officials in the field had documented the vast costs involved in housing and feeding millions of refugees. Each day, of course, brought more refugees. But it was not until a month later, after another 3 million refugees had arrived, that the United States announced a second contribution of $18 million on June 7. The next American dollar contribution—$70 million—was pledged on June 24, after another 1,500,000 refugees had poured into India. Finally, on September 24th the President asked Congress to include some $250 million for relief needs for both India and Pakistan in the foreign aid authorization for fiscal year 1972.

To be sure, as the Administration has pointed out with pride, our government has pledged a larger share of the total relief budget for the refugees in India than the rest of the world combined. But this pride is quickly dispelled by the vastly greater burden now being carried single-handedly by the government and people of India. When we realize that India faces the prospect of a budget for refugee relief totaling $500 million to $1 billion over this coming year alone, we realize how little the outside world is really doing, and how paltry the American contribution is comparatively.

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 15 minutes, with statements therein limited to 3 minutes.

Is there morning business?

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

NATIONAL ENVIRONMENTAL CENTER ACT OF 1971

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 504, S. 1113.

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

The assistant legislative clerk read as follows:

(S. 1113) to establish a structure that will provide integrated knowledge and understanding of the ecological, social, and technological problems associated with air pollution, water pollution, solid waste disposal, general pollution, and degradation of the environment, and other related problems.

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 Public Works with amendments on page 1, at the beginning of line 4, strike out "Laboratory" and insert "Center"; on page 2, line 1, after the word "the", strike out "Nation" and insert "global environment"; in line 2, after the word "of", strike out "environmental"; in line 3, after the word "quality", insert "and depletion of resources"; in line 12, after the word "principles", strike out "if the Nation is"; in line 15, after the word "development", insert "and application"; in line 19, after the word "that", insert "new and existing"; in line 20, after the word "detect", strike out "and"; at the beginning of line 21, insert "and prevent or minimize"; in line 22, after the word "ecosystem", strike out the comma and "which includes" and insert "including"; in line 23, after the word "man", insert a semicolon; in the same line, after the amendment just above stated, strike out "and that existing technologies must continually be reappraised to detect latent detrimental effects;"; on page 3, line 20, after the word "the", insert "global"; in line 21, after the word "to", where it appears the first time, strike out "the" and insert "that"; in line 24, after the word "assessment", insert a comma and "resource utilization"; on page 4, line 1, after the "complement", insert "but not supplant"; in line 5, after the word "development", insert a comma and "and"; in line 6, after the word "environment", insert a comma and "including resource utilization"; in line 7, after the word "and", insert "perform"; in the same line, after the word "necessary", strike out "work," and insert "functions"; in line 10, after the word "devices", strike out "training and education,"; in line 12, after the word "environmental", insert "and resource use"; in the same line, after the word "alternatives;", insert "(B) training and education conducted through and jointly with other institutions, including universities and colleges;"; at the beginning of line 15, strike out "(B)" and insert "(C)"; in line 18, after the word "and", strike out "(C)" and insert "(D)"; at the beginning of line 21, insert "and conservation of resources"; on page 5, line 2, after the word "may,", strike out "present in policymakers" and insert "upon request, make available expert testimony and other information and present"; after line 6, insert:

"(4) that the organization shall be located and operated in a manner to avoid overlap and conflict with existing public and private research agencies and organizations and, to the maximum extent possible, the organization shall draw upon the expertise of and affiliate with such existing agencies and organizations in carrying out its duties and responsibilities under this Act.

In line 15, after the word "Environmental", strike out "Laboratory" and insert "Center"; in line 16, after the word "the", strike out "Laboratory" and insert "Center"; in line 17, after the word "the", strike out "'Laboratory'" and insert "'Center'"; in line 18, after the word "the", strike out "Laboratory" and insert "Center"; in line 20, after "section 4", insert "of this Act"; in line 21, after the word "of", strike out "nine members as follows: (1) the administrator of the Environmental Protection Agency; (2) the Chairman of the Council on Environmental Quality established by Public Law 91–190; (3) the Director of the Office of Science and Technology; (4) the Director of the National Science Foundation; and (5) five" and insert "seven"; on page 6, line 4, after the word "than", strike out "three" and insert "four"; in the same line, after the word "of", strike out "the"; in the same line, after the amendment just above stated, strike out "public"; at the beginning of line 7, strike out "(b)" and insert "(2)"; at the beginning of line 8, strike out "clause 5 of"; in line 10, after the word "that", strike out "(1)" and insert "(A)"; in line 13, after the word "and", strike out "(2)" and insert "(B)"; in line 14, after the word "begin", strike out "on April 24, 1971," and insert "seven days after approval by the Senate as provided in paragraph (1) of this subsection; and"; in line 18, after the word "appointment", strike out "one" and insert "two"; in line 19, after the word "and", strike out "two" and insert "three"; in line 20, after the word "Board", strike out "chosen from private life"; at the beginning of line

23, strike out "(c)" and insert "(3)"; at the top of page 7, insert:

"(4) The Board shall keep the Congress fully and currently informed with respect to all of the Board's activities.

"(b) There shall be established a General Public Advisory Committee to advise the Board on scientific and technical matters relating to environmental research and development pursuant to this Act, to be composed of nine members, who shall be appointed from the public by the President. Each member shall hold office for a term of six years, except that (a) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such terms; and (b) the terms of office of the members first taking office after date of enactment of this Act shall expire, as designated by the President at the time of appointment, three at the end of two years, three at the end of four years, and three at the end of six years, after such date. The Committee shall designate one of its own members as Chairman. The Committee shall meet at least four times in every calendar year. The members of the Committee shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their traveling and other expenses while engaged in the work of the Committee.

"(c) There is established a Federal Agency Liaison Committee consisting of—

"(1) a Chairman, who shall be the Administrator of the Environmental Protection Agency; and

"(2) a representative or representatives from (A) the Council on Environmental Quality; (B) the Department of the Interior; (C) the National Science Foundation, (D) the Department of Agriculture, (E) the Department of Commerce, (F) the National Aeronautics and Space Administration, (G) the Department of Defense, (H) the Atomic Energy Commission, (I) the Smithsonian Institution, and (J) the Department of Health, Education, and Welfare, and who will serve without additional compensation.

"(3) The Chairman of the Committee may designate one of the members of the Committee as Acting Chairman to act during his absence.

"(4) Each member of the Committee shall keep the Department or Agency which such member represents fully and currently informed of all the activities of the National Environmental Center.

"(5) The head of each Department or Agency represented on the Committee shall keep the Board fully and currently informed on all matters within such Department or Agency which relate to the activities of the National Environmental Center.

On page 8, line 25, after "Sec. 5.", insert "(a)"; in the same line, after the word "the", strike out "Laboratory" and insert "Center"; on page 9, at the beginning of line 3, strike out "(a)" and insert "(1)(A) designate or"; in the same line, after the word "establish", strike out "regional" and insert "not to exceed six"; in line 4, after the word "Laboratories", strike out "not to exceed four in number"; in line 6, after the word "such", strike out "regional"; in the same line, after the word "by", strike out "environmental criteria" and insert "the Board after consideration of the criteria set forth in subsection (b) of this section"; after line 8, insert:

"(B) The Board shall not designate or establish the location of any National Environmental Laboratory until such location has been approved by resolutions adopted in substantially the same form by the appropriate Committee of the House of Representatives and by the Committee on Public Works of the Senate. For the purpose of securing consideration of such approval the Board shall transmit to the Congress a prospectus of the proposed location including (but not limited to)—

"(i) a brief description of the location;

"(ii) an estimate of the maximum cost of the location; and

"(iii) a statement of justification for such location.

"(2) enter into agreements to establish various degrees of affiliation with existing agencies and organizations;

On page 10, at the beginning of line 1, strike out "(b)" and insert "(3)"; at the beginning of line 2, strike out "Laboratory" and insert "Center"; in the same line, after the amendment just above stated, strike out "as determined from an analysis of the social and environmental priorities established by the Congress, the executive branch, and the private sector;"; at the beginning of line 5, strike out "(c)" and insert "(4)"; at the beginning of line 8, strike out "Laboratory" and insert "Center and any National Environmental Laboratory designated or established under paragraph (1) of this subsection"; in line 13, after the word "the", where it appears the first time, strike out "Laboratory" and insert "Center"; in line 17, after "section 10", insert "of this Act"; at the beginning of line 18, strike out "(d)" and insert "(5)"; in the same line, after the word "from", insert "make contracts to,"; at the beginning of line 21, strike out "(e)" and insert "(6)"; at the beginning of line 25, insert "and the Environmental Protection Agency"; on page 11, at the beginning of line 1, strike out "(f)" and insert "(7)"; at the beginning of line 5, strike out "(g)" and insert "(8)"; in the same line, after the word "as", insert "may be necessary for the"; in line 6, after the amendment just above stated, strike out "a"; in the same line, after the word "location", strike out "for" and insert "of"; in the same line, after the word "the", strike out "Laboratory" and insert "Center"; in the same line, after the amendment just above stated, strike out "or regional laboratories" and insert "and the National Environmental Laboratories established or designated under paragraph (1) of this subsection;"; at the beginning of line 10, strike out "(h)" and insert "(9)"; in line 11, after the word "including", insert "aircraft, vessels, vehicles and other"; in line 12, after the word "equipment", strike out the comma; in line 13, after the word "the", strike out "Laboratory" and insert "Center"; at the beginning of line 14, strike out "(i)" and insert "(10)"; in line 15, after the word "the", strike out "Laboratory" and insert "Center"; at the beginning of line 22, strike out "(j)" and insert "(11)"; at the beginning of line 24, insert "as may be necessary"; in the same line, after the amendment just above stated, strike out "of the Laboratory"; at the beginning of line 25, strike out "regional laboratory, or laboratories," and insert "National Environmental Laboratory"; on page 12, line 1, after the word "to", insert "paragraph (1) of this"; in line 2, after the word "subsection", strike out "(a) of this section"; in line 4, after "title 5", insert "of the United States Code; and"; after line 5, insert:

"(12) provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof, including support for appropriate mechanism of public understanding of environmental issues.

"(b) In designating the primary research program for each National Environmental Laboratory established under paragraph (1) of this subsection, the Board shall consider the general environmental problems related to ecosystem measurement and analysis, recycling materials and pollutants, energy, community restoration and development, transportation, and resources utilization, technology assessment, and long-range environmental planning.

In line 19, after the word "under", strike out "clause (j)" and insert "paragraph (11)"; in line 20, after the word "of", insert "subsection (a) of"; in the same line, after "section 5", insert "of this Act"; at the beginning of line 22, strike out "regional" and insert "National Environmental"; in line 24, after the word "the", strike out "broad" and insert "general"; on page 13, line 1, after the word "subsection", strike out "(b)" and insert "(a)"; in line 2, after "section 5", insert "of this Act"; in line 4, after the word "clause", strike out "(g)" and insert "(8) of subsection (a) of"; in line 5, after "section 5", insert "of this Act"; on page 14, line 4, after the word "the", where it appears the first time, strike out "Laboratory" and insert "Center"; on page 15, after line 12, insert:

"(b) The Board shall, on or before October 1 of each year, submit to the Committees on Appropriations of the House of Representatives and of the Senate a statement of the expenditure, in the preceding fiscal year, of all funds available under subsection (a) of this section.

At the beginning of line 18, strike out "(b)" and insert "(c)"; in line 19, after the word "appropriated", strike out "such sums as may be necessary to carry out the purposes of this Act: *Provided*, That not to exceed $200,000,000 may be appropriated for the use during any fiscal year of any one regional laboratory established pursuant to subsection (a) of section 5. Such" and insert "for the fiscal year beginning July 1, 1972, $40,000,000, and for the fiscal year beginning July 1, 1973, $80,000,000. Any"; on page 16, line 3, after the word "the", strike out "Laboratory" and insert "Center"; and, after line 9, insert a new section, as follows:

OVERSIGHT STUDY

SEC. 11. The Comptroller General of the United States shall conduct a study and review of the research, pilot, and demonstration programs related to environmental quality, which are conducted, supported, or assisted by all agencies of the Federal Government pursuant to any Federal law or regulation and assess the conflict, coordination, and efficacy of such programs, and make an interim report to the Congress thereon by January 1, 1973, and a final report by June 30, 1974.

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 this Act may be cited as the "National Environmental Center Act of 1971".

"SEC. 2 (a) The Congress finds—

"(1) that the global environment is presently experiencing a rapid deterioration of quality and depletion of resources;

"(2) that the environmental resources of the Nation are finite;

"(3) that the demands of a growing population and an increasing material standard of living will place an additional burden upon the capacity of the environment;

"(4) that the optimum allocation and use of our limited environmental resources will require the maximum use of scientific principles to restore and enhance the health, diversity, beauty, and capacity of the environment for perpetuity;

"(5) that the development and application of technologies has often created unintended ecological, economic, and social effects which have a profound impact on the environment;

"(6) that new and existing technologies must be assessed on a timely basis in order to detect, predict, and prevent or minimize the detrimental effects these may have on the ecosystem including man;

"(7) that the amelioration and prevention of environmental problems depend on a thorough understanding of the complex interactions among the human, natural, and technological components of the ecosystem, thereby requiring multidisciplinary research and analysis of the total environment;

"(8) that while the established departments and mission-oriented agencies make and will continue to make valuable contributions in specialized research and development, they lack authority and organization to deal comprehensively with the interconnected problems of the environment; and

"(9) that a complete and thorough understanding of the ecosystem cannot be accomplished through fragmented application of specialized research and development efforts, but rather requires a unity of effort and emphasis which is focused on the restoration and enhancement of the total environment.

(b) "The Congress declares—

"(1) that to assist in the effort to restore and enhance the global environment and to minimize future damage to that environment, it is necessary to establish a new organization with sufficient professional breadth and scope to provide a unified and systematic approach to the problems of technology assessment, resource utilization and environmental quality; that such an organization will complement but not supplant those public and private agencies presently dealing with various aspects of the environment; and

"(2) that the organization will conduct basic research, development, and analysis of human and natural activities affecting the environment, including resource utilization and perform other necessary functions which shall include but not be limited to (A) data collection, storage, and dissemination, data analysis and synthesis, the development of methods and devices, and objective analysis of various environmental and resource use policy alternatives; (B) training and education conducted through and jointly with other institutions, including universities and colleges; (C) the formulation of, and where appropriate, the development, testing, and demonstration of, alternative solutions to existing and probable environmental insults; and (D) the performance of other functions to assist public and private agencies and persons in the restoration, enhancement, and protection of the environment and conservation of resources; and

"(3) that it shall not be an appropriate function for the organization or of any of its constituent parts or representatives to make specific recommendations as to policy or choices between alternative courses of action, whether at its own initiative or upon request, but that the organization may, upon request, make available expert testimony and other information and present various alternative courses of action and describe the probable results of each such course of action.

"(4) that the organization shall be located and operated in a manner to avoid overlap and conflict with existing public and private research agencies and organizations and, to the maximum extent possible, the organization shall draw upon the expertise of and affiliate with such existing agencies and organizations in carrying out its duties and responsibilities under this Act.

"SEC. 3. There is established at the seat of government a National Environmental Center and a Board of Trustees of the Center (hereinafter referred to as the 'Center' and the 'Board') whose duty it shall be to maintain and administer the Center and site or sites thereof, and to execute other functions as are vested in the Board by section 4 of this Act.

"SEC. 4. (a) (1) The Board shall be composed of seven members appointed by the President from the public, by and with the advice and consent of the Senate. Not more than four of such members of the Board may be members of the same political party.

"(2) Each member of the Board appointed under subsection (a) of this section shall serve for a term of six years from the expiration of his predecessor's term except that (A) any such member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (B) the terms of office of such members first taking office shall begin seven days after approval by the Senate as provided in paragraph (1) of this subsection; and shall expire, as designated by the President at the time of appointment, two at the end of two years, two at the end of four years, and three at the end of six years. No member of the Board shall be eligible to serve in excess of two terms, except that the member whose term has expired may serve until his successor has qualified.

"(3) The President shall designate a Chairman and a Vice Chairman from among the members of the Board chosen from the public.

"(4) The Board shall keep the Congress fully and currently informed with respect to all of the Board's activities.

"(b) There shall be established a General Public Advisory Committee to advise the Board on scientific and technical matters relating to environmental research and development pursuant to this Act, to be composed of nine members, who shall be appointed from the public by the President. Each member shall hold office for a term of six years, except that (a) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (b) the terms of office of the members first taking office after date of enactment of this Act shall expire, as designated by the President at the time of appointment, three at the end of two years, three at the end of four years, and three at the end of six years, after such date. The Committee shall designate one of its own members as Chairman. The Committee shall meet at least four times in every calendar year. The members of the Committee shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their traveling and other expenses while engaged in the work of the Committee.

"(c) There is established a Federal Agency Liaison Committee consisting of—

"(1) a Chairman, who shall be the Administrator of the Environmental Protection Agency; and

"(2) a representative or representatives from (A) the Council on Environmental Quality; (B) the Department of the Interior, (C) the National Science Foundation, (D) the Department of Agriculture, (E) the Department of Commerce, (F) the National Aeronautics and Space Administration, (G) the Department of Defense, (H) the Atomic Energy Commission, (I) the Smithsonian Institution, and (J) the Department of Health, Education, and Welfare, and who will serve without additional compensation.

"(3) The Chairman of the Committee may designate one of the members of the Committee as Acting Chairman to act during his absence.

"(4) Each member of the Committee shall keep the Department or Agency which such member represents fully and currently informed of all the activities of the National Environmental Center.

"(5) The head of each Department or Agency represented on the Committee shall keep the Board fully and currently informed on all matters within such Department or Agency which relate to the activities of the National Environmental Center.

"SEC. 5. (a) In administering the Center, the Board shall have all necessary and proper powers which shall include, but not be limited to, the power to—

"(1) (A) designate or establish not to exceed six National Environmental Laboratories with the geographical distribution of any such Laboratories determined by the Board after consideration of the criteria set forth in subsection (b) of this section;

"(B) The Board shall not designate or establish the location of any National Environmental Laboratory until such location has been approved by resolutions adopted in substantially the same form by the appropriate Committee of the House of Representatives and by the Committee on Public Works of the Senate. For the purpose of securing consideration of such approval the Board shall transmit to the Congress a prospectus of the proposed location including (but not liimted to)—

"(i) a brief description of the location;

"(ii) an estimate of the maximum cost of the location; and

"(iii) a statement of justification for such location.

"(2) enter into agreements to establish various degrees of affiliation with existing agencies and organizations;

"(3) establish broad policy directions for the Center;

"(4) solicit, accept, and dispose of gifts, bequests, and devises of money, securities, and other property of whatsoever character for the benefit of the Center and any National Environmental Laboratory designated or established under paragraph (1) of this subsection, and any such money, securities, or other property shall, upon receipt, be deposited into a special fund administered by the Board for the purposes of the Center and the source, amount, and restrictions of any gift, bequest, or devise of money, securities, or other property in excess of $5,000 fair market value shall be included in the annual report required under section 10 of this Act;

"(5) obtain grants from, make contracts to, and make contracts with, State, local, and private agencies, organizations, institutions, and individuals;

"(6) obtain grants from, and make contracts with, any Federal agency, including the Atomic Energy Commission, as provided for in section 33 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2053) and the Environmental Protection Agency;

"(7) take such steps as may be necessary to coordinate with all public and private agencies so as to avoid unnecessary duplication of environmental research and development activities;

"(8) acquire such site or sites as may be necessary for the location of the Center and the National Environmental Laboratories

established or designated under paragraph (1) of this subsection;

"(9) acquire, hold, maintain, use, operate, and dispose of any physical facilities, including aircraft, vessels, vehicles and other equipment necessary for the operation of the Center.

"(10) appoint and fix the compensation and duties of a General Manager and such officers of the Center as may be required. The compensation of the General Manager and other such officers shall be fixed without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of such title 5;

"(11) appoint and fix the compensation and duties of a Director or Directors and such other officers as may be necessary to administer any National Environmental Laboratory established pursuant to paragraph (1) of this subsection; and such Director or Directors may be appointed and compensated without regard to such provisions of title 5 of the United States Code; and

"(12) provide for the widest practicable and appropriate dissemination of information concerning its activites and the results thereof, including support for appropriate mechanism of public understanding of environmental issues.

"(b) In designating the primary research program for each National Environmental Laboratory established under paragraph (1) of this subsection, the Board shall consider the general environmental problems related to ecosystem measurement and analysis, recycling materials and pollutants, energy, community restoration and development, transportation, and resource utilization, technology assessment, and long-range environmental planning.

"SEC. 6. Any Director appointed under paragraph (11) of subsection (a) of section 5 of this Act shall be responsible for the management and development of the National Environmental Laboratory for which he is appointed and for the research program that such Laboratory conducts, subject only to the general policy directions provided by the Board pursuant to subsection (a) of section 5 of this Act.

"SEC. 7. The Board shall, in connection with acquisition of any site or sites, provided for in clause (8) of subsection (a) of section 5 of this Act, provide to businesses and residents displaced from any such site or sites relocation assistance, including payments and other benefits, equivalent to that authorized to displaced businesses and residents under the Housing Act of 1949, as amended. In providing such relocation assistance and developing such relocation program the Board shall utilize to the maximum extent the services and facilities of the appropriate Federal and local agencies.

"SEC. 8. The Board is authorized to adopt an official seal which shall be judicially noticed and to make such bylaws, rules, and regulations as it deems necessary for the administration of its functions under this Act, including, among other matters, bylaws, rules, and regulations relating to the administration of its trust funds and the organization and procedures of the Board. A majority of the members of the Board shall constitute a quorum for the transaction of business.

"SEC. 9. (a) There is hereby authorized to be appropriated to the Board $50,000,000 for each of four consecutive fiscal years beginning with the fiscal year ending June 30, 1972, to be deposited in a fund (hereinafter referred to as the "Special Trust Fund") for the perpetual maintenance and support of the long-term research activities of the Center. It shall be the duty of the Board to invest such fund only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of the outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are extended to authorize the issuance at par of public-debt obligations for purchase by the Special Trust Fund. Such obligations issued for purchase by the Special Trust Fund shall have maturities fixed with due regard for the needs of the Special Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Board may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price only where it determines that the purchase of such other obligations is in the public interest. Any obligations acquired by the Special Trust Fund (except public-debt obligations issued exclusively to the Special Trust Fund) may be sold by the Board at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

"(b) The Board shall, on or before October 1 of each year, submit to the Committees on Appropriations of the House of Representatives and of the Senate a statement of the expenditure, in the preceding fiscal year, of all funds available under subsection (a) of this section.

"(c) In addition to amounts appropriated pursuant to subsection (a) there are authorized to be appropriated for the fiscal year beginning July 1, 1972, $40,000,000, and for the fiscal year beginning July 1, 1973, $80,000,000. Any sums appropriated under authority of this subsection shall remain available until expended.

"SEC. 10. The General Manager of the Center shall transmit annually to the President and to Congress a report which shall set forth, but not be limited to, (1) an audit of expenditures in accordance with generally accepted accounting procedures, (2) bibliographies, with annotations, of research performed, and (3) a description of ongoing research programs."

OVERSIGHT STUDY

SEC. 11. The Comptroller General of the United States shall conduct a study and review of the research, pilot, and demonstration programs related to environmental quality, which are conducted, supported, or assisted by all agencies of the Federal Government pursuant to any Federal law or regulation and assess the conflict, coordination, and efficacy of such programs, and make an interim to the Congress thereon by January 1, 1973, and a final report by June 30, 1974.

Mr. BAKER. Mr. President, on this bill there are some amendments made to the original text by the reporting committee and before we proceed to consideration of the bill, I ask unanimous consent that the several committee amendments be considered and agreed to en bloc and that the bill as thus amended be treated as original text for purpose of further amendment.

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

Mr. BAKER. Mr. President, I have a brief statement on the bill which I will abbreviate even further in the interests of saving time.

My understanding is that there is at the desk an amendment to be offered by the distinguished Senator from Oklahoma (Mr. BELLMON) which I find entirely acceptable and to which I am willing to agree, at the appropriate time.

It is also my understanding that the distinguished junior Senator from New York (Mr. BUCKLEY) has an amendment, which is not printed and at the desk but which I have examined and, at the appropriate time, I think, I will find that to be acceptable as well.

Without imposing unduly on the time of the Senate, I want to extend my appreciation to the Committee on Public Works and its staff, especially to its chairman, the distinguished Senator from West Virginia (Mr. RANDOLPH) and the ranking Republican member, the distinguished Senator from Kentucky (Mr. COOPER), for holding extensive hearings on this proposal over a period of time and for permitting the subcommittee and the full committee to consider the proposal fully and to report it for action to the floor of the Senate.

Similarly, I would like to express my appreciation to the majority leadership and the minority leadership for seeing that the bill on the calendar was given the opportunity to be taken up for action this morning. Being late in the session, I am especially mindful of the gratitude that those of us who sponsor this bill owe the joint leadership in making it possible for us to consider the bill at this time.

Now, Mr. President, it is my hope and expectation that the Senate will not be long detained in consideration of this measure. It is, I think, a fairly simple and straightforward piece of legislation. But it is also, in my judgment, an important one.

The committee report on S. 1113 describes in detail the need for this new institutional structure and how the committee hopes that the National Environmental Center will interact with existing public and private efforts in the environmental field.

The bill would create a new Federal agency in Washington D.C., called the National Environmental Center. Policy for the NEC would be established by a seven-man Board of Trustees. The Board would be empowered to name a General Manager of the NEC and such other personnel as may be necessary to carry out the functions of the Center. The Board would be further authorized to establish as many as six independent National Environmental Laboratories—NEL's—each headed by a Director appointed by the Board.

The committee has gone to great length—both in the bill itself and in the committee report—to emphasize its intention that the work of the NEC and the NEL's not be duplicative of the work being done now or in the future by other public and private agencies, groups, institutions, corporations, or individuals.

The committee intends that the NEC and the NEL's should function in such a way as to complement the work of others. In order for this goal to be realized, it is essential that the NEC–NEL structure establish and maintain close formal and informal relationships with others in the field. Toward this end, the NEC and the NEL's should, as a general rule, restrict themselves to the kind of undertakings for which they are particularly well suited—comprehensive, systematic, interdisciplinary research—and leave to the mission-oriented agencies those tasks for which they have been created and for which they, in turn, are best suited—intensive, short-term research and development related to particular environmental problems. Section 10 of the bill authorizes a study by the Comptroller General of the various on-going environmental research and development efforts of existing agencies, with a view toward recommendations from the General Accounting Office as to how actual and potential duplication might be eliminated through the consolidation of functions. It may prove to be the case that some of the activities now being conducted by line agencies would more appropriately be undertaken by the NEC–NEL structure.

The PRESIDING OFFICER (Mr. ALLEN). The time of the Senator from Tennessee has expired.

Mr. BYRD of West Virginia. Mr. President, I yield my 3 minutes to the distinguished Senator, if I may be recognized under the morning hour.

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

Mr. BAKER. I thank the distinguished acting majority leader.

Mr. President, the relationship between the NEC–NEL structure and the other environmental entities should not be characterized by competition but by a sort of symbiotic cooperation and cross-fertilization. It is expected that there will be a substantial and continuing interchange of information and personnel among the various institutions carrying out research in the environmental field.

The bill itself seeks to encourage this kind of relationship and to provide the tools necessary for its practical realization. The Board has been given full authority to make and receive grants, enter into contracts, make and receive interagency transfers, and enter into interagency agreements. Thus, the NEC–NEL's should make full use of the personnel and facilities of other agencies and institutions, just as such other agencies and institutions should make full use of the personnel and facilities of the NEC–NEL's. This two-way relationship should not be limited to public agencies at the Federal, State, and local level; it should be extended to private agencies, corporations, and individuals.

In establishing or designating the National Environmental Laboratories authorized by section 5(a)(1) of the bill, the Board may well choose to establish one or more of the NEL's at a site where a public or private facility is already located and in operation, rather than begin from scratch. This would, in the committee's judgment, be entirely appropriate. And there is ample precedent for such an arrangement. The Board has, under the provisions of the bill, full flexibility in this regard, subject only to site approval by the appropriate congressional committees. Through its capacity to enter into leases and other contracts, its authority to make and receive grants and interagency transfers, the Board should be able to make whatever arrangements are necessary, both with regard to physical facilities and personnel, to promptly establish the necessary National Environmental Laboratories.

While it is difficult to overemphasize the need for cooperation and for avoiding duplication, it is also important to emphasize the significant degree of independence that the committee has sought to provide for the NEC and the NEL's. During the course of its hearings on the bill, the committee heard testimony from a number of Federal agencies to the effect that the existing Federal structure possesses the capacity to do the kind of comprehensive, systematic, interdisciplinary work proposed for the NEC–NEL's. Had the committee been persuaded that this was, indeed, the case, it would not have acted favorably on S. 1113. While the committee intends no unfavorable or critical reflection on the competence and dedication of existing agency personnel, the committee does conclude that, by virtue of their very nature, existing mission-oriented agencies cannot and should not be expected to perform the functions envisioned for the NEC–NEL's. It is no criticism of the present or any other administration to observe that the work of mission-oriented agencies is necessarily subject to the program of any given national administration and likely to be concentrated in those areas which most immediately support the regulatory priorities of any given moment.

In order to achieve its intended potential, the NEC–NEL structure, while responsive to the executive and legislative branches, must have a meaningful measure of independence, so that long term, comprehensive needs will not be compromised by the exigencies of the moment. The Board of Trustees is expected to set broad policy guidelines, and the Director of each National Environmental Laboratory is expected to exercise broad discretion over the operations of the NEL for which he is responsible.

It may well be that the Board will choose to charge each NEL established under the Act with a principal or "primary" mission, such as those enumerated in section 5(b) of the bill. Such a primary mission should not restrict the freedom of the Board or the Director of a particular NEL to involve themselves in other areas of exploration.

Another aspect of the bill that is particularly important, Mr. President, is the role of the NEC–NEL in policy formulation. The committee believes that it should be clearly understood that the Congress intends to delegate none of its own policymaking functions to the NEC–NEL's. It is the committee's hope that the work of the NEC–NEL's will greatly facilitate policy determinations in the environmental field by the Congress. But in section 3(b)(3) of the bill the committee seeks to make it explicitly clear, as words can make it clear, that the National Environmental Center and all of its components are not to become proponents or opponents of any potential policy determination. The NEC–NEL's could and should make available to policymakers the likely results of alternative courses of action. But, as the bill states, it is not to be an appropriate function of the NEC–NEL's to advocate any particular course of action. The committee believes that this distinction—however difficult it may be to realize in practice—is of great importance. The usefulness of the NEC–NEL's will be proportionate to their reputation for independence and objectivity. If the NEC–NEL's become involved as advocates, such a reputation will be very difficult to achieve and maintain. I personally would hope that the NEC–NEL's will come to be thought of, much as the Bureau of Standards is, as an agency that can be turned to with a minimum fear of political or ideological bias.

Mr. President, I ask unanimous consent that the general statement of the committee report and a section-by-section analysis of the bill be printed in the RECORD at this point.

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

GENERAL STATEMENT

The industrial revolution of the last century marked a major turning point in the economic and social history of man's existence. The invention and application of mechanized processes, the division and specialization of labor, the harnessing of new forms of energy, and the utilization of natural resources opened new vistas of economic prosperity. The industrial and technological revolutions have produced—particularly in the Western nations—a remarkably high material standard of living. And the exponential expansion of economic growth has assumed a degree of inevitability.

It became apparent to many—even during its early stages—that this period of unprecedented expansion would not be without its social costs. Dickens and scores of others chronicled the squalid social conditions and labor abuses that frequently characterized urbanized industrial centers and factory towns. Progressive governments undertook efforts to remedy some of the more egregious wrongs that had sprung up in the wake of rapid change. Affirmative legislative acts and the evolution of the common law have increasingly worked to expand and protect the rights of individuals and groups within the framework of a mixed free enterprise economy.

It was not until the decade of the 1960's, however, that the world's industrialized nations began to develop a widespread awareness of the impact of man's activities on the natural environment. Billowing smokestacks—long a symbol of human progress—became a symbol of environmental abuse. Air and water—long treated by the economic system as "free" commodities—began to assume an increasing value.

As public concern about environmental degradation grew, so did the demand for action. During the last decade, the Congress enacted a number of important environmental statutes designed to control and abate various types of insults to segments of the environment, e.g., air pollution, solid waste disposal, pollution of the navigable waterways and the oceans. Although much remains to be done in each of these areas,

an important and meaningful beginning has been made.

But it has become increasingly apparent that, in the long term, an intelligent relationship between man and his natural environment can only be achieved through a systematic approach. The global ecosystem is precisely that: a system. In this enormously complex network, each subsystem, however subtly, is interconnected with all others. Any action that impacts on one element of the environment can have a discernible effect on seemingly unrelated elements of the same fundamental system. It is not enough, then, to treat air pollution and water pollution as if they were discrete and separable problems. To use a gross example, it has been estimated that as much as 40 percent of the surface pollution of the oceans derives not from the discharge of pollutants directly into the aquatic environment but from the precipitation of air pollutants.

A number of Federal agencies are presently engaged in important research that relates, in varying degrees, to environmental considerations. Examples are the Environmental Protection Agency, the Department of the Interior, the National Aeronautics and Space Administration, the Department of Agriculture, the Department of Housing and Urban Development, the Department of Health, Education and Welfare, the National Science Foundation, and the Atomic Energy Commission. The contribution of these and other public and private research efforts will continue to be of major significance.

But virtually all efforts of this type are necessarily directed to a limited aspect of the environmental problem. This is the expected and appropriate function of a mission-oriented or regulatory agency. It is natural, for example, that the research carried out by the Water Quality Office of EPA should focus on the most immediate problems associated with water pollution, or that the research of the Department of Agriculture should be concentrated on land conservation and practices related to the productive use of agricultural and forest lands.

During the course of its many hearings and investigations on environmental matters over the past 8 years, the Subcommittee on Air and Water Pollution and the Committee on Public Works have repeatedly taken notice of the absence of any single public or private unit with the mandate and the resources to conduct systematic, interdisciplinary research on matters relating to the global environment. The Committee proposes to remedy this perceived deficiency—at least in part—through the establishment of the National Environmental Center and constituent laboratories. As the text of the bill clearly states, the National Environmental Center is not intended to supplant in any way the necessary activities of existing public and private agencies but, rather, to complement those agencies; to provide a process whereby the entire range of environmental research, analysis, and to assure that an assessment can be brought together and viewed as a coherent, systematic whole.

The interdisciplinary nature of the National Environmental Center can scarcely be exaggerated. In assessing the impact of man's activity of the environment, no single discipline can possibly anticipate the full range of effects that any single action or group of actions may have. It is expected that the National Environmental Center would draw on the broadest spectrum of professional competence: physical scientists, economists, lawyers, business executives, agronomists, demographers, sociologists, and historians, to name a few. And the work of these men and women would not be *multi*disciplinary but *inter*disciplinary, that is, a maximum effort must be made for coordination among various disciplines, so that aspects of a given environmental consideration which might escape the notice of one would be embraced by another.

A readily comprehensible example of the kind of question which would lend itself to this sort of interdisciplinary exploration is that of alternative modes of transportation. The decision by a medium-sized city to proceed with a mass-transit system will send ripples out through that community and throughout the society and the economy. If electrically-powered underground transit is selected, regional demands for electrical energy will be affected. In meeting the need for energy, utilities will demand alternative fuel sources which may cause mining coal that may devastate the surface of a distant mountain or a new drain on limited natural gas supplies, or the construction of a nuclear facility with its relatively high waste heat component. The selection of the routes for such a subway system will determine land use, living and employment patterns for years to come. The construction of the system itself requires the commitment of financial, material, and human resources that will affect surrounding markets.

Man-made degradation of the natural environment is not ordinarily malicious; it is the unwanted by-product of the full range of man's search for a richer and fuller life. There is every evidence that economic progress and a quality environment can be made compatible. But precisely because the full range of man's economic and social activity is involved, and precisely because the global ecosystem is a system and not a random collection of separate parts, no quest for harmony between man and his environment is likely to be successful unless it proceeds on a systematic and integrated basis.

SECTION-BY-SECTION ANALYSIS

Section 1. Section 1 would establish the short title of the Act as the "National Environmental Center Act of 1971."

Section 2. Section two provides a detailed statement of congressional findings and declaration setting forth the elements of the environmental problem which the Congress finds support the establishment of an organization with independence and sufficient professional breadth and scope to provide a unified and systematic approach to the problems of environmental quality.

Section 3. Section 3 would establish the National Environmental Center at the seat of government.

Section 4. Subsection 4(a) would establish the Center to be managed and controlled by a Board of seven Trustees appointed by the President with the advice and consent of the Senate to serve terms as designated.

Subsection 4(b) would establish a General Public Advisory Committee to advise the Board of Trustees on scientific and technical matters relating to the environmental research and development program of the National Environmental Center.

Subsection 4(c) would establish a Federal Agency Liaison Committee comprised of representatives of Federal agencies for the purpose of keeping the Board of Trustees fully and currently informed of all relevant activities of Federal agencies and keeping all agencies of the Federal Government fully and currently informed of all activities of the National Environmental Center.

Section 5. Subsection 5(a) would establish the powers and duties of the Board of Trustees to include the designation or establishment of six National Environmental Laboratories in locations subject to the approval, by resolution, of the Committee on Science and Astronautics of the House of Representatives and the Committee on Public Works of the United States Senate; to enter into contractual agreements; to establish affiliation with any existing agency or organization; to establish broad policy and directions for the Center and its Laboratories; to accept gifts for deposit in a fund with public disclosure of gifts over five thousand dollars; to obtain grants and to make grants and contracts with other organizations; to make contracts with, and obtain grants from any Federal agency; to act to avoid duplication of environmental research and development activities; to acquire sites for the location of National Environmental Laboratories; to acquire and hold title to equipment, including aircraft, vehicles, and vessels; to appoint a General Manager of the Center for administrative purposes; and to appoint and fix compensation for Directors of each national laboratory and such other officers as may be necessary.

Subsection (b) describes general areas of environmental concern which the Board shall consider at the time of designating the primary research program for any laboratory established.

Section 6 sets forth the requirements and duties of the Directors of each National Laboratory established by the Board of Trustees.

Section 7 provides authority for relocation assistance in the event of land acquisition for the National Environmental Laboratory.

Section 8 provides general authority for the establishment of by-laws, rules and regulations for the administration of the Center and the Laboratories.

Section 9. Subsection (a) establishes authority to create a special trust fund for the long-term endowment of the Center. There is authorized to be appropriated $50 million for each of four consecutive fiscal years with such appropriations available only to invest in interest bearing obligations of the United States.

Subsection (b) requires the Board to transmit to the Committee on Appropriations of the House of Representatives and the Senate, a statement of the expenditures of any funds derived from the special trust fund.

Subsection (c) authorizes the appropriation of $40 million in fiscal year 1973 and $80 million in fiscal year 1974 for the operation of the Center and the National Environmental Laboratories.

Section 10. Section 10 requires the General Manager of the Center to transmit annually to the President and to the Congress a report setting forth the expenditures of the Center and a description of the research programs undertaken by the Center.

Section 11. Section 11 would mandate the Comptroller General to conduct a study of the environmental research activities of all agencies of the Federal Government and furnish Congress with an assessment of conflict, overlap, and coordination.

COMPREHENSIVE ENVIRONMENTAL RESEARCH MOVES AHEAD

Mr. RANDOLPH. Mr. President, today the Senate will authorize a giant step forward in the struggle to solve our Nation's environmental problems. S. 1113, the National Environmental Center Act of 1971, when enacted, will assure a far more systematic approach toward combating the problems which cause the deterioration of the world around us.

There is ample evidence that no single public or private agency has the authority, the resources, and the manpower to conduct systematic interdisciplinary research on environmental matters such as is envisioned by this legislation. The establishment of the National Environmental Center will provide such a capability. This center and its constituent laboratories will complement the existing functions of public and private agencies by providing a process whereby the whole range of environmental research can be brought together and studied as a coherent, systematic whole.

Mr. President, this legislation was primarily sponsored by Senator HOWARD

BAKER of Tennessee and Senator EDMUND MUSKIE of Maine. While I joined them in this endeavor and the Committee on Public Works devoted much time and thought to the subject of national environmental laboratories, it was these two Senators who formulated the initial legislation and guided it through the committee. Their efforts deserve the highest praise.

Mr. President, this legislation is added evidence of the commitment of the members of the Committee on Public Works and its Subcommittee on Air and Water Pollution to the development of adequate legal authority and effective institutions to clean up the Nation's environment.

I hope that final action will be taken on National Environmental Center legislation at an early date.

Mr. COOPER. Mr. President, I support the action the Senate takes today on the bill, S. 1113, to establish an independent and integrated environmental research capability.

Mr. President, all of us are aware of the dimensions of the environmental problem. Air and water pollution and solid waste disposal problems face all of us every day. To these problems are now added issues related to energy, to transportation, to urban deterioration, to surface mining, and on and on. All of these great issues are interrelated and yet nowhere in our Government is there any substantive capability to undertake interdisciplinary research on these issues and on their direct and indirect effects. The bill, S. 1113, would provide such capability.

Mr. President, with this bill the Senate reaches a new level of awareness of the environmental problem. We are beginning to hear more and more that the problems of the environment cannot be solved quickly or easily. There can be no doubt about their complexity, nor any doubt about the high cost of remedies. It is clear we must examine the true causes of environmental problems and relate public policy to those causes.

We have all often heard the rhetoric of the need for change to solve the environmental problems. Yet, Mr. President, we still have very little knowledge or evidence on what directions that change would follow. In large measure, an inadequate research and analysis base underlies that uncertainty.

It is to be hoped that by creating an independent staffed and funded research institution, this Nation will be able to begin to generate the kind of research, analysis, and assessment which should provide new insights into the nature of the problem and assist in the development of guidelines for the establishment of policy to resolve them.

The bill, S. 1113, is largely the product of Senator HOWARD BAKER, who since the beginning of his service on the Subcommittee on Air and Water Pollution has emerged as one of the truly strong forces in the development of the congressional response to environmental problems. Senator BAKER brings to the Senate a combination of an outstanding legal mind supported by a background in engineering. He has become an excellent legislator.

It is entirely fitting that the President selected Senator BAKER to serve as chairman of the Citizens Advisory Committee to the Secretary of State in preparation of the U.S. position for the United Nations Conference on the Environment to be held next spring. Senator BAKER has accumulated a wealth of knowledge and experience on environmental issues. The bill, S. 1113, is a testament to his outstanding expertise.

S. 1113, is the product of an extensive study by the Committee on Public Works. The bill was originally introduced in the 91st Congress following the submission of a special report to Senators BAKER and MUSKIE by an interdisciplinary task force at Oak Ridge National Laboratory. During the second session of the 91st Congress, Senators BAKER and MUSKIE solicited comments on the proposal from a large number of persons and organizations familiar with problems related to environmental research. These responses were printed in a publication of the committee.

These two Senators, now along with 43 additional cosponsors, reintroduced the environmental research proposal, S. 1113, in this Congress. Six days of hearings were held by the subcommittee and additional material was solicited, especially from Government agencies.

The need for the independent institution which would be created in the bill, S. 1113, is clearly established. The Congress must provide for an organization with a mandate to perform large scale interdisciplinary research on environmental issues. The Nation cannot rely upon existing mission or regulatory agency research on environmental issues. The environmental research envisaged in S. 1113 cuts across all agency lines and, indeed, will cut across national boundaries. Any agency which is going to perform research which will have global implications must be independent and be completely immune from allegations of nonobjectivity; allegations which would normally flow if the organization were part of an existing mission agency or agencies. S. 1113 is structured to prevent these allegations from arising in fact, or in theory. Several provisions, in addition to structural independence—such as public disclosure requirements or research activities and funding sources are specifically included in the bill for this purpose.

Mr. President, in testifying before the committee, Dr. Roger Revelle, on behalf of the National Academy of Science/National Academy of Engineering states:

Since that time, we have done more thinking on this question, and we would say that the National Environmental Laboratory, as you have envisioned it, would be a valuable part of the national program for environmental maintenance and improvement, provided it had three unique characteristics.

The first would be that it should combine the *natural and social sciences*. The staff should not consist only of physical scientists or biologists and engineers, but also there should be economists and specialists in human problems, because the basic environmental questions, as you gentlemen well realize, are problems of the interactions between people and their environment.

Second, it should have a combination of *scientific research and engineering development*. Not just one or the other, but both research and at least preliminary or exploratory development.

Third, it should combine in-house research and engineering development, and support of what one might call out-house research and engineering; that is, university research, research by other laboratories, and support of preliminary developments by industry.

Mr. President, the bill S. 1113, provides the characteristics described by Dr. Revelle. Particularly emphasized is the interdisciplinary character of the research. In addition Dr. Revelle strongly supported the independence of the National Environmental Center in his concluding remarks:

Finally, I would agree that an independent status for the Laboratory as envisioned in S. 1113 would in fact give it flexibility, responsiveness, and visibility, and would insure that it looks dispassionately, disinterestedly, and with a sufficiently broad view at environmental problems.

I want to commend Senator BAKER and Senator MUSKIE and Senator RANDOLPH and all the members of the Subcommittee on Air and Water Pollution and the Committee on Public Works, and the staff, for their outstanding work in bringing this bill to the Senate.

The PRESIDING OFFICER (Mr. ALLEN). The bill is open to further amendment.

Mr. BELLMON. Mr. President, I have an amendment at the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk proceeded to state the amendment.

Mr. BELLMON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment (No. 783) reads as follows:

On page 1, between lines 2 and 3, insert the following:

"TITLE I".

On page 1, line 3, strike out "That this Act" and insert in lieu thereof "SECTION 1. This title".

On page 5, line 13, strike out "Act" and insert in lieu thereof "title".

On page 5, line 20, strike out "Act" and insert in lieu thereof "title".

On page 7, line 6, strike out "Act" and insert in lieu thereof "title".

On page 7, line 13, strike out "Act" and insert in lieu thereof "title".

On page 10, line 17, strike out "Act" and insert in lieu thereof "title".

On page 12, line 20, strike out "Act" and insert in lieu thereof "title".

On page 13, line 2, strike out "Act" and insert in lieu thereof "title".

On page 13, line 5, strike out the word "Act" and insert in lieu thereof "title".

On page 13, line 2, strike out "Act" and insert in lieu thereof "title".

On page 16, after line 19, add the following new title:

"TITLE II

"SEC. 201. (a) This title may be cited as the 'State Environmental Center Act of 1971'.

"(b) The purposes of this title are to stimulate, sponsor, provide for, and supplement existing programs for the conduct of research, investigations, and experiments relating to the environment, to provide for concentrated study of environmental problems of particular importance to the several States, to provide for the widest possible dissemination of environmental information,

and to assist in the training of professionals in fields related to the protection and enhancement of the Nation's natural environment.

"SEC. 202. (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as the Administrator) is authorized to establish or designate within each State one State environmental center.

"(b) Each State environmental center established or designated pursuant to subsection (a) of this section shall be located at that college or university in each State now receiving, or which may hereafter receive, the benefits of the Act of July 2, 1862, as amended, except that in any State in which two or more such colleges or universities have been or hereafter may be established, the State environmental center shall be located at one of such institutions designated by the Governor of such State.

"(c) Each State environmental center shall—

"(1) have a nucleus of administrative, professional, scientific, and technical personnel capable of planning, coordinating, and directing comprehensive research programs and the other activities necessary to carry out the purposes of this title;

"(2) assist and coordinate the research and education capability of educational institutions and other appropriate institutions with the State;

"(3) be authorized to make grants to, contract with, providing matching funds to, and enter into other arrangements with educational institutions, foundations, private organizations, and individuals whose training, experience, and qualifications are such as to contribute to the work of the State center in furthering the purposes of this title; and

"(4) be authorized to contract with, make grants to, and accept grants from local, State, and Federal agencies for the purpose of undertaking research, investigations, experiments, and any other activities related to the environment and consistent with the purposes of this title.

"SEC. 203. (a) In order to aid in diffusing among the people of the United States useful and practical information on subjects relating to the enhancement of the Nation's natural environment, each State environmental center designated or established pursuant to section 202 of this title shall have as one of its principal functions an education extension program.

"(b) The work of the education extension program of each State environmental center shall be directed toward, but not limited to—

"(1) the general public;

"(2) units of government, including, local, State, and Federal;

"(3) business, industry, and commercial establishments; and

"(4) civic, fraternal, and other public interest groups.

"(c) The education extension program of each State environmental center shall provide a full range of educational and communications services, including—

"(1) workshops, seminars, clinics, courses, field trips, and demonstrations;

"(2) the publication of materials, including bulletins, fact sheets, monographs, and other appropriate matter; and

"(3) a reference service to facilitate the rapid identification, acquisition, retrieval, and use of environmental information.

"SEC. 204. (a) The Administrator shall promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this title.

"(b) Each State environmental center shall transmit annually to the Administrator a report which shall set forth, but not be limited to, (1) an audit of expenditures in accordance with generally accepted accounting procedures, (2) bibliographies, with annotations, of research performed, and (3) a description of ongoing research programs.

"SEC. 205. (a) There is authorized to be appropriated for the fiscal year beginning July 1, 1972, $6,250,000, of which $125,000 shall be made available by the Administrator to each State environmental center; for the fiscal year beginning July 1, 1973, $8,750,000, of which $175,000 shall be made available by the Administrator to each State environmental center; and for the fiscal year beginning on July 1, 1974, and for each fiscal year thereafter, $12,500,000, of which $250,000 shall be made available by the Administrator to each State environmental center.

"(b) In addition to the sums authorized by subsection (a) of this section, there is further authorized to be appropriated for the fiscal year beginning July 1, 1972, and for each fiscal year thereafter, $10,000,000, which shall be allocated among the States on the basis of population: *Provided*, That sums allocated under this subsection shall be made available only to State environmental centers in those States which provide $1 for each $2 provided under this subsection."

Mr. BELLMON. Mr. President, I thank my distinguished friend, the Senator from Tennessee (Mr. BAKER), for his comments and also congratulate him for having taken the leadership in the developing of S. 1113.

Mr. President, I consider this measure to be one of the most important pieces of legislation we have had before the Senate this year. I hope that the amendment, if agreed to, will strengthen the bill in some way.

The purpose of this amendment is to add an additional component to those laboratories established by the original bill.

The amendment accomplishes two things. First, it authorizes the establishment of an environmental center in each of the 50 States, to be located at a land grant institution. The purpose of this center is to carry out research, planning, and education on environmental questions.

Many environmental problems are peculiar to one locality, or to a limited geographic area. The establishment of a State center, to provide a research facility to solve that local problem, is of prime importance. In addition, the State center will provide a working facility to augment, supplement, and localize work done in the regional laboratory.

The second aspect of my amendment to S. 1113 is the technology transfer component established with each State center. The term technology transfer refers to the dissemination of information and education of the general public, as well as persons who need accurate environmental knowledge to meet their responsibilities in government and industry. Such technology transfer is an essential element to guarantee the effectiveness of a regional laboratory or a State center. I would equate this component to the extension service of the Department of Agriculture, created by the Morrill Act. This program has developed and disseminated a wealth of knowledge, not only in agriculture, but in practically every field of endeavor. This amendment will build upon and broaden a system that has already proven itself by a long period of service.

This amendment is the same as S. 681, now before the Interior and Insular Affairs Committee. S. 681 complements S. 1113, and it seems highly appropriate to attach it as an amendment.

The purpose is to provide a mechanism to continually monitor environmental matters.

An environmental crisis crept upon this Nation in recent years. This legislation is intended to help avoid such a development again. It will furnish a means and a system to solve the problems as they arise, so that they never reach a crisis level again.

I congratulate the distinguished senior Senator from Tennessee (Mr. BAKER) for his leadership in introducing S. 1113 and I hope that he will see fit to accept the amendment.

Mr. BAKER. Mr. President, I am delighted to accept the amendment. I commend the Senator from Oklahoma for his efforts. The Senator is entirely correct. His amendment will both strengthen and improve S. 1113.

I am delighted to accept the amendment.

I ask the Senator from Oklahoma if, in the vein of strengthening the bill, he would not agree that one appropriate function of the State environmental centers might be the giving of advice and guidance to Governors and State legislatures on such matters.

Mr. BELLMON. The Senator is correct. It is my opinion that because of the urgency of the environmental issue and because of the tremendous emotion that surrounds the environment, there are many units of government that have to make decisions and take action to police the environmental problems when, in some cases, they do not have access to the basic knowledge and information that they need.

Mr. BAKER. I am delighted to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. BAKER. Mr. President, as I stated earlier, I understand that the junior Senator from New York has an amendment that he may desire to offer to the bill. I have examined the amendment. I find it acceptable. If he cares to offer it at this time, I would be glad to consider it further.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. BUCKLEY. Mr. President, I thank the Senator from Tennessee. I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

On page 4, line 21, after the word "and" insert the following new subparagraph:

(E) the development of comprehensive mechanisms for measuring the total social, environmental and economic costs and benefits of human activities, so as to provide an objective basis for choosing between alternative courses of action which affect the environment; and

Mr. BUCKLEY. Mr. President, the purpose of my amendment is to direct the Board of Trustees of the centers to establish as one of its first research objectives the development of mechanisms for the assessment of the cost-benefit and risk-benefit tradeoffs of human activities as they affect the environment.

This year and last, the Senate has adopted sweeping legislation designed to reduce the pollution of our air and water to the extent feasible. In the Federal Water Pollution Control Amendments of 1971, in fact we have set as our goal—or more accurately, as our ideal—the elimination of the discharge of all pollutants into our navigable waters by 1985, except in instances where the "social and economic benefits" to be derived from the imposition of this standard will not justify the "social and economic costs" which would have to be incurred in order to eliminate such discharges. This legislation, however, has had to beg a rather substantial question; namely, just how do we go about measuring "social"—which in the context includes environmental—costs and benefits with sufficient precision to make the necessary judgments? To the extent that we do not have at our disposal widely accepted techniques for making such measurements, to that extent must we rely on what in the last analysis will be the subjective judgments of the Administrator of the Environmental Protection Agency.

One of the difficulties which we face at the present time is that our normal systems of accounting cannot accommodate commodities whose cost and values are not known. While we now generally accept the more enlightened concept that air and water cannot any longer be considered "free," we have not yet achieved any clear idea as to how we can place a cost figure on a given volume of air or water which is returned to the atmosphere or to a stream with impurities added. A system of "accounting" for the environment is rendered especially difficult to achieve because so many of the problems deal with effects separated by time and place from the specific action which is taken.

The PRESIDING OFFICER. The time for the transaction of routine morning business has expired.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time for the transaction of routine morning business be extended for an additional 6 minutes.

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

Mr. BUCKLEY. Mr. President, given the complexity and novelty of the problems which are involved, it will undoubtedly take years of intensive effort to develop generally accepted mechanisms for measuring these cost/benefit tradeoffs in a sufficiently comprehensive manner. In the meantime, we will be operating very much in the dark and will have to rely on largely arbitrary laws and regulations which will inevitably prove to have been unnecessarily costly and insufficiently effective. Until we have at our disposal the tools for making reasonably objective choices between environmental alternatives, we will inevitably find ourselves in the unhappy, and potentially dangerous, position of having to place extraordinary reliance on the judgment of a handful of individuals who will have the power of economic life and death over any number of businesses and communities.

Mr. President, we cannot begin too soon to launch an intensive effort to develop these techniques. I believe that the National Environmental Centers contemplated by the legislation before us will provide us with an ideal vehicle for the achievement of this essential goal.

I want to say that we need this tool if we are to provide ourselves with an efficient, effective, and generally acceptable technique for making decisions with respect to the environment.

Mr. President, I believe the measure of the Senator from Tennessee provides us with the proper vehicle for undertaking the kind of decisions that we need to make. I commend the Senator from Tennessee.

Mr. BAKER. Mr. President, I thank the distinguished Senator from New York for his contribution in this respect. I know of no further amendments to the bill.

Mr. BYRD of West Virginia. Mr. President, will the distinguished Senator yield?

Mr. BAKER. I would be happy to yield to the distinguished assistant majority leader.

Mr. BYRD of West Virginia. Mr. President, would the distinguished Senator advise the Senate as to whether or not the amendments which have been offered today by the Senator from Oklahoma and the Senator from New York are acceptable to the distinguished chairman of the Committee on Public Works, Mr. RANDOLPH, and other Members on this side of the aisle.

Mr. BAKER. The Bellmon amendment has been considered extensively, and it is my understanding that both majority and minority members on the Committee on Public Works agree in principle and to the content of the Bellmon amendment, which is somewhat different from the way it was originally introduced; so I think it is fair to say that there is general agreement on the Bellmon amendment.

The Buckley amendment is entirely acceptable to the Senator from Tennessee. I received the amendment only this morning, although I had received information it was to be called up.

At this time I am attempting to check to determine if the distinguished chairman of the Committee on Public Works is agreeable to the amendment. May I at this point suggest a brief quorum to check on the matter?

Mr. BYRD of West Virginia. Would this suggestion be agreeable: That we pass the bill and that we not ask that it be reconsidered? This would give the distinguished Senator an opportunity to check into the matter. If a Senator desires to have it reconsidered, it could be then done.

Mr. BAKER. We can do that. However, I see that my staff assistant has returned. If we may have just a moment I will check.

The PRESIDING OFFICER. The Buckley amendment has not been agreed to.

Mr. BAKER. I understand. I suggest the absence of a quorum at this time.

The PRESIDING OFFICER. The Clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. 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. BAKER. Mr. President, is my understanding correct that the pending question before the Senate is the Buckley amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. It is my understanding that the position of the distinguished senior Senator from West Virginia, who is chairman of the Committee on Public Works, is that he would not object to this amendment. I have no further comments to make at this time.

Mr. BYRD of West Virginia. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York (Mr. BUCKLEY).

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 and the third reading of the bill.

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

S. 1113

An act to establish a structure that will provide integrated knowledge and understanding of the ecological, social, and technological problems associated with air pollution, water pollution, solid waste disposal, general pollution, and degradation of the environment, and other related problems

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

TITLE I

SECTION 1. This title may be cited as the "National Environmental Center Act of 1971".

SEC. 2. (a) The Congress finds—

(1) that global environment is presently experiencing a rapid deterioration of qualty and depletion of resources;

(2) that the environmental resources of the Nation are finite;

(3) that the demands of a growing population and an increasing material standard of living will place an additional burden upon the capacity of the environment;

(4) that the optimum allocation and use of our limited environmental resources will require the maximum use of scientific principles to restore and enhance the health, diversity, beauty, and capacity of the environment for perpetuity;

(5) that the development and application of technologies has often created unintended ecological, economic, and social effects which have a profound impact on the environment;

(6) that new and existing technologies must be assessed on a timely basis in order to detect, predict, and prevent or minimize

the detrimental effects these may have on the ecosystem including man;

(7) that the amelioration and prevention of environmental problems depend on a thorough understanding of the complex interactions among the human, natural, and technological components of the ecosystem, thereby requiring multidisciplinary research and analysis of the total environment;

(8) that while the established departments and mission-oriented agencies make and will continue to make valuable contributions in specialized research and development, they lack authority and organization to deal comprehensively with the interconnected problems of the environment; and

(9) that a complete and thorough understanding of the ecosystem cannot be accomplished through fragmented application of specialized research and development efforts but rather requires a unity of effort and emphasis which is focused on the restoration and enhancement of the total environment.

(b) The Congress declares—

(1) that to assist in the effort to restore and enhance the global environment and to minimize future damage to that environment, it is necessary to establish a new organization with sufficient professional breadth and scope to provide a unified and systematic approach to the problems of technology assessment, resource utilization and environmental quality; that such an organization will complement but not supplant those public and private agencies presently dealing with various aspects of the environment; and

(2) that the organization will conduct basic research, development, and analysis of human and natural activities affecting the environment, including resource utilization and perform other necessary functions which shall include but not be limited to (A) data collection, storage, and dissemination, data analysis and synthesis, the development of methods and devices, and objective analysis of various environmental and resource use policy alternatives; (B) training and education conducted through and jointly with other institutions, including universities and colleges; (C) the formulation of, and where appropriate, the development, testing, and demonstration of, alternative solutions to existing and probable environmental insults; (D) the performance of other functions to assist public and private agencies and persons in the restoration, enhancement, and protection of the environment and conservation of resources; and (E) the development of comprehensive mechanisms for measuring the total social, environmental and economic costs and benefits of human activities, so as to provide an objective basis for choosing between alternative courses of action which affect the environment; and

(3) that it shall not be an appropriate function for the organization or of any of its constituent parts of representatives to make specific recommendations as to policy or choices between alternative courses of action, whether at its own initiative or upon request, but that the organization may, upon request, make available expert testimony and other information and present various alternative courses of action and describe the probable results of each such course of action.

(4) that the organization shall be located and operated in a manner to avoid overlap and conflict with existing public and private research agencies and organizations and, to the maximum extent possible, the organization shall draw upon the expertise of and affiliate with such existing agencies and organizations in carrying out its duties and responsibilities under this title.

SEC. 3. There is established at the seat of government a National Environmental Center and a Board of Trustees of the Center (hereinafter referred to as the "Center" and the "Board") whose duty it shall be to maintain and administer the Center and site or sites thereof, and to execute other functions as are vested in the Board by section 4 of this title.

SEC. 4. (a) (1) The Board shall be composed of seven members appointed by the President from the public, by and with the advice and consent of the Senate. Not more than four of such members of the Board may be members of the same political party.

(2) Each member of the Board appointed under subsection (a) of this section shall serve for a term of six years from the expiration of his predecessor's term except that (A) any such member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (B) the terms of office of such members first taking office shall begin seven days after approval by the Senate as provided in paragraph (1) of this subsection; and shall expire, as designated by the President at the time of appointment, two at the end of two years, two at the end of four years, and three at the end of six years. No member of the Board shall be eligible to serve in excess of two terms, except that the member whose term has expired may serve until his successor has qualified.

(3) The President shall designate a Chairman and a Vice Chairman from among the members of the Board chosen from the public.

(4) The Board shall keep the Congress fully and currently informed with respect to all of the Board's activities.

(b) There shall be established a General Public Advisory Committee to advise the Board on scientific and technical matters relating to environmental research and development pursuant to this title, to be composed of nine members, who shall be appointed from the public by the President. Each member shall hold office for a term of six years, except that (a) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (b) the terms of office of the members first taking office after the date of enactment of this title shall expire, as designated by the President at the time of appointment, three at the end of two years, three at the end of four years, and three at the end of six years, after such date. The Committee shall designate one of its own members as Chairman. The Committee shall meet at least four times in every calendar year. The members of the Committee shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their traveling and other expenses while engaged in the work of the Committee.

(c) There is established a Federal Agency Liaison Committee consisting of—

(1) a Chairman, who shall be the Administrator of the Environmental Protection Agency; and

(2) a representative or representatives from (A) the Council on Environmental Quality, (B) the Department of the Interior, (C) the National Science Foundation, (D) the Department of Agriculture, (E) the Department of Commerce, (F) the National Aeronautics and Space Administration, (G) the Department of Defense, (H) the Atomic Energy Commission, (I) the Smithsonian Institution, and (J) the Department of Health, Education, and Welfare, and who will serve without additional compensation.

(3) The Chairman of the Committee may designate one of the members of the Committee as Acting Chairman to act during his absence.

(4) Each member of the Committee shall keep the Department or Agency which such member represents fully and currently informed of all the activities of the National Environmental Center.

(5) The head of each Department or Agency represented on the Committee shall keep the Board fully and currently informed on all matters within such Department or Agency which relate to the activities of the National Environmental Center.

SEC. 5. (a) In administering the Center, the Board shall have all necessary and proper powers which shall include, but not be limited to, the power to—

(1) (A) designate or establish not to exceed six National Environmental Laboratories with the geographical distribution of any such Laboratories determined by the Board after consideration of the criteria set forth in subparagraph (B) of this section;

(B) The Board shall not designate or establish the location of any National Environmental Laboratory until such location has been approved by resolutions adopted in substantially the same form by the appropriate Committee of the House of Representatives and by the Committee on Public Works of the Senate. For the purpose of securing consideration of such approval the Board shall transmit to the Congress a prospectus of the proposed location including (but not limited to)—

(i) a brief description of the location;

(ii) an estimate of the maximum cost of the location; and

(iii) a statement of justification for such location.

(2) enter into agreements to establish various degrees of affiliation with existing agencies and organizations;

(3) establish broad policy directions for the Center;

(4) solicit, accept, and dispose of gifts, bequests, and devises of money, securities, and other property of whatsoever character for the benefit of the Center and any National Environmental Laboratory designated or established under paragraph (1) of this subsection, and any such money, securities, or other property shall, upon receipt, be deposited into a special fund administered by the Board for the purposes of the Center and the source, amount, and restrictions of any gift, bequest or devise of money, securities, or other property in excess of $5,000 fair market value shall be included in the annual report required under section 10 of this title;

(5) obtain grants from, make contracts to, and make contracts with, State, local, and private agencies, organizations, institutions, and individuals;

(6) obtain grants from, and make contracts with any Federal agency, including the Atomic Energy Commission, as provided for in section 33 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2053) and the Environmental Protection Agency;

(7) take such steps as may be necessary to coordinate with all public and private agencies so as to avoid unnecessary duplication of environmental research and development activities;

(8) acquire such site or sites as may be necessary for the location of the Center and the National Environmental Laboratories established or designated under paragraph (1) of this subsection;

(9) acquire, hold, maintain, use, operate, and dispose of any physical facilities, including aircraft, vessels, vehicles and other equipment necessary for the operation of the Center.

(10) appoint and fix the compensation and duties of a General Manager and such officers of the Center as may be required. The compensation of the General Manager and other such officers shall be fixed without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service and chapter 51 and subchapter III of chapter 53 of such title 5;

(11) appoint and fix the compensation and duties of a Director or Directors and such other officers as may be necessary to admin-

ister any National Environmental Laboratory established pursuant to paragraph (1) of this subsection; and such Director or Directors may be appointed and compensated without regard to such provisions of title 5 of the United States Code; and

(12) provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof, including support for appropriate mechanism of public understanding of environmental issues.

(b) In designating the primary research program for each National Environmental Laboratory established under subsection (a) (1) of this section, the Board shall consider the general environmental problems to ecosystem measurement and analysis, recycling materials and pollutants, energy, community restoration and development, transportation, and resource utilization, technology assessment, and long-range environmental planning.

SEC. 6. Any Director appointed under paragraph (11) of subsection (a) of section 5 of this title shall be responsible for the management and development of the National Environmental Laboratory for which he is appointed and for the research program that such Laboratory conducts, subject only to the general policy directions provided by the Board pursuant to subsection (a) of section 5 of this title.

SEC. 7. The Board shall, in connection with acquisition of any site or sites, provided for in clause (8) of subsection (a) of section 5 of this title, provide to businesses and residents displaced from any such site or sites relocation assistance, including payments and other benefits, equivalent to that authorized to displaced businesses and residents under the Housing Act of 1949, as amended. In providing such relocation assistance and developing such relocation program the Board shall utilize to the maximum extent the services and facilities of the appropriate Federal and local agencies.

SEC. 8. The Board is authorized to adopt an official seal which shall be judicially noticed and to make such bylaws, rules, and regulations as it deems necessary for the administration of its functions under this title, including, among other matters, bylaws, rules, and regulations relating to the administration of its trust funds and the organization and procedures of the Board. A majority of the members of the Board shall constitute a quorum for the transaction of business.

SEC. 9. (a) There is hereby authorized to be appropriated to the Board $50,000,000 for each of four consecutive fiscal years beginning with the fiscal year ending June 30, 1972, to be deposited in a fund (hereinafter referred to as the "Special Trust Fund") for the perpetual maintenance and support of the long-term research activities of the Center. It shall be the duty of the Board to invest such fund only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of the outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are extended to authorize the issuance at part of public-debt obligations for purchase by the Special Trust Fund. Such obligations issued for purchase by the Special Trust Fund shall have maturities fixed with due regard for the needs of the Special Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Board may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price only where it determines that the purchase of such other obligations is in the public interest. Any obligations acquired by the Special Trust Fund (except public-debt obligations issued exclusively to the Special Trust Fund) may be sold by the Board at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(b) The Board shall, on or before October 1 of each year, submit to the Committees on Appropriations of the House of Representatives and of the Senate a statement of the expenditure, in the preceding fiscal year, of all funds available under subsection (a) of this section.

(c) In addition to amounts appropriated pursuant to subsection (a) there are authorized to be appropriated for the fiscal year beginning July 1, 1972, $40,000,000, and for the fiscal year beginning July 1, 1973, $80,000,000. Any sums appropriated under authority of this subsection shall remain available until expended.

SEC. 10. The General Manager of the Center shall transmit annually to the President and to Congress a report which shall set forth, but not be limited to, (1) an audit of expenditures in accordance with generally accepted accounting procedures, (2) bibliographies, with annotations, of research performed, and (3) a description of ongoing research programs.

OVERSIGHT STUDY

SEC. 11. The Comptroller General of the United States shall conduct a study and review of the research, pilot, and demonstration programs related to environmental quality, which are conducted, supported, or assisted by all agencies of the Federal Government pursuant to any Federal law or regulation and assess the conflict, coordination, and efficacy of such programs, and make an interim report to the Congress thereon by January 1, 1973, and a final report by June 30, 1974.

TITLE II

SEC. 201. (a) This title may be cited as the "State Environmental Center Act of 1971."

(b) The purposes of this title are to stimulate, sponsor, provide for, and supplement existing programs for the conduct of research, investigations, and experiments relating to the environment, to provide for concentrated study of environmental problems of particular importance to the several States, to provide for the widest possible dissemination of environmental information, and to assist in the training of professionals in fields related to the protection and enhancement of the Nation's natural environment.

SEC. 202. (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as the Administrator) is authorized to establish or designate within each State one State environmental center.

(b) Each State environmental center established or designated pursuant to subsection (a) of this section shall be located at that college or university in each State now receiving, or which may hereafter receive, the benefits of the Act of July 2, 1862, as amended, except that in any State in which two or more such colleges or universities have been or hereafter may be established, the State environmental center shall be located at one of such institutions designated by the Governor of such State.

(c) Each State environmental center shall—

(1) have a nucleus of administrative, professional, scientific, and technical personnel capable of planning, coordinating, and directing comprehensive research programs and the other activities necessary to carry out the purposes of this title;

(2) assist and coordinate the research and education capability of educational institutions and other appropriate institutions with the State;

(3) be authorized to make grants to, contract with, providing matching funds to, and enter into other arrangements with educational institutions, foundations, private organizations, and individuals whose training, experience, and qualifications are such as to contribute to the work of the State center in furthering the purposes of this title; and

(4) be authorized to contract with, make grants to, and accept grants from local, State, and Federal agencies for the purpose of undertaking research, investigations, experiments, and any other activities related to the environment and consistent with the purposes of this title.

SEC. 203. (a) In order to aid in diffusing among the people of the United States useful and practical information on subjects relating to the enhancement of the Nation's natural environment, each State environmental center designated or established pursuant to section 202 of this title shall have as one of its principal functions an education extension program.

(b) The work of the education extension program of each State environmental center shall be directed toward, but not limited to—

(1) the general public;

(2) units of government, including local, State, and Federal;

(3) business, industry, and commercial establishments; and

(4) civic, fraternal, and other public interest groups.

(c) The education extension program of each State environmental center shall provide a full range of educational and communications services, including—

(1) workshops, seminars, clincs, courses, field trips, and demonstrations;

(2) the publication of materials, including bulletins, fact sheets, monographs, and other appropriate matter; and

(3) a reference service to facilitate the rapid identification, acquisition, retrieval, and use of environmental information.

SEC. 204. (a) The Administrator shall promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this title.

(b) Each State environmental center shall transmit annually to the Administrator a report which shall set forth, but not be limited to, (1) an audit of expenditures in accordance with generally accepted accounting procedures, (2) bibliographies, with annotations, of research performed, and (3) a description of ongoing research programs.

SEC. 205. (a) There is authorized to be appropriated for the fiscal year beginning July 1, 1972, $6,250,000, of which $125,000 shall be made available by the Administrator to each State environmental center; for the fiscal year beginning July 1, 1973, $8,750,000, of which $175,000 shall be made available by the Administrator to each State environmental center; and for the fiscal year beginning on July 1, 1974, and for each fiscal year thereafter $12,500,000, of which $250,000 shall be made available by the Administrator to each State environmental center.

(b) In addition to the sums authorized by subsection (a) of this section, there is

further authorized to be appropriated for the fiscal year beginning July 1, 1972, and for each fiscal year thereafter, $10,000,000, which shall be allocated among the States on the basis of population: *Provided*, That sums allocated under this subsection shall be made available only to State environmental centers in those States which provide $1 for each $2 provided under this subsection.

Mr. COOPER subsequently said: Mr. President, as in legislative session, I ask unanimous consent that the Secretary of the Senate be permitted to make technical changes in S. 1113, the National Environmental Center Act of 1971, passed by the Senate today.

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:

PROPOSED SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 1972 (S. Doc. No. 92-46)

A communication from the President of the United States, transmitting proposed supplemental appropriations for the fiscal year 1972, in the amount of $4,051,095, for the legislative branch (with an accompanying paper); to the Committee on Appropriations and ordered to be printed.

TRANSPORTATION OF DEPENDENTS OF CERTAIN MILITARY PERSONNEL

A letter from the Secretary of the Army submitting proposed legislation to authorize the transportation of dependents of certain military personnel to and from rest and recuperation centers, and for the payment of per diem allowances for such dependents and for other purposes (with accompanying papers); to the Committee on Armed Services.

ADJUSTMENT OF CHARGES AGAINST TRIBES OF INDIANS

A letter from the Assistant Secretary of the Interior submitting, pursuant to law, one order and supporting documents covering cancellations and adjustments of reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians (with accompanying papers); to the Committee on Interior and Insular Affairs.

REPORT OF THE NATIONAL SOCIETY OF THE DAUGHTERS OF THE AMERICAN REVOLUTION

A letter from the secretary of the DAR submitting, pursuant to law, the annual report of that society for the year ended March 1, 1970 (with accompanying papers); to the Committee on Rules and Administration.

CONVENTION OF AMERICAN INSTRUCTORS OF THE DEAF

A letter from the president of Gallaudet College, Washington, D.C., submitting the proceedings of the convention held at Little Rock, Ark., June 25–July 2, 1971 (with accompanying papers); to the Committee on Rules and Administration.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. FONG (for Mr. MCGEE) from the Committee on Post Office and Civil Service, with an amendment:

S. 889. A bill to restore the postal service seniority of Elmer Erickson (Rept. No. 92-559); and

S. 1031. A bill to credit certain service rendered by District of Columbia substitute teachers for purposes of civil service retirement (Rept. No. 92-560).

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, with amendments:

S. Con. Res. 26. A concurrent resolution on national American Indian and Alaska Natives policy (Rept. No. 92-561).

By Mr. TUNNEY, from the Committee on the District of Columbia, with an amendment:

S. 2677. A bill to authorize programs in the District of Columbia to combat and control the disease known as sickle cell anemia (Rept. No. 92-562).

By Mr. TUNNEY, from the Committee on the District of Columbia, with amendments:

S. 2429. A bill to amend the District of Columbia Unemployment Compensation Act in order to conform to Federal law, and for other purposes (Rept. No. 92-563).

REPORT ON ADMINISTRATIVE PRACTICE AND PROCEDURE—REPORT OF A COMMITTEE (S. REPT. NO. 92-558)

Mr. KENNEDY, from the Committee on the Judiciary, pursuant to Senate Resolution 333, 91st Congress, second session, submitted a report entitled "Administrative Practice and Procedure," which was ordered to be printed.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

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

Mrs. Betty Crites Dillon, of Indiana, the representative of the United States of America on the Council of the International Civil Aviation Organization, to serve on the Council with the rank of Minister;

Robert Foster Corrigan, of Ohio, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary to the Republic of Rwanda; and

William A. Stoltzfus, Jr., of New Jersey, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary to the State of Kuwait, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary to the State of Bahrain and to the State of Qatar.

ENROLLED BILLS SIGNED

The President pro tempore on today, December 7, 1971, signed the following enrolled bills which had previously been signed by the Speaker of the House of Representatives:

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;

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. 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 life plan with reduction at age 70.

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.

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. DOLE (for himself and Mr. PEARSON):

S. 2960. A bill to amend the Watershed Protection and Flood Prevention Act so as to provide necessary assistance in connection with rural development. Referred to the Committee on Agriculture and Forestry.

By Mr. RIBICOFF:

S. 2961. A bill to remove impediments to commerce among the States by prohibiting the States from imposing certain discriminatory taxes upon insurance corporations carrying on interstate commerce. Referred to the Committee on Commerce.

By Mr. JAVITS (for himself and Mr. HART, Mr. BAYH, Mr. BROOKE, Mr. BURDICK, Mr. CRANSTON, Mr. EAGLETON, Mr. JACKSON, Mr. KENNEDY, Mr. MCGOVERN, Mr. MONDALE, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. STAFFORD, Mr. STEVENSON, and Mr. TUNNEY):

S. 2962. A bill to amend the Manpower Development and Training Act of 1962 to provide financial assistance for a special manpower training and employment program for criminal offenders and for persons charged with crimes, and for other purposes. Ordered held at desk.

By Mr. METCALF:

S. 2963. A bill to amend the act of June 27, 1918, relating to certain reversionary interests of the United States in certain real property in the State of Montana. Referred to the Committee on Interior and Insular Affairs.

By Mr. GRAVEL:

S. 2964. A bill for the relief of Nukul Srisukho. Referred to the Committee on the Judiciary.

By Mr. MUSKIE:

S. 2965. A bill to provide greater access to Government information, and for other pur-

poses. Referred to the Committee on Government Operations.

By Mrs. SMITH:

S. 2966. A bill making a supplemental appropriation for the fiscal year ending June 30, 1972, and for other purposes. Referred to the Committee on Appropriations.

By Mr. SPONG:

S. 2967. A bill to authorize the Secretary of the Interior to establish the George Washington Boyhood Home National Historic Site in the State of Virginia. Referred to the Committee on Interior and Insular Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE (for himself and Mr. PEARSON):

S. 2960. A bill to amend the Watershed Protection and Flood Prevention Act so as to provide necessary assistance in connection with rural development. Referred to the Committee on Agriculture and Forestry.

UTILIZATION OF WATERSHED FOR WATER SUPPLY STORAGE

Mr. DOLE. Mr. President, I am today introducing a bill which I feel is urgently needed to permit people in my home State of Kansas, and in the rural areas of all States as well, to more fully utilize and benefit from the small watershed program carried out under Public Law 83–566.

Under provisions of the Kansas State water plan, the water resources board is authorized to request the inclusion of water supply storage space in projects constructed by the Federal Government and to enter into agreements with the Federal Government concerning the payment of such storage features. Inclusion of such storage may be made at the request of the board or through the board by other interests. In carrying out this directive the board has participated with the Corps of Engineers in a number of reservoir projects in accordance with the provisions of the Water Supply Act of 1958—Public Law 85–500.

Also under this phase of endeavor, the board has been aware of the untapped resource available through the Public Law 566 program. Several years ago, in cooperation with the Soil Conservation Service, steps were initiated to inventory possible reservoir sites within the watershed areas of the State where water supply storage could be incorporated to service a need, both present and future. About 70 potential sites were identified as meriting further detailed study and consideration. Generally it was the intent to pursue this activity through the watershed district program of the State.

The Food and Agriculture Act of 1962—Public Law 87–703—included several amendments to Public Law 83–566, one of which involved authority for adding storage to meet future demands for municipal or industrial water supply included in any reservoir structure constructed or modified under the provisions of the act. This was done with the intent to make the Public Law 566 authority comparable to the Water Supply Act of 1958.

It should be noted that while the intent has been to have a similar type of assistance with respect to future water supply in Corps of Engineers' projects and Public Law 566 projects, there is a basic difference in the two programs in that Corps projects are Federal projects and control of water is in the United States, whereas in Public Law 566 projects, control of the water is in a local organization.

Unfortunately, the authority provided by the 1962 law has been found to be too restrictive to permit its application fully as intended. The present language of the provisions added in section 4(2)(B) of the Watershed Protection and Flood Prevention Act requires that the local organization shall agree prior to initiation of construction to repay the cost of future water supply storage. The requirement of an agreement to repay has been interpreted as necessitating a local organization to take legal steps, such as the issuance of bonds, to constitute an enforceable agreement for such repayment.

The amendment to Public Law 83–566 which I am introducing today should help bring about a greater degree of uniformity between Public Law 566 projects involving future water supply and Corps of Engineers' projects. The amended language should eliminate the restrictive interpretation placed on a repayment agreement, by requiring only a reasonable showing that there is an anticipated need for the water and that the local organization or an authorized State agency gives assurances that the Federal Government will be reimbursed the cost of the water supply for anticipated future needs. Such assurances could be in the nature of a commitment by the local entity which anticipates need for the water not to use any other source of water until repayment for the particular additional future water supply has been provided for, and agreement that control of the use of the water will be in the United States until such time as the future supply is needed and appropriate legal arrangements are made for reimbursement of the United States for the costs of such water supply storage.

It is extremely important today that planning efforts take into account the full spectrum of resource needs. Reservoir sites in upstream areas which have the capability of serving multiple-purpose needs are limited and represent an irreplaceable resource. It behooves us to utilize those sites to their full potential wherever practicable. My bill will help assure this objective.

Mr. PEARSON. Mr. President, I am pleased to join with my distinguished colleague from Kansas (Mr. DOLE) in offering an amendment to Public Law 566 which, if adopted, will improve significantly the opportunity for small watershed projects to serve the long-range requirements of the States in which they are located. I congratulate my colleague from Kansas for the leadership he has taken in this effort to resolve a chronic problem which has inhibited the effectiveness of the small watershed program.

The economic development of rural America is frustrated in certain areas by inadequate water resources. The Congress has adopted important measures in the past designed to assist individual citizens, localities, and States in developing comprehensive water resource conservation programs. Among these Federal initiatives is Public Law 83–566, a landmark act which created the small watershed program.

The Water Resources Board of the State of Kansas, under State law, is authorized to enter into agreements with the Federal Government to construct water supply storage facilities in connection with Federal flood control projects. The law in Kansas, I am informed, is comparable to State law in other areas of the Nation. The Kansas agency, pursuant to its authority, has entered into agreements with the Corps of Engineers, in connection with several corps reservoir projects, to reimburse the Federal Government for the construction of water storage facilities for future rural development and present needs.

During consideration of the Food and Agriculture Act of 1962—Public Law 87–703—Congress recognized that the States could not effectively cooperate with the Federal Government in constructing water storage facilities in connection with small watershed projects. Thus, Congress adopted amendments to Public Law 566 at that time, permitting deferred repayment of municipal and industrial water supply costs. The Office of General Counsel of the U.S. Department of Agriculture, in an informal opinion dated February 1971, determined that the Kansas Water Resources Board, an arm of the State government, was ineligible to underwrite construction costs for water storage facilities despite the amendments adopted in 1962. This impediment effectively denies the State an opportunity to cooperate with the Federal Government in developing water storage facilities in connection with the small watershed development program.

The board has identified 70 sites in Kansas where small watershed development could, consistent with the purpose of Public Law 566, include water storage facility construction in cooperation with the State agency. The need for additional water storage, in some cases, is long-range and consistent with local rural development objectives. Thus an amendment to Public Law 566 must be adopted which will allow the States, if they choose, to participate with USDA and local water districts, in developing adequate water resources for future needs.

The amendment we offer today will accomplish this objective. This bill would permit deferred payment to the Secretary for the cost of water storage within the life of the reservoir structure. The bill also provides that adequate assurances may be made by local organizations, or by agencies of the State government, that the Secretary will be reimbursed for the cost of water storage incurred in connection with small watersheds.

I would point out that this bill would not result in increased Federal spending. It would implement the intent of Congress, as enunciated in the 1962 legislation. It would permit an authorized State agency to obligate itself for rural development, when local organizations lack

legal capacity to make the necessary assurances. Finally, and most importantly, it would significantly improve the practical operations of our federal system in water resource development and conservation.

Congress has a deep obligation, practically as well as philosophically, to insure that legislation adopted at the Federal level is wholly consistent with the objectives of the States and localities. When all levels of government are afforded an opportunity to cooperate in the national interest, government at all levels becomes more responsive and effective.

By Mr. RIBICOFF:

S. 2961. A bill to remove impediments to commerce among the States by prohibiting the States from imposing certain discriminatory taxes upon insurance corporations carrying on interstate commerce. Referred to the Committee on Commerce.

INTERSTATE INSURANCE CORPORATION TAXATION ACT

Mr. RIBICOFF. Mr. President, today I introduce a bill designed to remove impediments to commerce among the States by prohibiting the States from imposing certain discriminatory taxes upon insurance companies operating in interstate commerce.

States at present tax insurance companies on the premiums received from their resident policyholders. Under the laws of a majority of States, however, premium laws discriminate between foreign and domestic companies. In 25 States the tax laws favor domestic companies. Three States impose greater premium taxes on their domestic companies than they impose on foreign companies. The remaining 22 States impose equal tax rates on all companies.

The tax rates in the three States that impose higher taxes on domestic companies—Connecticut, New York, and Massachusetts—were adopted to avoid the imposition on its domestic companies of even greater adverse discrimination through the application of retaliatory laws in other States.

As States seek new ways to raise vitally needed revenues, it is clear that they will continue to jockey for favorable revenue positions vis-a-vis other States in the field of interstate taxation. A more rational system of taxation must be found.

State premium tax discrimination has been considered by the State insurance commissioners who have jurisdiction over the regulation of insurers and in many States administer the premium tax system. On December 15, 1970, the executive committee of the National Association of Insurance Commissioners adopted a resolution as follows:

> In summary, the task force finds the present system of premium taxation to be unfair and inappropriate to the contemporary insurance economy and recommends as a single and indivisible program, the elimination of premium tax discrimination domestic and foreign, the elimination of premium tax discrimination among types of insurance organization or arrangement, and the elimination of retaliatory premium taxes."

The bill I introduce today is one possible approach to the problem. Insurance companies and other informed groups and individuals have differing opinions about this bill, but it is my hope that the introduction of this bill, together with consideration of my legislative proposal to reform interstate taxation, S. 317, will afford the Senate an opportunity to develop a rational system of interstate taxation.

I ask unanimous consent that the text of the legislative proposal, a section-by-section analysis, and a memorandum describing the existing system, be printed in the RECORD.

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

S. 2961

A bill to remove impediments to commerce among the States by prohibiting the States from imposing certain discriminatory taxes upon insurance corporations carrying on interstate commerce

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 "Interstate Insurance Corporation Taxation Act."

DISCRIMINATORY TAXES

SECTION 1. No provision of law enacted by a State or political subdivision of a State, except a provision imposing a retaliatory tax, shall make any corporation engaged in the business of issuing insurance, annuity or reinsurance contracts in the State liable for a greater amount of taxes than the amount of such taxes for which such corporation would be liable if it were domiciled in the taxing State. When any law of a State or political subdivision thereof is in conflict with this section, tax liability may be discharged under such law in the manner which would be provided under the law of such State or political subdivision if the corporation were domiciled in the State.

RETALIATORY TAXES

SEC. 2. No provision of State law shall make any life insurance corporation liable in any taxable year for a retaliatory tax if for such year the State in which such corporation is domiciled imposes an income tax, as defined in this Act, on life insurance corporations not domiciled therein and such State or any political subdivision thereof does not impose on such corporations any other tax on or measured by income, premiums, or other receipts.

DEFINITIONS

SEC. 3. As used in this Act—

(A) "Life insurance corporation" means a corporation that qualifies as a life insurance company under Section 801(a) of the Internal Revenue Code of 1954, as now or hereafter amended.

(B) "Retaliatory tax" means a tax imposed by a taxing State on insurance corporations domiciled in another State in retaliation for taxes imposed by such other State on insurance corporations domiciled in the taxing State.

(C) "Income tax" means a tax imposed by a taxing State on or measured by an allocable share of a life insurance corporation's taxable income determined in accordance with the method provided in part 1, subchapter L of the Internal Revenue Code of 1954 as now or hereafter amended, with permissible modifications as follows:

(1) The taxing State may make adjustments in the method for determining taxable income in order to conform such method to its constitutional requirements.

(2) The taxing State may define taxable income under a method that is more favorable to life insurance corporations than the method provided under the Internal Revenue Code and may disallow deductions for taxes paid by life insurance corporations to the taxing State.

The term "income tax" includes a transitional tax which is imposed on or measured by premiums or annuity considerations received by the life insurance corporation during the taxable year from or on behalf of residents of the taxing State and which (1) is adopted as a part of a law imposing an "income tax" and against which the income tax imposed is allowed as a credit and (2) is imposed for the taxable year on bases and at premium tax rates that do not exceed those in effect when the transitional tax was first enacted.

(D) "Allocable share" means an amount determined by multiplying a life insurance corporation's taxable income by a fraction the numerator of which is an amount equal to the premiums and annuity considerations received by such corporation during the taxable year from or on behalf of residents of the taxing State and the denominator of which is an amount equal to the total of all premiums and annuity considerations received by such corporation during such taxable year.

(E) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or possession of the United States.

SEC. 4. EFFECTIVE DATE.—The provisions of this Act shall apply to all taxable years commencing after December 31, 1972, except that section 1 shall apply to all taxable years commencing after December 31, 1975.

SUMMARY OF BILL TO PROHIBIT THE STATES FROM IMPOSING DISCRIMINATORY TAXES ON LIFE INSURANCE CORPORATIONS ENGAGED IN INTERSTATE COMMERCE

Section 1. Discriminatory Taxes.

This section prohibits a state from imposing taxes that discriminate against life insurance companies domiciled in other states, hereinafter referred to as "foreign companies." It extends to such companies the protection other corporations have always enjoyed under the commerce clause of the Constitution. The bill does not, however, limit the power of a state to impose higher taxes on its domestic life insurance companies than it imposes on foreign companies. If enacted Section 1 would affect the tax laws of 25 states, which currently discriminate against foreign companies. (See footnote 1, page 2 of attached memorandum.) For the purpose of the Act a life insurance company is defined as a corporation that qualifies as a life insurance company under Section 801(a) of the Internal Revenue Code.

When a state law is in conflict with Section 1, a foreign company may discharge its tax liability in the manner which would be provided under the law of such state if such company were domiciled in the state.

Section 1 deals only with tax rate discriminations enacted by a particular state. It does not apply to the so-called retaliatory laws under which a taxing state may impose an additional tax on companies domiciled in another state in retaliation for taxes imposed by such other state on companies domiciled in the taxing state.

Section 2. Retaliatory Taxes.

Retaliatory tax laws have been adopted by 46 states. (The District of Columbia, Alabama, Hawaii, New Mexico and North Carolina have not enacted such laws.) Some of these laws have been in force for over a century. They were enacted to discourage states from arbitrarily increasing premium tax rates. This protection is of paramount importance to life insurance companies, since their contracts extend over many years and the rates thereunder cannot be changed to absorb tax increases.

As long as states continue to tax life insurance companies on premium receipts, the continued protection of the retaliatory laws

is essential. On the other hand this safeguard is not needed if a state adopts an income tax law that taxes net gains from operations and thus reflects a company's ability to pay taxes. Currently several states are considering such an enactment.

The purpose of Section 2 is to insulate from retaliation life insurance companies of any state that replaces its premium tax law with an income tax law. However, the income tax law must meet certain conditions set forth in the bill. One condition is that such a state shall not impose in addition to the income tax any other tax on or measured by income, premiums or other receipts. Another condition is that the income tax must be imposed on an "allocable share" of the company's "taxable income" and taxable income must be determined in accordance with the method provided in the Internal Revenue Code for the taxation of life insurance companies. Certain modifications of this Federal method are permitted as follows:

(1) A state may modify the method to satisfy its constitutional requirements.

(2) A state may modify the method to provide more generous deductions, exemptions or exclusions than those provided in the Internal Revenue Code.

(3) A state may disallow the taxpayer the right to deduct the taxes it paid to the taxing state for the taxable year.

(4) In order to avoid a possible loss of revenue, a state may adopt a transitional premium tax as a part of its income tax law, provided the minimum tax satisfies certain requirements. These requirements are (1) the minimum tax must be adopted as a part of a law imposing an income tax, (2) the income tax must be allowed as a credit against the transitional tax, and (3) the premium tax rates for the transitional tax may not be increased in future years.

If the above conditions and requirements are not met in any taxable year the state's domestic companies are subject to the retaliatory laws of other states.

Under Section 2 a state, in lieu of a transitional premium tax, may impose an income tax at rates that are high enough to produce its revenue objectives. At the outset such rates may be higher than the income tax rates imposed by the states on other corporations.

A state income tax law, in order to qualify under the bill, must impose a tax on an allocable share of the taxpayer's taxable income. Under the bill definitions "allocable share" is determined by multiplying the taxpayer's total taxable income by a fraction the numerator of which is equal to the premiums received during the taxable year from residents of the taxing state and the denominator of which is an amount equal to the total of all premiums received by the life insurance company. The term "premiums" includes annuity considerations.

Section 2 does not require any state to enact an income tax law. A state may continue to impose premium taxes on life insurers, in which case the domestic companies of such a state will be subject to the retaliatory laws of any state in which they do business. On the other hand, under Section 2 a state may elect to enact an income tax law, which meets the requirements of the bill, and thereby insulate its domestic companies from the retaliatory laws of other states.

Section 3. Definitions.

This section defines various terms used in the bill.

Under Section 4 of the bill the provisions of Section 2 dealing with the retaliation laws would be effective at the end of the year in which the bill is enacted. Section 1, which prohibits states from discriminating in favor of their domestic companies, would not become effective until 3 years later so as to provide an opportunity for the states to modify their laws.

Attached is a list of companies sponsoring the proposed bill with assets representing approximately 50% of the total assets of U.S. life insurance companies and a memorandum dated February 25, 1971, on the subject of state taxation of insurance companies engaged in interstate commerce.

STATE TAXATION OF INSURANCE COMPANIES ENGAGED IN INTERSTATE COMMERCE

The states tax insurance companies on the premiums received from their resident policyholders. Under the laws of more than half the states, the premium tax rates are discriminatory. The purpose of this memorandum is to examine these discriminatory laws in terms of the public interest and their impact on interstate commerce.

The power of the states to discriminate in taxing insurance companies is derived from Congress. In *United States* vs. *Southeastern Underwriters Association*, 322 U.S. 533, 64 S. Ct. 1162, decided June 5, 1944, the Supreme Court in a 4–3 decision, with two justices not participating, held that insurance companies doing business over state lines were engaged in interstate commerce. Prior to *Southeastern*, the Court had held in a number of decisions that the making of contracts of insurance within a state by licensed insurers domiciled outside the state was not commerce. On the basis of these earlier decisions, insurers had been regulated and taxed solely by the states without regard to the limitations imposed by the Commerce Clause of the Constitution.

The impact of the *Southeastern* decision on state laws governing insurance was mentioned with concern by Chief Justice Stone in his dissent to the majority opinion. Among other things he warned, "Certainly there cannot be but serious doubt as to the validity of state taxes which may now be thought to discriminate against interstate commerce, * * *" It was also thought that the decision severely limited the power of the states to regulate insurance. In response to these concerns, Congress on March 9, 1945, enacted the McCarran-Ferguson Act. Chap. 20, 59 Stat. 33.

In the McCarran Act, Congress declared that the continued regulation and taxation by the several states of the business of insurance is in the public interest; that silence on the part of Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several states; that the business of insurance, and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation or taxation of such business; that no act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any state for the purpose of regulating the business of insurance or which imposes a fee or tax upon such business, unless such act specifically relates to the business of insurance. The Act contains certain exceptions to these general provisions in the case of the Federal Trade Commission Act, the Robinson-Patman Act, the National Labor Relations Act, and the Merchant Marine Act. These exceptions are not relevant to this discussion.

One of the first issues litigated under the McCarran Act was whether Congress authorized the states to discriminate in taxing insurance companies engaged in interstate commerce. This question was decided by the Supreme Court on June 3, 1946 in *Prudential Insurance Company* vs. *Benjamin*, 322 U.S. 408, 66 S. Ct. 142. In a unanimous decision, the Court held that through enactment of the McCarran Act Congress intended to validate discriminatory state premium taxes; that Congress had the power to permit such discrimination. A South Carolina law taxing out-of-state licensed companies (hereinafter referred to as foreign companies) on premiums received from residents of South Carolina was upheld, notwithstanding the fact that South Carolina did not tax its domestic insurers on the premiums they collected from residents of the state.

Today the premium tax laws of 25 states discriminate in favor of domestic companies.[1] Three states impose greater premium taxes on their domestic companies than they impose on foreign companies.[2] The remaining 22 states do not impose higher premium tax rates on foreign companies.[3] The discriminatory tax rates enacted in Connecticut, Massachusetts, and New York were adopted to avoid the imposition of its domestic companies of even greater adverse discrimination through the application of retaliatory laws in effect in 46 states.[4]

A retaliatory statute is a device adopted by the states many years ago to protect domestic insurers from higher premium taxes in other states. The statutes operate as follows. Assume that Company A is domiciled in Maryland and is licensed to do business in Virginia. Assume that Company B is domiciled in Virginia and is licensed to do business in Maryland. The two states impose a 2% uniform premium tax and have enacted retaliatory laws. Maryland decides to raise its premium tax to 3% on both domestic and foreign companies. Under the retaliatory law of Virginia, Company A, domiciled in Maryland, would be charged a 3% Virginia tax. Thus Virginia would penalize Maryland companies doing business in Virginia because Maryland raised its tax rate on Virginia companies. Under the example, Company A would pay a 3% tax in Virginia; Company B would pay only a 2% Virginia tax. In Maryland both companies would pay a 3% tax. The result is to impose a discriminatory tax rate on the Maryland company doing business in Virginia. This would violate the Commerce Clause if it were not for the McCarran Act.

A state that raises its premium tax rate on foreign companies above the level of the tax imposed on foreign companies by the other states could trigger retaliation against its domestic companies in as many as 46 states. No additional legislative action is required to produce these tax increases, nor are the revenue needs of the retaliating states related in any way to the tax windfall the retaliatory laws created.

Tax retaliation may be avoided by a state rejecting proposals to increase rates on foreign companies to levels that exceed those imposed by other states. However, in recent years as the need for additional state revenue greatly expanded and states advanced proposals for across-the-board increases in business taxes, opposition arose to exempting insurers from premium tax increases as a method of avoiding retaliatory taxes on domestic companies. It became increasingly apparent that the revenue requirements of the states would have to be met by insurers regardless of the resulting retaliatory taxes.

In New York a way was found to collect the revenue expected from insurers without exposing domestic companies to retaliation. Under the New York plan, a tax increase was

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[1] Alabama, Alaska, Arizona, Arkansas, Florida, Hawaii, Illinois, Kansas, Kentucky, Maine, Michigan, Mississippi, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, Wyoming.

[2] Connecticut, Massachusetts, New York.

[3] California, Colorado, Delaware, Georgia, Idaho, Indiana, Iowa, Louisiana, Maryland, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Pennsylvania, Rhode Island, Utah, Vermont, Virginia, West Virginia. (Six of these states, however, have tax reducing investment laws—Colorado, Georgia, Idaho, Louisiana, Montana and New Mexico.)

[4] The District of Columbia, Alabama, Hawaii, New Mexico and North Carolina have not enacted retaliatory laws.

levied on domestic companies in an amount sufficient to cover the revenue expected from both domestic and foreign companies. No additional tax was imposed on foreign companies; roughly a double tax was imposed on domestic companies. Since the tax on foreign companies was not increased, there was no retaliation. In Connecticut and Massachusetts, similar plans were adopted. As a result, companies domiciled in these states are now required to pay substantially higher premium taxes than their foreign competitors.

State premium tax discrimination has been considered by the state insurance commissioners who have jurisdiction over the regulation of insurers and in many states administer the premium tax system. On December 15, 1970, the Executive Committee of the National Association of Insurance Commissioners submitted a resolution to the Association outlining the problem. The resolution, which was adopted unanimously by the commissioners, contained the following conclusion.

"In summary, the task force finds the present system of premium taxation to be unfair and inappropriate to the contemporary insurance economy and recommends as a single and indivisible program, the elimination of premium tax discrimination between domestic and foreign companies, the elimination of premium tax discrimination among types of insurance organization or arrangement, and the elimination of retaliatory premium taxes."

Until 1944 discriminatory premium taxes had limited influence on competition in the insurance business. Moreover, the rates then in effect in most of the important insurance states tended to be uniform. New conditions, such as the needs of the states for more revenue, have greatly aggravated the discrimination and its impact on interstate competition. (See attached review of recent legislative developments in Connecticut, Massachusetts, New York and Pennsylvania.) Uneven premium tax burdens in a state favor one group of policyholders over another; one insurer over another. The resulting unfair competition is especially damaging in the field of mass marketing, such as group insurance, where a premium tax differential often represents a substantial part of the overall cost of providing the service.

LIST OF COMPANIES FAVORING LEGISLATION

Aetna Life & Casualty.
American Mutual Life Insurance Co.
Bankers National Life Insurance Co.
Berkshire Life Insurance Co.
Central Life Assurance Co.
Equitable Life Assurance Society.
Farmers and Traders Life Insurance Co.
Fidelity Mutual Life Insurance Co.
Guardian Life Insurance Co.
Harleysville Life Insurance Co.
Home Life Insurance Co.
Investors Syndicate Life Insurance Co.
John Hancock Mutual Life Insurance Co.
Life Insurance Company of North America.
The Manhattan Life Insurance Co.
Massachusetts Mutual Life Insurance Co.
Metropolitan Life Insurance Co.
Monarch Life Insurance Co.
Mutual Life Insurance Co. of New York.
National Life Insurance Co.
New England Mutual Life Insurance Co.
New York Life Insurance Co.
Northwestern National Life Insurance Co.
Security Mutual Life Insurance Co.
State Mutual Life Assurance Co. of America.

By Mr. JAVITS (for himself, and Mr. HART, Mr. BAYH, Mr. BROOKE, Mr. BURDICK, Mr. CRANSTON, Mr. EAGLETON, Mr. JACKSON, Mr. KENNEDY, Mr. McGOVERN, Mr. MONDALE, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. STAFFORD, Mr. STEVENSON, and Mr. TUNNEY):

S. 2962. A bill to amend the Manpower Development and Training Act of 1962 to provide financial assistance for a special manpower training and employment program for criminal offenders and for persons charged with crimes, and for other purposes. Ordered held at desk.

COMPREHENSIVE CORRECTIONAL TRAINING AND EMPLOYMENT ACT

Mr. JAVITS. Mr. President, I send to the desk a bill on behalf of myself and the distinguished Senator from Michigan (Mr. HART) who is the principal cosponsor. We are joined in this measure by Senators BAYH, BROOKE, BURDICK, CRANSTON, EAGLETON, JACKSON, KENNEDY, McGOVERN, MONDALE, MUSKIE, NELSON, PELL, RANDOLPH, STAFFORD, STEVENSON, and TUNNEY.

The act authorizes the Secretary of Labor, in coordination with the Attorney General and the Secretary of Health, Education, and Welfare, to make available training and employment opportunities for offenders, including work release and other programs for incarcerated offenders, jobs in the public and private sectors, as well as pretrial intervention and probation programs, technical assistance and research.

We propose, in short, that the administration and Members of the Congress join in formulating a national effort through which public resources and private efforts may be combined to improve opportunities for offenders, to increase the effectiveness of the correctional process and to better serve the Nation by reducing recidivism.

Mr. President, it has been apparent for some time—and the events at Attica and elsewhere serve as a tragic reminder—that prisoner rehabilitation and related offender processes are in disgraceful shape, with a heavy cost for society and the individuals involved.

As President Nixon stated, on November 14, 1969:

> The American system for correcting and rehabilitating criminals presents a convincing case of failure. No realistic programs to substantially reduce crime can ignore the appalling deficiencies in our prisons and rehabilitation efforts.

There are many inadequacies in our present correctional process which must be addressed, but, as the President's task force on prisoner rehabilitation stated in its April 1971, report:

> Satisfying work experiences for institutionalized offenders including vocational and pre-vocational training when needed, and the assurance of decent jobs for released offenders, should be at the heart of the correctional process.

Yet, surveys have established that 90 percent of local penal institutions have no training or education at all; 85 percent of Federal inmates lack any marketable skill and have not completed high school; exoffenders have levels of unemployment three times the norm; and less than one-third of inmates who receive training use it in their first job.

It is not surprising that two out of three persons confined in correctional institutions are repeaters.

The measure which we introduce today seeks to provide a framework to begin to remedy these deplorable facts. It has been designed with particular attention to three major objectives:

First, we have identified the various elements of manpower training and employment programs which have been demonstrated to be particularly effective in rehabilitating offenders; in this regard, we drew heavily upon the experience of the Department of Labor and the Department of Health, Education, and Welfare under the general provisions of the Manpower Development and Training Act of 1962, particularly the demonstration section contained in section 251 of that act.

A key element is the provision of pretrial manpower training and employment opportunities. The Department of Labor has funded test programs in seven cities—Cleveland, Minneapolis, San Antonio, Baltimore, Boston, Atlanta, Newark—under which persons charged with crime are given the opportunity to be committed for training and placement assistance for a 90-day period prior to judicial consideration of their cases. The training staff subsequently makes a recommendation to the court, relating to disposition of the case, which may include further training or employment. In a demonstration project along these lines involving defendants 15 to 25 years of age conducted last year in Washington, D.C., it was found that participants committed further criminal acts at a rate less than one-half of that of a control group that did not receive the manpower training project services. A similar program, the Manhattan court project, has been conducted with considerable success in New York City.

Another important element concerns the provision of manpower training and related services during confinement in prison, where inmates do not now have the opportunity to make maximum use of their time. Considerable promise has been shown in programs under which prisoners are permitted to receive training in real work situations with up-to-date equipment and the involvement of the private sector. For example, at Greenhaven Prison in Poughkeepsie, N.Y., training is provided for 40 prison inmates in office machine repair under a program conducted with the assistance of the private sector. In New York City, the Department has funded a program for a community treatment center for 40 offenders awaiting parole or release from Federal institutions; inmates receive employment placement, counseling, and job training. Another program is underway at Rikers Island, N.Y., where 100 training slots in metal fabrication, woodworking, and production machine work are supplemented with basic education and vocational training.

In a project conducted by the South Carolina Department of Crime, inmates have been working in industry and private business during the day in communities in which they plan to live upon release from incarceration, returning to community prerelease centers at night.

In the last 5 years, work release inmates have paid from their earnings nearly $500,000 to the Department of Corrections for room and board and more than $300,000 to support their families.

Mr. President, perhaps the most crucial element is linking the training to an actual job.

The importance of such a link has been demonstrated generally in the JOBS program, conducted by the National Alliance of Businessmen and funded by the Department of Labor under which almost 600,000 opportunities have been provided for the disadvantaged over the last 4 years.

But, this approach has been applied to criminal offenders only in a handful of cases and the National Alliance of Businessmen has advised me that it has no estimate of the number of offenders or ex-offenders currently involved in their programs.

The Departments of Labor, Health, Education, and Welfare, and Justice are currently funding joint projects to this end—for example "Project Transition" which supplements the South Carolina work-release program to which I referred—but these efforts represent only a very small beginning, compared with the potential that exists through a combination of public and private resources.

Mr. President, the bill we introduce today emphasizes the links between training and employment opportunities by—

Giving funding priority in respect to training programs for those efforts as to which prior arrangements have been made for subsequent employment;

Involving private industry and up-to-date equipment in training programs assisted under the title;

Requiring the Secretary and the applicant to determine that training which relates to a job for which there is generally a demonstrated demand on the National, State, and local level;

Requiring the formation of advisory committees for programs, including representatives of the private sector, as well as participants in the programs.

Moreover, it provides for an increase in the jobs generally available to criminal offenders and persons charged with crimes by—

Authorizing the Secretary to provide employment opportunities in the public and private sectors, with reimbursement where necessary;

Requiring the Secretary to insure that programs involving criminal offenders and persons charged with crimes are given full consideration for funding under the on-the-job training and job creation programs under the Manpower Development and Training Act of 1962, the Economic Opportunity Act of 1964, and the Emergency Employment Act of 1971;

Authorizing the Secretary to provide personnel to assist the U.S. Employment Service in providing jobs;

Requiring the Commissioner of the Civil Service Commission to report to the President and to the Congress on the manner in which Federal jobs may be increased.

As this bill is considered in the context of manpower reform generally, we shall consider what quotient of public service jobs may be set aside particularly for criminal offenders, and persons charged with crime.

Second, we have sought to insure that the programs authorized under the title will interlock with existing programs and advance the larger objective of comprehensive and coordinated penal reform.

To this end, the bill:

Grants considerable flexibility to the Secretary of Labor in choosing between public and private agencies, institutions, and organizations for the planning, conduct, and evaluation of programs;

Requires the Secretary of Labor and the Attorney General to enter into agreements to assure the combining of resources, maximum program coordination and joint planning between programs conducted under the Safe Streets Act and other similar laws. Of the $700 million available for correctional programs under that act for this fiscal year, approximately $2 million will be spent on training in correctional institutions;

Requires the Secretary of Labor and the Secretary of Health, Education, and Welfare to enter into agreements under which the latter shall be responsible for providing education to persons assisted under the title and for maintaining linkage to educational, vocational education, and rehabilitation to programs, as currently is the case under existing programs.

Third, we seek a substantial increase in Federal funding for offender programs.

The administration is to be commended for the priority that it has given to these efforts—expanding funding from less than $1 million in fiscal 1968 to $31 million in the current fiscal year, but the training and employment programs still account for less than 1 percent of the $4 million spent on manpower programs generally and less than 4 percent of the $1 billion spent for corrections generally.

The bill authorizes the appropriation of $40 million for fiscal year 1972, $100 million for fiscal 1973, and $200 million for fiscal year 1974.

We consider these amounts to be reasonable yearly additions which may be put to effective use, to cut into the overall need—which is so much greater:

With respect to pretrial programs, the Department of Labor efforts will reach 4,000 dependents, approximately three-tenths of 1 percent of the total of one and a quarter million individuals who are under the jurisdiction of the criminal justice system at any one time. Many of whom are of an appropriate age for such program.

With respect to correctional institutions, its programs will reach 6,000 inmates nationwide while 400,000 persons—60 times that number—are now incarcerated in correctional institutions in the Nation.

Mr. President, I am pleased to note that Senator GAYLORD NELSON, chairman of the Subcommittee on Employment, Manpower, and Poverty of the Senate Committee on Labor and Public Welfare, of which I am the ranking minority member, intends to have hearings on such programs, as a part of consideration of comprehensive manpower reform early next session, and I hope to have the benefit of comments and suggestions of the administration, as well as experts in the field with respect to the approach which I have proposed. Particularly, I hope we will consider what portion of funding might be expressly reserved for the essential educational element.

We look forward also to working with members of the Subcommittee on Criminal Laws and Procedures for the Committee on the Judiciary, as well as the Subcommittee on Penitentiaries—whose chairman, Mr. BURDICK, held very beneficial hearings on this subject earlier this year.

The current situation and the goals which we seek were expressed by Chief Justice Warren E. Burger, in remarks before the Association of the Bar of the City of New York, on February 17, 1970. He said:

> Few prisons today have even a minimal education or vocational training program to condition the prisoner for his return to society as a useful self-supporting human being. A distressing percentage of prisoners cannot read or write.
>
> The training programs in most State institutions are limited to a few skills, and there is almost no effort to correlate training programs with the demand for particular skills. It is no help to prisoners to learn to be pants pressers if pants pressers are a glut in the labor market or bricklayers or plumbers if they will not be admitted into a union. I suggest these two simple illustrations to indicate the desperate need for comprehensive and coordinated planning and research at local and national levels. This requires a monumental effort with the best leadership and brains of labor unions, industry, the Departments of Justice, of Labor, and of Health, Education, and Welfare. To be successful these programs need local community support which must involve Churches, YMCA's, Chambers of Commerce and Bar Associations.

Mr. President, as I indicated, inadequate training and job programs is one of the elements contributing to the crisis in our correctional process. I shall introduce additional proposals which would affect other reforms.

Mr. HART. Mr. President, for too long prison reform in America has been like Mark Twain's observation on the weather. Everyone talks about it, very little is done.

Over and over, Presidential commissions and expert studies tell us that our correctional systems do not correct. The file cabinets of Washington overflow with that finding. Yet to date the response has been a token, totally inadequate one. Recent tragedies at Attica and other institutions only underline our failure to make prisons decent places of true rehabilitation.

The bill introduced today by Senator JAVITS and myself zeros in on useful skills and employment assistance to criminal offenders—the area long recognized as perhaps the most critical ingredient of successful rehabilitation.

Some may shortsightedly call this "coddling criminals." But I can think of no more foolish mistake we can make in the protection of the public safety than to withhold adequate resources and energy from offender rehabilitation on that ground. Almost two-thirds of those now in prison have been there before. We

should know not merely how many men are sent to jail, but what kind of men emerge.

Manpower training programs for prisoners do exist, of course, on a fragmented and uneven basis. But this area of effect must be given priority, while improved correctional institutions are developed and other important services provided. Particularly while our economy is in disarray, the problems faced by an unskilled ex-offender who seeks to go straight are enormous.

One of these problems is the man's criminal record itself, which is often an almost insurmountable hurdle to employment. The junior Senator from North Dakota (Mr. BURDICK) has introduced a bill to remove that hindrance as far as possible for offenders who can demonstrate good conduct since their release. And under the leadership of the Senator from North Dakota, his subcommittee of the Judiciary on penitentiaries has advanced legislation on many other fronts to facilitate successful rehabilitation.

With his backing, and the other bipartisan support behind this bill I hope that we can pass this measure promptly in the next session. It provides a comprehensive range of training and employment services at every stage of the criminal justice process—with emphasis on early intervention for those who can be diverted to constructive employment or schooling prior to incarceration. In addition, priority will be given to funding programs which have lined up job opportunities for those in training. All applicants for Federal assistance under this act will be required to involve the local business community correctional officials, and the potential trainees in planning and executing programs.

Hopefully, with this bill we can begin to help offenders turn away from careers of crime. Put more bluntly, perhaps we can reduce the number of "graduate degrees in crime" which is all the prison release papers now seem to constitute.

Mr. JAVITS. Mr. President, I ask unanimous consent that there be printed in the RECORD the bill, a section-by-section analysis of the bill, and the following supporting documents: a letter from the Department of Labor outlining current efforts; a letter from the National Alliance of Businessmen regarding their efforts; and a summary of present sources of funding for correctional programs.

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

SECTION-BY-SECTION ANALYSIS OF THE COMPREHENSIVE CORRECTIONAL TRAINING AND EMPLOYMENT ACT

SEC. 2. This section amends title II of the Manpower Development and Training Act of 1962 to establish a new Part D entitled: "Comprehensive Correctional Training and Employment Programs", as follows:

SEC. 251. STATEMENT OF PURPOSE

This section declares the principal objective of the U.S. correctional system to be the rehabilitation of individuals confined in correctional institutions, sentenced to probation, or released on parole and states that manpower training and employment programs have been identified as one of the most critical elements of successful rehabilitation.

The purpose of the Part is to authorize the provision of specialized manpower training and employment programs for criminal offenders and persons charged with crimes, as an integral part of the correctional process, and with the assistance of the private sector, in order to improve employment opportunities for such persons, increase the effectiveness of the correctional process and reduce recidivism.

SEC. 252. DEFINITIONS

This section defines the terms "eligible individual", "eligible applicant", "juvenile delinquent", "youthful offender", "Secretary", and others.

"Eligible applicant" means any state or local public agency or private agency or organization, or combination thereof.

"Eligible individual" means criminal offenders, including youthful offenders, and juvenile delinquents, and persons charged with a crime.

"Secretary" means the Secretary of Labor.

SEC. 253. PROGRAM AUTHORIZATION

Authorizes the Secretary of Labor to provide financial assistance to eligible applicants for the planning or conduct of, or assistance to: pretrial and other intervention programs offering eligible individuals participation in training and employment programs prior to final disposition pursuant to plans approved by the appropriate judicial and prosecuting authority; manpower training and employment programs in correctional institutions (including on-site and off-site work experience projects); programs offering a full range of employment opportunities with public agencies and private business concerns; professional and paraprofessional training programs; research programs assisting employment service personnel; programs for the provision of manpower training and employment services in model community-based centers and the provision of bonding assistance.

SEC. 254. FINANCIAL ASSISTANCE FOR MANPOWER TRAINING AND EMPLOYMENT PROGRAMS

Authorizes the Secretary to make grants to eligible applicants, consistent with basic criteria under Section 605: Each application must ensure that supportive services are provided along with training and employment; ensure that training is for a job for which a demonstrated demand has been determined to exist; provide wherever possible for the involvement of industry, labor and employment personnel from the private sector of the economy and for the use of training equipment comparable to what used in the job for which training is furnished; indicate prior arrangements for release of participants upon satisfactory completion of training and for follow-up training; and meet certain administrative requirements.

With respect to training programs, this section accords priority in funding as to programs for which arrangements have been made with public or private employers for employment after release.

BASIC CRITERIA

SEC. 255. Requires the Secretary to prescribe basic criteria in respect to labor market information, suitable length of training, the formulation of employability plans, the establishment of advisory committees, and the equitable participation in programs by all segments of the population of eligible individuals.

EQUITABLE DISTRIBUTION OF ASSISTANCE

SEC. 256. Requires the Secretary to establish criteria assuring equitable distribution of financial assistance among the States taking into account, among other factors, relative crime rates and the ratio of the number of persons confined in correctional institutions, on probation, on parole, or charged with crimes within the state to those nationally. No state shall receive more than 15 percentum of the amounts appropriated.

LIMITATIONS ON FEDERAL ASSISTANCE

SEC. 257. Limits federal financial assistance to 90 percent of program cost unless the Secretary, pursuant to objective criteria, decides otherwise; non-federal contributions may be in cash or in kind.

MANPOWER TRAINING AND EMPLOYMENT PROGRAM IN FEDERAL CORRECTIONAL INSTITUTIONS

SEC. 258. Authorizes the Secretary of Labor, pursuant to agreements with the Attorney General and the Secretary of Health, Education and Welfare, to conduct special model programs for eligible individuals in Federal correctional institutions and in the federal courts, consistent with the purposes of the part.

AVAILABILITY OF EMPLOYMENT OPPORTUNITIES

SEC. 259. Requires the Secretary to ensure due consideration for applications for programs serving eligible individuals submitted under on-the-job training programs under the Manpower Development and Training Act of 1962, the Economic Opportunitv Act of 1964, as amended, and the Emergency Employment Act of 1971.

SEC. 260. COORDINATION AND PROGRAM LINKAGES

(a) Requires the Secretary of Labor and the Attorney General to enter into agreements to assure the combining of resources, maximum program coordination and joint planning between programs conducted under this Part, under Part E. of Title I of the Safe Streets Act of 1968, the Juvenile Delinquency Prevention and Control Act of 1968 and other federal laws; (b) requires the Secretary of Labor and the Secretary of Health, Education and Welfare to enter into agreements pursuant to which the Secretary of Health, Education and Welfare will provide education to participating eligible individuals and will ensure programs linkage with vocational education, vocational rehabilitation and similar programs; (c) requires coordination, by arrangement with the Director of ACTION, for the use of volunteer programs; and (d) authorizes the Secretary to ensure such arrangements as are necessary to ensure maximum coordination and joint planning between programs conducted and assisted under this Part within each State.

SEC. 261. STUDIES AND REPORTS

Authorizes the Secretary of Labor, in consultation with the Attorney General and the Secretary of Health, Education and Welfare to conduct a continuing study on the effect of programs conducted or assisted under the Part and to compile information on the employment opportunities of criminal offenders, including research on impediments to employment. The Chairman of the Civil Service Commission is also required to report on the means of increasing employment opportunities for such persons in the Federal Service.

SEC. 262. PAYMENTS

Authorizes payment of the federal share of program costs.

SEC. 262. WITHHOLDING

Authorizes the Secretary to withhold funds, after notice and hearing, in cases of an applicant's non-compliance with statutory provisions of the Part.

SEC. 263. AUTHORIZATION OF APPROPRIATIONS

This section authorizes appropriations of $40 million for FY '72, $100 million for FY '73; and $200 million for FY '74.

SEC. 3. This section amends the Manpower Development Training Act of 1962 to make certain conforming changes.

SEC. 4. This section amends the Wagner-Peyser Act of 1933 to require state employment service plans to include provision for the designation and assignment of personnel for the promotion and development of employment opportunities and placement for criminal offenders and persons charged with crimes.

DECEMBER 7, 1971.

Mr. JOHN K. SCALES,
Minority Counsel, Subcommittee on Employment, Manpower, and Poverty, U.S. Senate, Washington, D.C.

DEAR JOHN: Attached is a statement by former Assistant Secretary of Labor Jerome Rosow on the Department of Labor's role in offender rehabilitation. As you know, the Department of Labor has sought a more active role in offender rehabilitatoin through the provision of manpower services and employment opportunities. Your interest in our activities in this area is very much appreciated.

Please let me know if I can be of further assistance in this or any other matter.

Sincerely,

FREDERICK L. WEBBER,
Special Assistant for Legislative Affairs.

STATEMENT OF JEROME M. ROSOW, ASSISTANT SECRETARY FOR POLICY, EVALUATION, AND RESEARCH, U.S. DEPARTMENT OF LABOR, BEFORE THE SUBCOMMITTEE ON NATIONAL PENITENTIARIES, JUDICIARY COMMITTEE, U.S. SENATE, WEDNESDAY, MAY 19, 1971

Mr. Chairman, on behalf of Secretary Hodgson, I want to thank you for the kind invitation you have extended to the Department of Labor to join with your Subcommittee in its exploration of "the vocational approach as an avenue to the rehabilitation of offenders." You have asked that we include in our presentation "barriers to employment as well as present efforts in placement, training, evaluation and counselling for federal, state, and local offenders."

To provide a complete account of our activities in this field, including the emerging shape of our expanding program as it turns to deal with "future needs and directions," requires a number of witnesses.

It will be my responsibility to give an account of the rationale which supported the decision of both Secretary Shultz and Secretary Hodgson to seek a more active role for the Department in offender rehabilitation through the provision of manpower services and employment opportunities. This analysis guides both our long-term strategy and the general shape of immediate actions. In turn, representatives of the Manpower Administration, charged with responsibility for executing these decisions, will describe in detail the nature of the current program, its problems and results, along with an assessment of those factors which in their opinion will have the most significant impact upon future developments.

In brief, our analysis rests on the belief that there is a close connection between an effective criminal justice system and the development of economic opportunity for offenders flowing through that system.

Here we are talking, quite simply, about the prime importance of *jobs* as the key element in a new national strategy designed to rehabilitate known offenders—to prevent the commission of further criminal acts. This hearing is evidence of an increasing public understanding of the potential of such an approach.

We do not claim to have a monopoly on the most practical and effective ways in which to apply the vocational or labor market approach to the problem of rehabilitating the offender. Much significant work is underway at the State and local level, in large part stimulated by both the block and discretionary grant program of the Law Enforcement Assistance Administration. Further, an extensive program of vocational rehabilitation in a number of states has been mounted with the guidance and support of the Rehabilitation Services Administration. Finally, significant innovation has been pursued and applied in the work of the Federal Bureau of Prisons.

As a final caveat, our expectations in applying the vocational or labor market approach must be realistic. There are many men behind bars who need lots of help, beside skills and employment assistance. They have drug problems, alcohol problems, reading problems. They're too old or too sick or mentally ill. These people need considerable special attention before we can think in terms of aiding them to be self-sufficient. An unknown, but perhaps significant, number are not going to be able to move into the mainstream of society.

Unfortunately, they are not getting the care they require in overcrowded, understaffed institutions. These institutions, on the other hand, have many men and women within them who *can* be helped to be self-supporting. It is our belief that we must assist these individuals if we are ever to be in a position to deal effectively with the rest.

In order to present our view of the nature of the problem, let me briefly sketch the process by which our policy was developed and the basic considerations upon which it rests.

The single most critical consideration underpinning our thinking is that only a very small proportion of offenders are incarcerated—even for the most serious offenses. Further, most offenders—an overwhelming proportion of whom are youth—are never adjudicated and if adjudicated are not imprisoned.

Clearly, then, most offenders are already *in society*—whether on bail, on probation, on parole, or in community-based corrections.

Let's take a moment to roughly estimate the ways in which the flood of crimes narrows to a trickle of men and women entering penal institutions. Taking the roughly 4,500,000 Index crimes reported to the Federal Bureau of Investigation in 1968 as our initial parameter, note first that there were less than 800,000 clearances of such offenses. Less than one successful outcome for law enforcement activity for every five reported serious offenses—even at the initial stage of apprehension of a suspect—is a sobering reflection of a long-range trend with significant implications for the criminal justice and corrections systems.

This trend expresses, among other factors, an 85 percent increase (adjusted for population growth) from 1960 to 1968, in the rate per 100,000 for the FBI Crime Index. The rate of increase has, until quite recently, been accelerating, bringing critical points in the criminal justice system under enormous pressure. In the area of law enforcement activity, for example, as against the 122 percent increase in the *absolute* number of Index crimes from 1960 to 1968, there was a 51 percent increase in clearances for such crimes in the same period.

As a result, the clearance rate (clearances over Index crimes) has declined steadily from 31 percent in 1960, to 21 percent in 1968. This decrease has been accelerating, as well, and applies to every category of offense in the index. I will have a further word to say about the significance of the clearance rate, but for the moment let us follow our flow of 4,500,000 Index Crimes, through almost 800,000 clearances, as it proceeds through the system.

The relative decline in the effectiveness of low enforcement activity has not kept the courts from being overwhelmed by the absolute increase in the number of individuals who are formally charged with offenses. Almost 400,000 individuals were formally charged, that is, held for prosecution, as against the 800,000 clearances. Further, delays between arrest and final disposition are increasing and are most severe for those who seek to exercise their right to a trial—where it is not at all uncommon for a year or more to be consumed before adjudication.

If you take a closer look for example, at the Federal criminal justice system, you find an increasing trend—from 1966 through 1969—of criminal investigative matters declined for prosecution and an increasing backlog—at the same time—of Federal criminal cases. While it is not possible to determine the relative significance of the major factors reflecting the pressures upon the system, some of these, at least, can be identified.

There is an increasing number of trials per number of cases filed, with fewer guilty pleas, etc. There is an increasing length of time of trials, with an increasing number and complexity of pre-trial and post-trial motions—as well as an increasing number of appeals per trial convictions. As cases get more complex, and under the circumstances described above, it becomes easier to understand why less than one half the cases cleared in 1968—across the nation—resulted in individuals being charged. Or why of these 400,000, 160,000 were found guilty of the offense charged or of a lesser offense, with 60,000 acquitted or having charges dismissed.

Note that these two categories comprise only a little more than half of the 400,000 individuals charged. The remainder, around 180,000 were referred to juvenile court.

This is significant for a number of reasons, if only because it places many youthful offenders at or just beyond the reach of a labor market policy designed to achieve rehabilitation through economic self-sufficiency. This represents another practical constraint upon the utility of our approach.

If arrests, then, have been less than one for every five serious offenses, convictions have been running at around one out of five such arrests. What happens to those found guilty? Our estimates are that perhaps 90,000 were placed on probation—where, as we know, most will receive little meaningful assistance and scant supervision—with the remaining 70,000 being committed to some kind of pearl institution. Of these 70,000, as many as 40,000 will eventually be released on parole, with almost all of the remainder serving their full mandatory sentence.

The net result: something like one out of every seventy serious offenses reported in 1968 may have resulted in an individual being charged, tried, convicted, sentenced, and committed to a penal institution. And less than half this number will serve the full sentence for the offense.

Clearly, then, the distribution of offenders through the criminal justice system, yields a picture at any one moment in time in which the great number of those individuals under supervision are not within institutions. In that same year, for example, we estimate that of the 1.2 million adult offenders, fewer than one in three of those under supervision were in institutions of any kind, with one of six on parole and the remainder on probation.

The significance of this analysis is that it reveals powerful trends likely to endure over time which compel the conclusion that an offender rehabilitation policy focused primarily on penal institutions would not be either balanced or comprehensive Offenders exit from the system at a number of points—not the least important of which is the revolving door character of prisons themselves, with 19 of every 20 commitments resulting in release, most of these within two years.

Accordingly, an effective offender rehabilitation policy must provide program options at each stage of the criminal justice and corrections systems—and offer a continuous sequence of services keyed to the flow of the offender through those systems.

The goal would be to provide with due concern for the interests of society and the constraints of security—a realistic opportunity to achieve economic competence at every possible stage of the system to every individual capable, with help, of taking advantage of this opportunity. In this manner

we may break into and break down the cycle of the offender's life-style.

In addition, our programs can serve to ease pressures upon elements of the system which are malfunctioning under severe strain and may—without assistance—deteriorate further.

Corrections, for example, as an element of the system, has rehabilitation as its goal, but is not functioning effectively—and should, perhaps, not be expected to, under existing circumstances. Any measure applied to the system's outcomes yields the same result. Of 18,333 offenders released to the community from the Federal prison system in 1963, 63 percent had been arrested within five years of release. These 11,477 individuals had been rearrested over 28,000 times, 3,600 of them four or more times. Taking a different cut, consider the 94,467 individuals arrested in 1968 for an Index offense: 46 percent had been imprisoned on a prior sentence for 90 days or more. And, finally, at a reasonably representative large central state prison in Maine, 53 percent of the inmates, as of February, 1970, had served prior sentences at that institution, while only one out of six had no prior record.

It is not surprising that prisons fail to rehabilitate, that probation is relatively ineffective, and parole often poorly supervised and deprived of resources.

A national policy on offender rehabilitation is only gradually emerging, so that existing efforts—inadequate as they may be—are scattered and uncoordinated. Most crucially, when a man is found guilty and sentenced, our interest in him wanes. Though society supports the police in their important work of law enforcement and while we are aware of the need to modernize and improve our courts, we are not as concerned with what happens after conviction. We should be, for the picture is bleak.

Each year perhaps two million different Americans serve a sentence for a broad range of offenses in one of our local jails, State prisons, or Federal institutions. At any one time, as we have seen, about one and a quarter million individuals are under the jurisdiction of the criminal justice system. Almost four hundred thousand are in a jail or prison, many awaiting trial. Most will be in old, decayed buildings, designed only for confinement. Many buildings in active use are more than one hundred years old, reflecting the fact that corrections was the last major area of traditional local responsibility to receive direct Federal assistance.

Thousands of county and local jails—where more than half the inmates are imprisoned without having been convicted of a crime—are in terrible condition, with little rehabilitation available. Over 95 percent of the staff is concerned with strictly custodial duties. Counting inmates, locking them up, counting them again and so on through the day. Isolated from society, with no links to work, a place to live, and meaningful human relationships, inmates' time passes at a painful snails pace—with little preparation for living in the world outside.

In terms of prisoner population data, the offenders dealt with by the criminal justice system are poorly educated, very young, disproportionately black, overwhelmingly male, and unsuccessful in forming stable families. They are also plagued by serious and multiple personal problems, frequently involving alcoholism, mental retardation, drug addiction, and mental and physical illness. They constitute, therefore, a seriously disadvantaged group, poorly situated to benefit from economic growth even were they not faced with other, artificial barriers to decent employment.

In addition to these elements of disadvantage, institutionalized offenders bring with them a severely limited range of prior work experience, largely concentrated in the low-skill end of the spectrum.[1] Offenders face, as well, substantial barriers to employment in the attitudes and practices of prospective employers (both public and private), as well as of co-workers, employment agencies, and the public in general.[2]

In the face of this overwhelming picture of personal, educational, and occupational deficits—and of systems structured to exclude the offender from a reasonable range of opportunity—there is little organized governmental rehabilitation effort. Of perhaps one billion dollars spent to maintain corrections, roughly 3 percent or $30 million goes for rehabilitation. Ninety percent of local institutions—the recognized vestibule to a criminal career—have no education and training at all, while perhaps two-thirds have no rehabilitation of any kind.

In large part because of these cumulative disadvantages, offenders—particularly those just released from prison—are unable to seek, secure, and retain stable and worthwhile employment. The Pownall national sample survey shows 17 percent unemployment for released male prisoners in the labor force, at a time of 5 percent unemployment in the national civilian labor force. This study is quite conservative, understating the problem, since it represents a period six months after release—when many have already been rearrested or are otherwise unavailable for sampling.

Though we lack adequate information on this subject—as well as comprehensive studies of recidivism—the inability of former inmates to obtain satisfactory employment—or to receive education or training to prepare for such employment—clearly contributes significantly to the problem.

A major research effort is required covering unemployment rates, labor force participation rates, earnings and quality of employment, and personal characteristics of offenders; in its absence we know enough from research and pilot efforts to postulate a significant relationship between training, manpower services, employment, and recidivism for offenders. Studies show unemployment is a major factor in parole and mandatory release violations and steady employment is directly related to lower recidivism—with a direct relationship between parole success, job training, placement and supportive services, and employment for the ex-offender.

Employment and income, therefore, are central to any offender rehabilitation strategy, which is, in turn, essential to both correctional reform and the President's anti-crime program. An effective offender rehabilitation policy must provide program options at each stage of the criminal justice and corrections systems—and offer a continuous sequence of services keyed to the flow of the offender through those systems.

Let us consider—not as an alternative, but for purposes of completeness and contrast—some estimates of the cost of bringing the entire field of corrections up to professionally-determined standards. These are, indeed, staggering. An adequate physical plant alone—that is, replacing jails and prisons that should be closed, would require over $12 billion. Upgrading the rest of the system would cost at least $3 billion more.

Is this the only direction in which we should go? It was our conclusion that there were far less costly and potentially more fruitful approaches to correctional reform. This conclusion rested upon an analysis of over seven years of experience the Department of Labor has had with a variety of experimental, demonstration, pilot, and research activities bearing upon the relationship between employment, training, manpower services, and the recidivism of criminal offenders.

In FY 1970 Secretary Shultz decided that our experience warranted expanding our small effort, consisting primarily of a pilot inmate training program, two pre-trial intervention projects, a demonstration bonding program, and some significant research. You will hear more about each of these from later witnesses, both from within and without the Department.

I would like first, however, to briefly describe this decision and stress that it has been recently reaffirmed and restated by Secretary Hodgson.

The decision was of a two-fold nature: First, we would add to the roughly $3 million we were spending, mostly on inmate training, $10 million in new resources for FY 1971. An effort would be made to provide a more realistic balance between activities designed to reach inmates and those aimed at other stages of the system for the far greater number who are not institutionalized.

Second, we would make every effort to develop effective relationships between the criminal justice and manpower systems, aligning our efforts in such a manner that they support and sustain constructive change and reform within these structures. At the same time we will insure that our efforts and those, for example, of the Law Enforcement Assistance Administration, are mutually beneficial. As you will soon hear, from representatives of the Manpower Administration, the Secretary's charge to integrate our expanding program into state and local effort that is supported by the block and discretionary grants of LEAA has been vigorously pursued—as have efforts to relate the activities of the state employment services to the corrections system.

We envision the Federal role as being one of providing national guidance, developing model systems for directing manpower services and employment opportunities to the critical intervention points within the criminal justice system, and conducting an intensive and innovative research and demonstration program. More responsibility for designing, planning, and administering a balanced program of offender rehabilitation activities will be exercised by State and local government with our support and technical assistance.

Briefly, what are some of these activities which we have decided are helpful enough to warrant more resources and attention? For some offenders, the appropriate point for assistance is upon arrest and before arrangement and trial. We call this pre-trial intervention.

Results from our first two projects indicate that if young people can be turned aside from lawbreaking before they have established a "record," there is greater hope that they will not commit further delinquent or criminal acts.

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[1] Occupational distribution of the male prison population, 1960 (Source: Census of Institutions, 1963): According to last major occupation prior to incarceration; 68.6 percent laborers, service workers, operatives, 24.7 percent craftsmen, clerical-sales, 6.5 percent managers, professional-technical, as compared with men in the general labor force: 38.4 percent, 34.8 percent, 26.7 percent respectively.

[2] Over half the States will not employ a person with a criminal record. Seventy percent of 475 private employers in a 1946 New York City sample stated they would never hire a released offender; all but one of these said they would fire any offender inadvertently hired. In 1964, 50 percent of employers surveyed in 16 midwestern cities had never hired parolees and 23 percent had a stated policy against doing so. Seventy-five percent of employment agencies recently sampled refuse to refer any applicant with an arrest record. Seventy-two percent of the public stated, in a 1968 survey, they were uneasy working alongside ex-offenders.

The concept is simple. At present there are three traditional ways of dealing with young first offenders: they can simply be discharged—and often are—without any serious attempt to help them, in the often forlorn hope that they will straighten themselves out; they can be released on probation, where very little support—as I shall show—is available; or they can be incarcerated, with results which often serve no one's interests. For a youngster who may be on the threshold of a criminal career—and for whom normal court processing would in all probability be a negative and hardening experience—none of these is satisfactory.

Pre-trial intervention provides the court with a fourth alternative. Carefully selected defendants, 16 to 26 years of age, charged with primarily economic offenses—were recruited for enrollment in a 90-day period of voluntary participation prior to judicial review of their cases. Each individual was provided with job or training placement assistance, group and individual counseling, remedial education and other assistance as required. The staff then made a recommended disposition of the charges to the court based on the extent to which the enrollee satisfactorily participated and demonstrated his determination to use legitimate means to obtain economic rewards.

After three years of experience, our Washington project has been incorporated in the court budget, with the enthusiastic endorsement of the U.S. Attorney and the Chief Judge. Of 753 young offenders accused of such things as petit larceny, attempted auto theft, forgery and simple assault, charges against 468 have been dropped, while 285 were returned to normal court processing, primarily because of unsatisfactory performance. Charges were dismissed at a rate of 76 percent for adult enrollees and 40 percent for juveniles.

The acid test is that favorably terminated participants committed further criminal acts at a rate less than one-half that of control group which did not receive project services. Over 1,000 job and training placements were made, with the employment rate among former adult enrollees a year after leaving more than double that at the time of enrollment. At a program cost of a little over $500 per enrollee, the project exhibited a benefit-cost ratio of at least 2:1.

Before proceeding further, I'd like to note that probation—as a realistic alternative to imprisonment—has never been seriously tried in America. This underlines the importance of providing the courts with other alternatives, such as pre-trial intervention, for those many individuals who would not be well-served by probation, or, what's worse, institutionalized because of local deficiencies in probation.

I want to stress that prisons—as bad as many of them are—get almost all the corrections dollar, scanty as that is. Little or nothing is left for probation or—for that matter—for parole. When it comes to sentencing, then, the courts are compelled to rely on costly and ineffective residential institutions.

A massively expanded probation system could tap all those resources for education, employment, and training, that almost every community has in greater quantity and quality than the most expensive institution. Potentially much more effective than institutionalization and obviously cheaper, probation remains virtually an unexplored frontier for rehabilitation.

At the next stage—imprisonment—even less assistance is available for the offender. As I noted above, it is estimated that of over $1 billion spent on prisons, perhaps $30–$40 million goes for rehabilitation. It is also more difficult to inform and involve the public in rehabilitation work within prisons because of the relative isolation of corrections from those opportunity systems which support and sustain the rest of the community.

In recent years the Labor Department has tested skill training in penal institutions, together with supportive services, education, job development and placement. This modest experimental program was expanded in fiscal 1970 to 49 projects with more than 3,100 inmates at a cost of $5.3 million. The average cost of $1,600 per enrollee includes a small stipend—most of which is held back as "gate money" to cushion the difficult post-release adjustment period.

A careful evaluation finds that inmate training programs can be mounted in many different kinds of settings, despite legitimate security requirements. Most institutions, after initial caution, were cooperative—and many altered previously unexamined arrangements of long standing to make training possible.

Unfortunately, state employment services were asked to shoulder the difficult task of job development and placement, with little assistance and less advance notice. Overall, not enough attention was paid to developing a job in advance of release and inadequate use made of the existing JOBS mechanism.

Considering these tooling-up problems, program results prior to our recent decision to expand inmate training are encouraging.

As you will hear we seek to have not only more projects—but a better program. We know that we must link training with a specific job. One approach is through improved performance by State employment services, so we are funding model programs in five states—Pennsylvania, Georgia, Oklahoma, Arizona, and Massachusetts—to expand their capacity to provide manpower services for offenders.

Yet we recognize that State employment services are not necessarily in the best position to provide all manpower services needed by offenders. For one thing, we have fresh evidence that parole, probation, and corrections staff can be equipped to perform many of these functions. This is being done in North Carolina and may serve as a model for other states. Moreover, a balanced program must actively involve the private sector.

Before discussing this, however, I want to stress that all those interested in jobs for ex-offenders now have an important, thoroughly tested new weapon to assist them: bonding assistance. The Department bought fidelity bonds for more than 2300 ex-offenders, including inmates released after completing our skill training programs. Only 30 defaulted.

Our studies show former prisoners able to hold jobs otherwise unobtainable without bonding assistance. Further, employers were often motivated to review their regular requirements for subsequent hires. As a result, we are now providing bonding assistance at all institutions where we provide skill training.

We are going even further. We have so much confidence, we are extending the program nationwide to make bonding assistance available through more than 2,200 local employment service offices for all ex-offenders who apply—and who can demonstrate that they are barred from accepting a specific job offer solely because of inability to secure a commercial bond. Significantly, the bonding company substantially reduced its rates to us and has now agreed to give standard coverage rates to any bondee bonded for 18 months without a paid default, if he is unable to get commercial bonding.

We know now also that a comprehensive program of manpower services and employment opportunity for offenders in the criminal justice system requires volunteer involvement and extensive private sector participation. The government can only do so much; the very size of the problem requires that the private sector—in its own self-interest—shoulder a major part of the burden.

It would seem wise for the Labor Department to build on such involvement and test greater reliance on the private sector for job development, placement, and follow-up. This could be a useful alternative to exclusive dependence upon an already over-burdened state employment service.

When we look at the overall picture, we see the Department of Labor expanding inmate training, pretrial intervention, bonding assistance and manpower services to offenders. From a $3 million program in FY 1970, the President's budget requests $29 million for FY 1972, the bulk to be administered at the State level in the coming year.

Each state already has a planning agency setting priorities in the related fields of law enforcement, courts, and corrections, under bloc grants from the Law Enforcement Assistance Administration. Each state determines where it can spend these funds most effectively. Hopefully, manpower services can be carefully aligned with this Safe Streets program.

We are working with the Justice Department to insure this kind of coordination at the national and regional levels. Concerned citizens and public interest groups can help bring these programs together so as to achieve maximum impact in each state.

We are very much aware, however, that while we can stimulate improvements in our criminal justice system, the improvement itself must largely be brought about by states, municipalities, volunteer organizations, professional groups, and just plain concerned private citizens. We are also aware that the more systematic alignment we have undertaken between the manpower network and the criminal justice and corrections systems—of which you will be hearing more—is a large order. We know we have a long way to go, but we have been making progress.

This effort, overall, will require a change in public attitudes, as well as in institutional practices. This theme comes through strongly in remarks that Chief Justice Burger has made on a number of occasions. He has said, "If we want prisoners to change, public attitudes toward prisoners and ex-prisoners must change." It seems to me that there is no more critical area where such change must take place than that of employment and opportunity for self-sufficiency.

We believe that any realistic plan for rehabilitation of offenders will center—for many, though not all—on the manpower approach I have discussed with you this morning. While there are clearly limitations, it is equally clear that we have not begun to press against those limits. We have a long way to go.

It seems to us—taking what we feel is a sound and balanced view of overall public policy—that work and preparation for work can also help in the struggle to achieve court and correctional reform. If we are right, it is another reason to encourage comprehensive planning at the Federal and state levels, so that we can identify and meet the needs of offenders for training, rehabilitation, and work. At the same time, state-wide planning for reform in the criminal justice system can rest on a broader base. This base must include the kind of attitude change of which the Chief Justice spoke, together with the work of all the volunteers—and more—now working in corrections.

In closing, I would like to try to bring together a number of themes that seem to me to be of great importance.

Corrections and offender rehabilitation have long been viewed as traditional responsibilities of state and local government. Equally traditional has been the low priority accorded to these areas, together with a continuing strain on state and local finances.

These factors combine to insure that the the overall level of resources available for these tasks—particularly if the approach is the conventional one of building more, and hopefully better, institutions—will continue to be grossly inadequate.

This will be the case even with the substantial aid available for corrections and offender rehabilitation to states that make imaginative use of the grant program of LEAA.

Further, if law enforcement becomes more effective as a result of such aid it will swell the human tide flowing through the systems we discussed earlier. The clearance rate, as a vital indicator of law enforcement activity, would then slow its rate of decline and, perhaps, after leveling off, turn up. If that happens it will signal a massive increase in the costs of operating the criminal justice system.

Further, delays in every form of final disposition subsequent to arrest—already severe—could become so extensive as to present the possibility of a complete breakdown in the application of our concepts of trial, proof, judgment by verdict of peers, effective representation by counsel, and so forth. Our society can ill afford such risks. These systems exist to afford the innocent an opportunity for vindication, a function which must be performed if our society is to remain free.

Last year in the District of Columbia, as a result of increased and more effective law enforcement, the clearance rate for serious crimes doubled, from 10 to 20%! Consider, along with these startling indications of prospective pressures on the rest of the system, the fact that of $873 million spent on fighting crime in New York City in 1970, 3/10 of one percent was devoted to rehabilitation of offenders.

Clearly, a crisis of as yet undisclosed dimensions and impact is riding closer to the edge of public consciousness.

Put quite simply, it can be reduced to one question: What are we to do with all of these people we will be apprehending, and, in varying numbers, convicting?

While we are not able to predict with precision—at this still quite early stage—the extent to which our manpower program can help, it is clear that the results would be in the right direction. Further, if the manpower system—along with others—can be more successfully aligned in ways that will tend to break down the almost complete isolation of the criminal justice and correction systems, it may work to hinder what would appear to be—as in the case of the welfare system—an almost completely predictable further deterioration.

Remote from the institutions and services which support the mainstream of our society, the level of resources which these systems can bring to bear—without assistance and meaningful linkages—is inadequate and must remain so. At the present time, organizational arrangements that could facilitate this process of effective intervention in the life-style of many offenders are both parochial and primitive. The integration of criminal justice and corrections resources with state employment services, vocational rehabilitation agencies, and the training programs of the private business sector, is only now being formulated as a problem to be resolved.

Until this is done, the full resource capacity that can be brought to bear upon the problems of crime and recidivism can only be guessed at and, more importantly, existing programs (conventionally listed in inventories as interfaced correctional resources) will not realize their full potential.

Last summer, Bernard Segal, then President of the American Bar Association, said, with respect to the subject of correctional facilities and services: "We have enough research and studies. This is the time for action." We agree.

OCTOBER 18, 1971.

Mr. JOHN K. SCALES,
Minority Counsel, Subcommittee on Employment, Manpower and Poverty, U.S. Senate, Committee on Labor and Public Welfare, Washington, D.C.

DEAR MR. SCALES: This is in response to your letter of October 4 requesting information on programs and activities conducted by the National Alliance of Businessmen which relate to employment and training of criminal offenders.

Ex-convicts who are poor and wihout suitable employment are eligible for the NAB/JOBS program. Accordingly many ex-convicts, as well as some federal work-release prisoners, have been provided employment and training by NAB/JOBS employers. We have not, however, collected data on the numbers of individuals in this category.

Sincerely,

WILLIAM C. WOODWARD, *President.*

Mr. JAVITS. Mr. President, I send the bill to the desk and serve notice that I shall have a unanimous-consent request later in the day with respect to its referral.

Mr. JAVITS subsequently said: Mr. President, I ask unanimous consent that the bill I introduced today relating to manpower development and training, for corrections, be held at the desk for referral to a committee until tomorrow.

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

By Mr. MUSKIE:

S. 2965. A bill to provide greater access to Government information, and for other purposes. Referred to the Committee on Government Operations.

TRUTH IN GOVERNMENT ACT OF 1971

Mr. MUSKIE. Mr. President, our democratic system depends upon the vigorous interaction of three branches of government amongst themselves and with the press and the public. The interaction—so vital to our freedom—is threatened with serious imbalance as the power of the executive branch grows. A great part of that power stems from the executive branch's ability to withhold information from Congress and the public.

With the growth of the security classification system, of normal bureaucratic maneuvering, and of formal use of executive privilege, the executive branch can hide from Congress, the press, and the public information that is absolutely crucial for responsible decisionmaking. This is not the result of a plan or plot, or even a policy. More accurately, it is the inevitable result of the changes that have taken place in our Federal Government over the past two decades.

Engaged in a cold war, we needed a permanent Military Establishment of major size and an elaborate classification system. As the size and complexity of our Government grew, information became more important and complicated. Information became harder to find and easier to hide. As issues and events began to move more rapidly, fewer institutions like Congress or the press could by themselves keep track of the essential knowledge of Government policy.

The executive branch alone now has the resources to assemble the detailed knowledge needed to formulate public policy in our technological society. And in a natural attempt to increase its leverage, the Executive withholds that information to further its own policies. Information is hidden to hide mistakes and blunders. Adverse information is hidden to preserve political reputations and promote policies. Dissenting opinion is hidden to mute opposition.

The new power of the Executive and the importance of the information transforms what was once an effort to put the "best foot forward" of an administration into an ability to control what Congress and our people will know about many key Government decisions and policies. The public and the press often no longer have enough facts to make responsible judgments about the course of Government. And Congress often does not have the information essential for it to carry out its constitutional responsibilities.

The Pentagon papers are the best example of this problem. Material that is essentially historical was denied to the public on national security grounds. That information, had it been known at the appropriate time, may have substantially changed the course of events in Vietnam. Even after it was too late to affect our policies, but when it could have served to inform us about past errors in order to avoid a tragic repetition of Vietnam, the Pentagon papers were still denied to the American people and their representatives.

Just last month citizens had to go to court—where they were largely unsuccessful—in order to attempt to obtain basic factual data about the potential environmental impact of the Cannikin test. Most of this information was unavailable to Congress. It was not made available before an irrevocable decision to go ahead with the test was made.

A battle in Congress of several years over the SST went on while key evaluations of the effect of the craft on the environment, the economy, our balance of payments, and so on were denied to Congress—even though Congress had to decide on whether to fund the project or not.

These are just a few of the many examples that demonstrate a need for fundamental reform. We must get the facts about our Government and its policies to the people and to Congress. Only in this way can our citizens and their representatives judge and, when they feel it is appropriate, oppose the policies of our Federal Government. This is the way we will restore some balance between the powers of the executive branch and the rest of our Government. It will also restore trust in our Government by removing much of the credibility gap.

In order to provide the essential information about our Government needed by Congress and the public, I am introducing today the Truth in Government Act. It creates a Disclosure Board which will supply Congress and the public adequate information about the policies of Government. It will also provide independent control over our classification system to end its abuses. Such an independent agency can judge amongst the competing claims of Congress' need to

know and the Executive's need for secrecy to protect national security.

This legislation creates a seven-member Disclosure Board. Its members are selected by the President with the advice and consent of the Senate. They would serve staggered 15-year terms.

In order to insure a diversity of views one member must come from a background in the American diplomatic corps, one from the military, one from the press, one from Congress and one from the legal profession. The Board is given the power to subpena any Government document in order to fulfill its functions. Its reports and decisions are to be publicly printed.

The first responsibility of the Board is to supervise the security classification system. The Board is granted the power to issue rules and regulations governing classification and the power to enforce them. Classification is required to be made subject to stringent principles restricting its use to cases of demonstrated need. Classification of documents is limited to a period of years according to their nature. Extension of that period is not automatic; the official requesting an extension must prove to the Board that it is consistent with the principles limiting classification.

The Board has the power to investigate any cases of misclassification or overclassification; to declassify documents; and to order agencies to modify their methods of classification to conform to the Board's rules and regulations.

The President has 45 days to review these decisions, orders, or regulations of the Board. If he modifies them, he must give a public, written explanation of the modification.

This part of the bill will take the classification system away from those who use it to protect themselves instead of secrets. It will allow an impartial Board to review the case for secrecy—so that secrecy when needed will be kept and, when unneeded, it will be efficiently swept away. It will give all Americans reassurance to know that the stamp "secret" will be restored to its rightful place.

A second major responsibility for the Board will be to provide Congress documents it needs to fulfill its Constitutional responsibilities. Congress needs sufficient information to make reasoned choices about appropriations, new legislation, and required oversight. Without this information, our system of checks and balances breaks down.

Just as important, Congress, as elected representatives of the people, can reflect their interest in light of information that cannot be made available to the general public. This will allow a broader check on the Executive, while preserving needed confidentiality.

This legislation creates a system to accomplish this by allowing either House of Congress, 10 Senators or 43 Representatives, or any congressional committee to request from the Board executive documents that have been refused to them. When such a request is made, the Board will hear from the requesting party why the documents are needed by Congress and then will hear the justification for the refusal to produce them from the relevant agency or department. The department could rely upon any of the traditional reasons for executive privilege: National security, diplomatic need, the privacy of personnel, the needs of criminal investigation, or the protection of candid advice to superior. The Board would balance these two needs and provide a written decision. The Board would be able to release the documents under a protective order requiring their secrecy and restricting their availability.

The decisions of the Board can be modified by the President if he invokes executive privilege with a written order. Both the Board's and the President's decisions are appealable to the U.S. Court of Appeals and then the Supreme Court by the original parties.

In the normal course of events the Board under these provisions will reject and accept many requests for documents. Undoubtedly, many documents will be sent to Congress with limitations upon their distribution. In the case where the Board rejects a serious and strong claim of executive privilege, the President could overturn or modify the decision, while publicly stating his reasons for so doing. Decisions by the Board, modified or unmodified, would go to the court of appeals and then the Supreme Court. The Court would review the reasonableness of the decision below—in effect reweighing the constitutional balance.

Although this is unusual, I think it is highly appropriate for the courts to make this type of decision. They have the institutional neutrality that is needed. They have the expertise in balancing these types of competing constitutional claims. And they have the perspective to ensure that the entire democratic system will be served by the decision.

In those decisions where the argument for secrecy is weakest, the Board would release documents to Congress without protective order; they would become public. This would be the major avenue for making information public.

Put to provide another route for public access to information, the Truth in Government Act substantially liberalizes the provisions of the existing Freedom of Information Act, which now provides for private suit in court for the release of Government documents. Under the law, all documents must be made available save those that fall into one of many broad categories of exemptions. To date this legislation has not provided major access to Government documents. In order to strengthen the act, my legislation would amend it to:

Provide attorney's fees for those who win a suit to force an agency to release documents it has improperly held;

Allow courts to judge the reasonableness of a claimed exemption from the Freedom of Information Act—overruling *Epstein v. Resor*, 421 F. 2d 230 (1970);

Make determinations by the Board that a document should be declassified a prima facie case that the document is not within the national security secrecy exemption of the Freedom of Information Act; and

Permit a district court in a Freedom of Information Act case to seek an advisory opinion from the Board.

Thus private citizens, using the Freedom of Information Act, will be able to affect the flow of vital information to the public.

This entire bill is structured to restore balance to our system. Properly administered, it can provide greatly increased information for the public. Congress will have a reasonable way to obtain the information it needs in order to play its role in our constitutional system.

Yet this legislation does not go too far. It preserves a classification system in competent hands. It gives ultimate control over that system to the Commander in Chief. It creates an orderly procedure for releasing documents to Congress that does not ignore the legitimate needs of Executive privilege. Contemporaneous documents and the advice of aides are absolutely protected.

I suggested this proposal for an independent declassification board last summer during the heightened concern over Government secrecy caused by the Pentagon Papers controversy. The reaction to it across the country was enormously favorable. I ask unanimous consent that editorials about the board printed last summer be placed in the RECORD at this point.

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

[From the Vallejo (Calif.) Times-Herald, June 25, 1971]

BEATING THE SECRECY LABEL

It was unfortunate the showdown between the press of America and the United States Government happened in the case of the government charging the New York Times with endangering the country's security by publishing a series of articles based on what was said to be a secret study of the Vietnam War in 1964.

All of this could have been prevented if someone had come up with the idea years ago as proposed by Sen. Edmund S. Muskie the other day. He said he would introduce legislation to create an independent board with authority to lift secrecy labels from government documents.

Under Muskie's plan, the board could make a document public after a lapse of two years. And at anytime, this board could send relevant documents to the appropriate committee of the Congress.

"Whatever the facts are," Muskie said, "they cannot inflict more damage than a rising tide of disbelief. We must give people a reason to believe anew in their ability to control the great events which shape and alter their fate. And that is why the board must be an independent board in appearance as well as in fact," he added.

Muskie said his plan would give the president and the departments the strongest incentive to be frank about the facts, which would in any case be made public almost immediately or soon afterwards. And at this same time, an independent board could protect the national security without using it as an excuse to hide blunders or launch covert policies.

Muskie's plan appears to have merit. With an independent board working unfettered and unbiased and holding allegiance to neither the government nor the people, showdowns can be avoided. All showdowns, and in this instance the word is used all-inclusive, are damaging because there can be only one winner. In some instances, however, both sides come out the loser when the showdown is resolved.

Congress should take a careful look at Muskie's plan in the not too distant future.

[From the Rock Island (Ill.) Argus, June 22, 1971]

OVERCOMING SECRECY ABUSE

Democratic Sens. Edmund Muskie and George McGovern have made a timely suggestion in connection with the New York Times publication of official Vietnam war documents—require that any "national security" stamp put on an official paper be subject to periodic review.

Sen. Muskie proposed the establishment of an independent board which after two years would be allowed to make public any paper classified as secret.

Because a paper so labeled won't always be known to exist, any department or agency classifying a document as top secret should be made to come before the board within a specified time and justify continued classification if this was intended.

But why not a shorter time period for non-defense agencies? Yes, a lot of documents are suppressed by these agencies, often to cover up official blunders.

Newspapers believe there has been far too much secrecy, but have no desire to publish facts that are harmful to the nation; in fact, they have often withheld such information when stumbling upon it. In the present dispute the Times has taken pains to delete references that might harm the U.S. in its relations with other nations.

[From the Lewiston Daily Sun, June 23, 1971]

SECRECY AND DEMOCRACY

The most positive and important development to come out of the current imbroglio among the federal government, The New York Times and the Washington Post, over the publication of secret papers on the origin of the Vietnam War and high level discussions and decisions about it has come from our junior United States Senator, Edmund S. Muskie. While some office holders on both sides of the political fence have been seeking to make political capital of the situation, to embarrass present or past Presidents, our senator has come up with a concrete proposal which is meritorious. He plans to file legislation to create an independent, bipartisan board with authority to lift secrecy labels from government documents.

Secrecy and democracy are antithetic, on the surface, at least. How can there be government "of the people, by the people and for the people" if the people are denied information by a stamp of secrecy placed on documents on public affairs by officials who may or may not have good reason? But even in democracy, there must be some secrecy. It is necessary for national security, particularly, and extends into other fields such as trade, research and even planning at times.

Secrecy should serve the interests of the public and not be a cloak to protect officials against the disclosure of their honest mistakes, nonfeasance or misfeasance.

The use of the secrecy stamp in Washington is regulated by an Executive Order issued by the late President Dwight D. Eisenhower in 1953. It set up three classifications, of declining importance: Top Secret, Secret, and Confidential, and vested the power to classify in the heads of the various departments. The power in turn could be delegated to appropriate officials. Provision is made for downgrading of classifications after a period of years leading to final declassification. The latter may require 25 to 30 years, when Top Secret papers are involved. Great Britain recently adopted a 30-year regulation, while France continues to a 50-year rule.

An independent board, such as proposed by Senator Muskie, could make periodic reviews of classified material to determine whether the reason for secrecy remained valid. We agree with the senator that such a system "would give the President and the departments the strongest incentive to be frank about the facts. * * * At the same time an independent board could protect national security without using it as an excuse to hide blunders or launch covert policies. * * *."

[From the Lincoln (Nebr.) Journal June 22, 1971]

MERIT IN DECLASSIFYING BOARD

A sensible and unemotional suggestion was offered by Sen. Edmund S. Muskie, D-Me., in the highly explosive situation of the publication of the Pentagon papers. He will propose legislation to create a seven-member independent board responsible for declassifying secret government documents.

This board should be free from government control and pressure from the news media. Too often government officials have put on the classified stamp to avoid embarrassment or to cover up incompetence or worse when national security is not involved.

There should be stronger regulations about putting classified papers in code. Coding of documents which later can be declassified leads to the claim that declassification gives foreign agents an opportunity to break the codes.

Loose regulations about coding in itself lead to locking history into secrecy, giving government officials too much latitude to keep their operations from the people who have a right to know and from the press which has a right to print except when national security is threatened.

If the country is to remain strong and free the people must have faith in the government and in the press to protect their right to know what government is doing and is up to.

Congress should give strong consideration to the proposal of Sen. Muskie. An independent board should have wide authority and cover both the executive and legislative branches. Secrecy is not confined to any one segment of government.

One of the administration's arguments against the printing of the documents by the New York Times and Washington Post is that this will cause concern abroad and the loss of confidence in the United States. It is doubtful that the United States will lose face with other nations if it keeps faith with its people at home.

If it can't have it both ways, then if the government of the United States of America is to survive as it was conceived, it must make the choice of being trusted at home.

[From the Minneapolis (Minn.) Star, June 22, 1971]

THOSE SECRECY LABELS

Outrage over deceit on U.S. involvement in Vietnam, as disclosed in the secret "Pentagon Papers," appears to be widespread. There is probably less outrage, however, and more puzzlement, over the government's practice of classifying documents "secret" and "top secret."

John Kenneth Galbraith, in the letter reprinted on this page, asks a critical question about this practice: Against whom was this secrecy employed? He charges, with some validity, that it was used against Congress, "our own people and our friends," and that it protected "the freedom to make catastrophic mistakes."

It is obvious that there has been a loosening of long-standing security practices during the course of the Vietnam War. Officials who have become disenchanted with U.S. policies have leaked information, or, once having left office, have rushed into print with their own versions of what has happened. At the same time, there has been a tendency, by many in high office, to overclassify information, to stamp ordinary documents and study papers "secret" and keep them so classified for long periods. One result is that a good deal of information, often common knowledge to our foes, is kept from the public.

Sen. Edmund Muskie, D-Maine, says he will introduce legislation to create an independent board with power to lift secrecy labels from official documents. The board would be able to make documents public after a two-year waiting period, and send others to committees of Congress while they were still classified.

Muskie's proposal is a laudable one, but we would prefer to see a board responsible to the public—in other words, made up of elected officials—rather than one appointed by, and responsible only to the president. Only in this way can the public's right to know, rather than the actions of high officials be protected.

[From the Hackensack (N.J.) Record, June 25, 1971]

ESCAPE HATCH FOR TRUTH

The first proposal for adjusting the machinery of government to prevent unwarranted classification of official documents has come from Sen. Edmund S. Muskie.

Details are sketchy. The Maine Democrat outlined the plan at a party fund-raising dinner, a forum hardly conducive to dispassionate consideration of important innovations. The plan has promise none the less.

Sen. Muskie would create an independent seven-member board to review secret documents two years or more after their original classification and to make public those whose disclosure it deems to pose no threat to the nation's security or diplomatic relations.

Under present law the authority to declassify such documents is vested in the authors who declared them secret originally or their successors in office.

The membership of Sen. Muskie's board would presumably include neither the authors nor the subjects of the reports under its scrutiny. There would be less temptation to keep the lid on merely to cover up ineptitude or outright malfeasance. And the public's essential right to know what its government is doing would be enlarged.

This is all to the good. As Sen. Muskie put it: "We must give people a reason to believe anew in their ability to control the great events that shape and alter their fate."

One potential danger in the plan is that it might encourage a reluctance to put certain sensitive considerations in writing or a tendency to confine them to unofficial memorandums.

Sen. Muskie should be encouraged to consider this possibility and prepare his plan for formal congressional consideration promptly. National concern over how much the people are entitled to know about this government has never been more intense.

[From the New York (N.Y) Post, June 23, 1971]

HOW HUMAN ARE JUDGES?

(By Max Lerner)

In the three federal court cases hogging the news—guess which—there are at least 20 federal judges involved. Within the week the nine Supreme Court judges will probably have been drawn in, to get the cases settled for good.

This is a vast expenditure of judicial energies and brains, but the issues are worth it. Everyone agrees that we are now involved in a crisis of belief—in the government and in the press. Which means that we can't depend on the officials of either of them to settle it, since each has an ax to grind—drastic secrecy rules in one case, and an absolute freedom of press in the other. At this point only the judiciary and the judicial mind can serve as arbiters.

Are the high federal judges qualified for this role? They cannot be wholly qualified—no one can be—for to be above all human bias and passion they would have to be men like gods. I know more about the Supreme Court judges than I do about the Federal District and Appeal judges, but they are all very human, with their own biographies, preferences, ambitions, values. The glimpses we get of them, as each moves into the public spotlight for his brief intense moment of exposure, show up the human qualities and perhaps some of the frailties.

Many years ago, when my innocence about the judicial process was first breached, it occurred to me that judicial decisions are not babies that come into the world conveyed by storks, but that they come out of the travail and conflict of opposing interests, power systems, world views. That is still true. But it is also true that there has to be something special about the way judges operate that sets them off from those other government servants, the political men.

The something is what we mean by the judicial mind. Either it is there or it isn't, and in too many cases it isn't. But it had better be there in the high judicial posts. For if we are in a crisis of belief about politicians and about the media, it would be catastrophic if our belief in the judiciary were also under siege.

I read an account the other day of a federal judge. It said that his friends thought of him as a man who knows his own mind, and has no hesitation in speaking it. I should like such a man for a friend. But a judge must not only know his own mind, like the rest of us. He must be able to transcend it, in the sense of transcending his own preferences. He must reach out to reconcile the claims of conflicting groups, and do it clearly enough, in long-range terms, so that men will know where they stand in the sight of the law, and feel that it deals fairly with them, and that they can live out their lives in a rapidly changing world with some measure of order and security.

The trouble is that many judges see this as their self-image, and hide their own partisan views behind it. FDR understood this about the conservatives on the Supreme Court who blocked the New Deal legislation, and he was so angry that he made the mistake of blasting them out of the way by a court-packing threat.

The judges of the Warren Court were just the opposite. They were impatient with the slow pace of change in giving all men greater access to equal life chances, and in protecting the obscure.

In the process they moved so passionately and unwarily, in the field of criminal law that they aroused the rage of a large segment of opinion which felt they were unjudicial, and that they had ignored the everyday fact and fear of crime. Thus with the best of motives one of the most creative courts in American history ended with what Fred Graham has called a "self-inflicted wound," and witnessed another crisis of belief in the judicial mind.

On the vexed problem of how to declassify secret government documents Sen. Muskie's suggestion of a blue-ribbon civilian commission, to review the classification after two years, makes considerable sense. Somehow we shall find a better way than the present one.

Even the problem of the credibility of government officials can be solved—by changing them. But the belief in the fairness of judges goes deeper than either of these. In a Time of Troubles like the present we need constantly to renew a kind of social contract between struggling groups, and it is the courts that must have credibility as the keepers of that contract.

[From the Scranton (Pa.) Times, June 23, 1971]

A "De-Secreting" Board Much Needed

Both of those masters of satire, Russell Baker and Art Buchwald, whose columns appear on this page, have had their fun with the government's tendency to withhold information by way of classifying even apparently harmless documents with graded variations of secrecy.

Their caustic wit on this subject was prompted by the Justice Department's attempt to halt further publication of the Pentagon Papers, as the McNamara study of our escalated commitment to the Vietnam War has come to be known.

And both the Pentagon Papers and the satirical commentaries point up a need for some means of prodding governmental departments into releasing or else justifying the continued hiding of information about subjects which have universal impact on the quality and direction of life in the United States.

The only recommendation we have seen put forth publicly thus far is that of Maine Sen. Edmund Muskie. He has proposed that legislation be enacted which would establish an independent board with authority to declassify secret government documents in the public interest. The board would be authorized to act after the documents had been withheld from Congress and the public for two years.

It is significant that congressional committees have not been able to get requested information from the executive branch because of the screen of official secrecy, including the Pentagon Papers. The need for an independent agency to monitor these documents is apparent when it is realized that without such a board the very existence of vital documents is little known. An independent board also would be less likely than the executive branch to make the covering up of administrative ineptitude the test of whether a document should be placed in the public domain.

[From the Providence (R.I.) Journal, June 23, 1971]

Too Much Secrecy

The furor over the Pentagon papers that have been published thus far has pointed up the growing problem of secrecy in government. The practice of classification has long since bureaucratized the concealment of government decisions and information embarrassing to officials, far beyond the requirements of national security. Once classified and filed away from public scrutiny, papers tend to stay buried for years on end. That is why the proposal of Sen. Edmund S. Muskie for creation of an independent declassification board finds a receptive public today.

If such a board had the power to make a document public after a two-year waiting period, as suggested by Senator Muskie, there would be strong pressure on top officials to be more open and honest about their policies and actions. There would be less incentive to try to hide the facts, since the secrecy label would not cover them for long. Presumably, the executive department would have full opportunity to oppose lifting of the secrecy curtain and to convince the board, perhaps in private hearing, of the necessity for continued classification.

But an independent board, whose directive was to release as much as possible, would have a very different approach from a bureaucracy whose tendency is to file and forget—or to release only what is favorable to its interests. If the board's work were carried out in the spirit of full information for the people, there would be much less chance for suits against newspapers or other media for publishing information that had been classified, justifiably or without sound reason.

If very much of the material in dispute in the cases of *The New York Times* and *The Washington Post* were clearly harmful to national security, there would have been much less controversy over its publication, perhaps none at all. Of all those who have commented on the security aspect, the most convincing is Sen. Stuart Symington of Missouri. When he asserts that the disclosures were not harmful to national security, he speaks from the experience of long years in the Senate, preceded by service as a top defense official—secretary of the air force. "It's obvious to us for many years," said Mr. Symington, "that the executive department has been taking advantage—as it is today—in classifying in order to cover up various matters they do not want the people to know."

A declassification board which cannot release documents to the public for two years may not solve the problem posed by an executive who holds out on the people or feeds them misleading information to keep them quiet. A feature suggested by Senator Muskie, permitting the board to furnish documents to appropriate congressional committees during the two-year period, would go part-way toward solving that problem. Beyond that, top officials must begin working to restore the attitude of trust between the people and the government—between Congress and the executive—that existed in a less turbulent time of our history. The simplest way to do that is to "level" with the people. As Senator Muskie said Sunday, "Whatever the facts are, they cannot inflict more damage than a rising tide of disbelief."

[From the Houston, (Tex.) Chronicle, June 23, 1971]

Muskie on Official Secrecy

The continuing controversy over publication of the Pentagon papers has focused attention on the manner in which the government classifies "secret" information.

The Pentagon papers, portions of which have been published by the New York Times, the Washington Post and the Boston Globe, are indeed classified as "secret." But the editors of those three newspapers published the information anyway—not because they are unpatriotic or desirous of causing this nation harm but rather because they believed the secret classication in this case is not justified.

Government officials have a natural inclination to put the secrecy stamp on anything which might be embarrassing. It is far more human to attempt to hide mistakes and blunders than it is to publicize them.

If publication of the Pentagon papers is harmful to the nation's security, as the government contends, then we doubt seriously that the editors of three great newspapers would seek to publish the documents.

The U.S. Supreme Court ultimately will have to decide who is right in this controversy, one of the most important issues of press freedom in this country's history.

Meanwhile, Secretary of Defense Melvin Laird has directed his Pentagon censors to declassify as much of the lengthy report as possible.

It should be kept in mind that we are not dealing here with current military plans which might if disclosed jeopardize the safety of our military personnel. Rather we are dealing with high government decisions, policies and contingency plans which occurred at least four years ago and as far back as the Truman administration. This is history, and in such a case Americans can justifiably wonder why the "secret" classification still applies.

Sen. Edmund S. Muskie, in a speech over the weekend, observed that "countless citizens no longer believe in their government... What they do believe is that the govern-

ment lies, and this disbelief has reached a new high with this week's publication of the Pentagon papers. They are the daily front-page story and the urgent concern of anyone who cares about the trust that binds Americans together."

He said that this danger of loss of trust in the government and this "corrosion of ideals" is so great that specific steps must be taken to prevent any government from operating in so secret a fashion in the future.

Muskie proposes to introduce legislation to create an independent seven-man board with the authority to declassify secret government documents after a waiting period of two years.

"This system," Muskie argues, "would give the President and the departments the strongest incentive to be frank about the facts, which would in any case come out almost immediately or very soon."

We think Muskie's plan is a sound one.

Incidentally, a husband and wife team were the ones who blocked efforts to declassify the Pentagon papers. Dennis J. Doolin, deputy assistant secretary of defense for international security in charge of East Asian affairs, had the responsibility of periodically reviewing the 46-volume report. He was assisted by his wife, who is deputy director of the office of special considerations in the U.S. Department of Health, Education and Welfare.

[From the Salt Lake City (Utah) Deseret News, June 22, 1971]

TOO MANY SECRETS? LET'S TAKE A LOOK

A few days ago this page called for a review of the government's classied documents and reports to determine which ones need no longer be kept secret.

We did so because America might have been spared some embarrassment if the report leaked to the New York Times regarding the origins of the Vietnam war had been released instead by the government itself. Maybe the government couldn't have released all of that report, but it could have made public substantial portions of it without impairing national security.

We did so because too much information is kept secret by the government not to protect national security but to guard against the exposure of official bungling and deceit.

We did so because the public must be given the facts—no matter how distressing or distasteful the facts may be—if the people are to pass sound judgments on how well its public servants are actually serving it.

So it was encouraging to read Sen. Edmund S. Muskie's announcement the past weekend that he will introduce legislation to create an independent board with authority to lift secrecy labels from government documents after two years.

Of course, there's room for differing with Senator Muskie over the size and composition of the board. He suggests a board of seven members, which isn't large considering the volume of classified documents it would have to review. But the smaller the board the better it would be from the point of view of making sure that legitimate secrets remain secret.

Moreover, would the five private citizens he wants on the review board—in addition to a member from the government and one from the press—really possess enough expertise to handle the job?

As a case in point, take the secret study leaked to the New York Times and the Washington Post. Would such review board members be in a position to know on their own that some of the material was originally coded and that its publication could help other nations decipher other messages of the same period that might so far have eluded translation? Would the reviewers know on their own that some of the material can enlighten foreign analysts on how U.S. intelligence operates, together with some of its strengths and weaknesses?

Or would the reviewers have to take the Pentagon's word on such matters? If so, wouldn't such a board be independent in name only and wouldn't we all be right back where we are now?

Certainly the mere existence of such a board could help heal some of the deep wounds that are summed up in the term "credibility gap" as well as restore confidence that this is, indeed, a government of the people.

[From the Salt Lake City (Utah) Tribune, June 22, 1971]

MUSKIE DECLASSIFICATION PROPOSAL WOULD BURY "CREDIBILITY GAP"

Sen. Emund S. Muskie's proposal that an independent board be created to declassify government documents after two years is basically sound. It is about time that some machinery be provided to protect the American public's right to know what its government is doing. The Maine Democrat's proposal contains the basic blueprints for such long overdue protection.

If any member of Congress has any doubts that there is a need for such a declassification, he should turn to the Senate Armed Services Committee record and review those portions where Defense Secretary Melvin Laird refused to give the committee the now-disputed Pentagon papers, even after they had been published in the New York Times. Secy. Laird's reason for refusing the committee's request was that the papers were still "classified." Despite the fact the papers were public information, the secretary still exercises his executive prerogatives and won't let the committee have the papers.

Over the years similar actions have prevented Congress from getting information it deemed necessary for thoughtful consideration of legislation. The Muskie plan for a "public-centered" declassification would not only keep the public informed but give Congress vitally needed information.

A potential pitfall of the proposal is that the board instead of hastening the release of information to the public, might end up restricting its flow. Conceivably the board, after hearing only the highly persuasive arguments of government agencies on a declassification issue, might slap its own security stamp on the questioned documents. To avoid this spectacle of doubly classified information, Congress must provide for mandatory public hearings on these matters.

Any declassification board must also include some type of appellate procedure which would allow persons denied access to government information means of adjudicating their complaints. Government information classification is now pretty much a one-way street. There are many ways information may be classified and virtually none to force declassification. Inclusion of some appellate process would assure that inappropriate "secret" labels that the board overlooked, or even avoided investigating, would be tested in public.

The term "credibility gap" has become one of the more distasteful idioms of the American language. The Muskie plan is a positive step toward giving the phrase the swift and proper burial it has long deserved.

[From the Norfolk (Va.) Ledger-Star, June 21, 1971]

WAY OUT OF A DILEMMA

If we were to wager on the outcome of the confrontation between the government and *The New York Times*, the money would be on permission to publish the rest of the stolen or purloined Pentagon Papers.

For the horse is out of the barn, and what the *Times* was saying (through James Reston) last week—that the papers were practically floating around Washington—is perhaps true enough this week. *The Washington Post* had begun publishing its own version of the papers and all of the columnists with pipelines are busy calling the principals—such as the Bundys, former Defense Secretary McNamara and Averell Harriman—to get their versions. Gentlemen involved in the frequent conferences that drafted position papers and plans quite naturally will be doing their own explaining, sooner or later.

Meantime, the confrontation is in the federal courts, specifically in two Courts of Appeals; the *Post* case is before the District of Columbia Circuit and the *Times* case before the Second District Circuit. The next steps, if any, must be appeals by the losers to the Supreme Court.

There is one Constitutional point in these cases that badly requires solution; that is, the right of the government to prevent publication of documents that it believes may injure negotiations of this country with others; and the right of any member of the press to unilaterally declassify government documents on ground that the people have a right to know what their government is doing.

We do not see how anyone can argue that the North Vietnamese, sitting across the table at Paris, will have benefited less than the people of the U.S. by these revelations.

Nonetheless, what damage is to be done will be done before this is over. All these secrets will come out.

Therefore, it seems to us that the Nixon administration would be wise now to declassify these Pentagon Papers on its own part, and throw them open to the public by way of the entire press, television and radio.

Then a second step, like the proposal of Senator Muskie, seems sound and wise to us. That is, create an independent board empowered to lift security labels when their declassification is overdue. Senator Muskie would wait two years; perhaps a shorter period might suffice, or a longer, depending upon the circumstances. The board ought to be composed of appointees from the Executive, the Legislative and the Judicial Departments of the government. Surely no one will argue that all three are not involved in this present confrontation.

But, that is for the future. For the present, President Nixon ought to see that these papers about which so much controversy swirls now, are released to all interested in delivering them to the public.

[From the Washington Evening Star, June 22, 1971]

THE CLASSIFICATION GAME

The loud debate over the significance of the Pentagon Papers seems destined to last at least through the 1972 elections. The government's legal assault on freedom of the press promises to be rattling around the courts for some time as well. But even before the political and juridical questions are finally resolved, there is at least one tangential issue that can be settled now.

The process by which official documents are classified and stay that way can be seen for what is: An unholy mess.

Abuse of the classification is no new thing. It has existed at least since the invention of the rubber stamp and has been the subject of periodic protests in Congress and the press. The present controversy has, however, focused public attention on the classification game as never before and has produced the best hope for ending the practice of sweeping political dirt under a security rug.

Few would deny the government's need to carry out many of its military moves and some of its diplomacy in secrecy. Nor is there any serious questioning of the government's obligation to protect its legitimate secrets for as long as the national security is involved. But the method by which documents are now classified carries with it a virtual guarantee of misuse.

No one, government officials included, likes to have a past mistake paraded in public. But unlike the run-of-the-mill goof-off, the upper-level government type can arrange to have the documentary evidence of his errors hidden from public view until the heat is off. And there is more at fault with the present system than the common human inclination to keep skeletons hidden. There is the common human disinclination to invite trouble.

The original decision as to how a given document is to be classified is, generally speaking, left up to a low or middle-echelon officer. The obvious way to invite trouble is to stamp a really hot secret "Confidential." The instinct for survival dictates that the highest classification possible is the one that will be chosen.

The same rule applies to declassification: When in doubt, keep it hidden. Theoretically, the classification is supposed to have a set life span designated by a number code signifying automatic declassification by a certain date. But again, that system depends on a government agency's desire to follow its own guidelines as to when the security blanket should be abandoned. It doesn't work.

There are alternatives to the present system. One that deserves serious consideration has been suggested by Senator Muskie, who proposed that all classified material should be reviewed by an independent board after two years. The board could declassify the material and release it to the public. It could also at any time make classified documents available to appropriate committees of Congress.

It might be advisable to change the proposed legislation so that all documents would automatically be declassified after two years, unless an independent board should approve a government request for an extension. In any event, some such system of review would constitute a major improvement over the present setup. It would insure eventual public exposure. And such assurance would tend to curb the excessive use of the Top Secret stamp as a cloak for wrongdoing, incompetence or political embarrassment.

Mr. MUSKIE. Mr. President, the proposal just introduced is new and unprecedented. I am certain that during its consideration, it can be improved. There may be questions about whether the Board as structured will attract members of sufficient caliber. The scope of Presidential review of the Board may need to be modified. The provisions for judical review of its decisions must be tested against the profound and difficult constitutional issues which are involved. While I believe the legislation is both constitutional and wise, I think it deserves close scrutiny in Congress and the executive.

I have offered this legislation in an effort to assure the public and Congress of greater access to information they should have. It necessarily entails a lessening of a President's powers. And clearly a President would have to voluntarily cooperate with legislation such as this—to accept it and agree to procedures that circumscribe his power. I hope that this will be done, not as a forced limitation of the President's power, but as a voluntary Presidential decision that limits his power because he feels it is best for our constitutional system.

We need to end bureaucratic secrecy and provide the people with the facts about our Government. If we do not, our system of government will continue to be weakened. If we do, we shall begin to restore trust and truth in our Government.

I ask unanimous consent that the bill be printed in the RECORD at this point along with an outline of its proposals.

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

S. 2965

A bill to provide greater access to Government information, and for other purposes

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

TITLE I—DISCLOSURE BOARD

SEC. 101. This Act may be cited as the "Truth in Government Act of 1971".

ESTABLISHMENT

SEC. 102. There is established an independent board to be known as the Disclosure Board (hereinafter referred to as the "Board").

SEC. 103 (a) The Board shall consist of seven members to be appointed by the President, by and with the advice and consent of the Senate.

(b) Two of the original members of the Board shall be appointed for a term of 3 years, two for a term of 7 years, two for a term of 11 years, and one for a term of 15 years. Their successors shall be appointed for a term of 15 years each, except that any individual appointed to fill a vacancy shall be appointed only for the unexpired term of his predecessor and subject to the limitations with respect to party affiliation. No member shall serve for more than one term, but a member may serve until his successor has been appointed and qualified. No more than four of the members shall at any one time be affiliated with the same political party.

(c) One member of the Board shall have a background in the diplomatic corps, one shall have a background in military or intelligence work, one shall be from the news media, one shall be a former member of Congress, and one shall be a member of the bar.

ADMINISTRATION

SEC. 104. (a) The President shall designate one of the members of the Board as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in case of the absence or disability of the Chairman. Four members of the Board shall constitute a quorum. Except as provided in section 202 (a) (6), decisions of the Board shall be made by a majority of the members present.

(b) Members of the Board shall be responsible for maintaining the security of classified material in their custody, and all security procedures prescribed by law and Executive order shall be followed.

(c) In addition to other penalties provided for by statute, the disclosure of material classified or other by any member or employee of the Board shall be punishable by a fine of not to exceed $15,000 or imprisonment for not to exceed ten years, or both, unless such disclosure is made in accordance with the provisions of this Act.

(d) (1) No member of the Board shall actively engage in any business, vocation, or employment other than that of serving as a member of the Board.

(2) Section 5313 of Title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(21) Members, Freedom of Information Board."

POWERS

SEC. 105. The Board is authorized to—

(1) adequate measures to guard the physical security of the documents be taken;

(2) issue subpoenas duces tecum to all custodians of classified and other official government information for the purposes of compelling production of such information excepting none whatever for in camera inspection by the Board or its staff in order to carry out the purpose of the Act and the duties of the Board under section 552(d) of title 5, United States Code or for release of such documents in accordance with the terms of any decision of the Board under this Act;

(3) hold hearings, administer oaths, take testimony, and require persons to appear and furnish information relevant to the Board's duties;

(4) make such rules and regulations as may be necessary to carry out its duties; and

(5) appoint counsel when appropriate for indigent private parties appearing before the Board under section 202(a) (6) of this Act or under section 552(d) of title 5, United States Code.

RECORDS

SEC. 106. The Board shall print a record of its decisions, orders, reports, rules and regulations for public use, and shall keep on file for public use a record of its proceedings and hearings. Portions of the proceedings may be classified in accordance with the principles set forth under section 204 of this Act.

REPORTS

SEC. 107. The Board shall report not later than sixty days after the close of each fiscal year to the Congress and to the President concerning its activities under titles 2, 3, and 4 of this Act. Each such report shall contain a register of the employees of the Board and their positions, duties, and salaries, and shall contain an accounting of all funds expended by the Board during the preceding fiscal year. The report shall contain an evaluation of the Board's efforts to achieve the purposes of this Act and may contain such recommendations for legislation or other governmental action as the Board determines to be appropriate.

TITLE II—SUPERVISION OF THE SECURITY CLASSIFICATION SYSTEM

GENERAL DUTIES

SEC. 201. The Board shall be responsible for the supervision and review of the security classification system of the executive branch. It shall insure that classification of information is kept to an absolute minimum consistent with the needs of national security.

SPECIAL DUTIES AND AUTHORITY

SEC. 202. (a) The Board shall—

(1) conduct a thorough and continuing investigation and appraisal of the standards and practices of classifying official information in the executive branch;

(2) promulgate rules and regulations, in accordance with section 553 of title 5, United States Code, and in conformity with the general principles under section 204 of this Act, designating: (A) Classification categories for all official Government information; (B) the titles or positions of Government officials authorized to classify Government information; (C) criteria for declassification and for the downgrading or upgrading of the classification of all Government information; (D) standards for permitting access to classified information; (E) rules regulating the use of derivative classification; and (F) any other matters necessary to carry out the purposes of this Act;

(3) provide for the automatic expiration of classification of particular items or certain categories or subcategories of items of information after periods ranging from two years from their production in the case of the least sensitive information to twelve years from their production in the case of the most sensitive information;

(4) within a reasonable period of time to be determined by the Board, provide for the mandatory reclassification and the expira-

tion for such classification not to exceed twelve years or for the declassification of all information which was classified prior to the effective date of the rules and regulations promulgated under this Act;

(5) declassify or reclassify all information classified or reclassified after the effective date of the rules and regulations promulgated under this Act which is not classified in conformity with said rules and regulations;

(6) investigate upon the motion of three or more of its members or upon inquiries initiated by Members of Congress, private citizens, or officers or employees of the Government, any allegation of improper classification of information, or upon the failures of any Federal agency to comply with the provisions of this Act and with the rules and regulations promulgated hereunder, and publicly issue a report describing the results of each such investigation; and

(7) order a lower or higher classification, or a declassification of information, or direct any department or agency of the executive branch to modify its classification procedures or practices to conform with the rules and regulations of the Board upon a finding by the Board of improper classification pursuant to the proceeding clauses.

(b) All information in the executive branch shall be subject to the procedures prescribed under clause (3) or (4) of subsection (a) of this section. The Board is authorized to extend for a period of not to exceed 10 years the classification of any item of information if the Board determines, upon written application and a showing by the official authorized to classify that item, that—

(1) such extension is required for purposes of national security; and

(2) such extension is consistent with the provisions of section 204 of this Act.

PRESIDENTIAL REVIEW

SEC. 203. Any rule, regulation, decision, or order issued by the Board under this title shall become final unless, within 45 days of receipt of the Board's written rule, regulation, decision, or order, the President issues an order overruling or modifying that rule, regulation, decision, or order setting forth in writing his reasons for such action. Any such order of the President shall be final and published in accordance with section 105 of this Act, except that the title or other identifying features of the information involved may be deleted at the request of either the Board or the President.

CLASSIFICATION PRINCIPLES

SEC. 204. In carrying out its duties under this title, the Board shall be subject to and guided by the following principles—

(a) The American public and press need to be fully informed concerning the policies, decisions, and operations of the Federal Government in order to participate intelligently in and report responsibly on the democratic processes.

(b) The Congress, as the elected representatives of the people, need even greater access to information concerning the policies and operations of the Federal Government in order to determine the need for new legislation, assess the appropriate level and distribution of appropriations, and exercise its oversight responsibilities.

(c) The legitimate needs of Congress, the public and the press require that classified security classification information be imposed only where its protection for national defense is demonstrably necessary. Classification of information shall be limited to information the declassification of which would clearly and directly threaten the national defense of the United States.

(d) Classifications should be removed when the passage of time eliminates the requirement for security, and information of a historical nature should not be or remain classified unless a clear relationship to current national defense interests can be demonstrated.

(e) Procedures governing classification and derivative classification should insure that each classification decision be the carefully considered act of a responsible official, whose accountability for the classification decision is a matter of record.

(f) No information should be classified for the purpose of preventing embarrassment to any official of any branch of government, or for the purpose of concealing incompetence or misconduct.

TITLE III—CONGRESSIONAL ACCESS TO DOCUMENTS

GENERAL DUTIES

SEC. 301. The Board shall be responsible for providing Congress, upon request, certain information necessary for Congress to discharge fully and properly all its constitutional responsibilities.

SPECIAL DUTIES AND AUTHORITY

SEC. 302. (a) The Board shall receive and act upon any requests submitted to it for the issuance of an order directing any department or agency of the Executive Branch to transmit one or more documents held by such department or agency to—

(1) either House of Congress if such request was made pursuant to a majority vote of the Members of such House;

(2) any standing or special committee of either House of Congress if the requested document or documents relates to its jurisdiction; or

(3) either House of Congress if such request is made pursuant to a petition signed by not less than 10 members of the Senate or not less than 43 Members of the House of Representatives, as the case may be.

(b) Any request made to the Board under subsection (a) shall state with reasonable particularity (1) the document, documents, or category of documents requested, (2) the constitutional or other need for access to the document or documents requested, and (3) the previous efforts made to obtain access to the document or documents requested.

SEC. 303. (a) Upon receipt of such a request, the Board shall immediately advise the head of the appropriate Federal department or agency and the President of that request, subpena the document or documents and solicit the reasons of that department or agency for its refusal to transmit the requested document or documents to the Congress, a committee thereof, or members, as the case may be.

(b) The Board shall conduct an investigation to determine whether such documents shall be transmitted to the Congress. The Board may order an evidentiary hearing with oral argument before the entire Board in any such case. Upon concurrence of five members, such a hearing shall be closed. In making this determination, the Board shall weigh the respective constitutional authorities and duties of the parties, including—

(1) the extent to which disclosure would impede the orderly administration of the executive branch; and

(2) the extent to which the information contained in each documents is necessary for the performance of legislative functions.

(c) The Board shall not be empowered to transmit documents which the Board finds (1) were initially prepared within two years of the date of the request or (2) are interagency or intra-agency memoranda or correspondence consisting principally of advice, recommendations, or opinions prepared in connection with policy determinations of a department or agency of the Executive Branch.

(d) The Board is authorized to enter an order in any such case granting or denying the request, or granting the request upon such terms and conditions as may be necessary to protect the security of the documents, including but not limited to terms and conditions requiring that—

(1) adequate measures to guard the physical security of the documents be taken;

(2) access to the documents be given only to Members of Congress or only to certain Members of Congress whose responsibilities require access to the documents;

(3) all discussion concerning the documents take place in executive session of committees and closed sessions of either the Senate or the House of Representatives.

(e) Any decision made under this title shall be in writing and shall set forth in detail the reasons for (1) granting any request, (2) subjecting the request to an appropriate protective order, or (3) denying the request.

(f) The pact that a document requested is classified shall not, in itself, be a reason for denying Congressional access to such document.

PRESIDENTIAL REVIEW

SEC. 304. Any decision of the Board under this title may be modified in whole or in part by order of the President within 30 days of publication of the Board's written decision. No modification of a decision by the Board which restricts the release of documents to Congress shall be made unless the President invokes executive privilege. Any order of the President modifying a decision of the Board shall be written and shall be published in accordance with Section 105 of this Act. If the President invokes executive privilege, the written order shall explain the necessity for such invocation.

APPEALS

SEC. 305. (a) Any decision rendered by the Board under Section 303 shall become final unless, within 30 days after publication, the President orders a modification of the decision in accordance with Section 304 or either party files an appeal with the United States Court of Appeals for the District of Columbia Circuit. Any Presidential order modifying a decision of the Board under Section 304 shall become final unless, within 30 days after publication, either party files an appeal with the United States Court of Appeals for the District of Columbia Circuit.

(b) For purposes of this section, a party eligible to appeal a decision of the Board under Section 303 or an order by the President under Section 304 shall be (1) the party which requested the documents in question under Section 302, or (2) the agency or department which submitted reasons opposing such request under Section 303(a).

(c) The Court of Appeals shall determine whether there is substantial evidence on the record as a whole to sustain the action of the Board or the President, having due regard for the need and right of the Congress to obtain information in order to fulfill its constitutional duties and the privilege of the Executive to withhold information under executive privilege. The court may, if appropriate, order the production of classified documents from the Board or from any department or agency. The party aggrieved by the decision of the Court of Appeals shall have an appeal as a matter of right to the United States Supreme Court.

TITLE IV—PUBLIC INFORMATION

PUBLIC INFORMATION AMENDMENTS

SEC. 401. (a) Section 552(a)(3) of title 5, United States Code, is amended by inserting after the second sentence thereof the following sentence: "The court shall award reasonable attorney's fees and costs to the complainant if it issues any such injunction or order against the agency."

(b) Section 552(b) of such title is amended by inserting at the end thereof the following:

"In any case in a district court under paragraph (3) of subsection (a) of this section,

the court shall have jurisdiction to determine whether any exception provided by this subsection, if asserted by the agency, has been reasonably asserted, and for this purpose the court may compel the production of the records in camera. The declassification of records under title II of the Truth in Government Act of 1971 constitutes a presumption, rebuttable only by clear and convincing proof, that such records are not within the purview of clause (1) of the first sentence of this subsection."

(c) Section 552 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) Any case in a district court under paragraph (3) of subsection (a) of this section, the court may request an advisory opinion from the Freedom of Information Board on the reasonableness of any assertion of any exception provided by subsection (b) of this section.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

SEC. 501. There are authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

TITLE VI—SEPARABILITY

SEC. 601. The sections, subsections, paragraphs and provisos of this Act are hereby declared to be separable, and if any one or more of the sections, subsections, paragraphs, or provisos of this Act, or the application thereof to any person or circumstance, should be held to be unconstitutional or invalid for any reason, the validity of other sections, subsections, paragraphs, and provisos of this Act, and the application thereof to other persons or circumstances, shall not be affected thereby.

OUTLINE OF MUSKIE TRUTH IN GOVERNMENT BILL

TITLE I—DISCLOSURE BOARD

Establishes a seven-member Board appointed by the President with the advice and consent of the Senate. The seven have staggered terms; one each shall be from the American diplomatic corps, the military, the press, Congress, and the law. Special security provisions are provided for the Board and its staff. The Board has the power to subpoena *all* documents needed to carry out its duties. Decisions and orders of the Board must be publicly printed.

TITLE II—SUPERVISION OF CLASSIFICATION

The Board is granted the authority to supervise the security classification system. It has the power to promulgate rules and regulations governing classification and to enforce adherence to them. Classification of documents is required to automatically expire; extension of classification requires officials to prove to the Board that further classification is needed to protect national security. The Board can investigate charges of overclassification from public and private persons. The President is given power to review the Board's decisions on classification.

The Board is required to administer the classification system according to principles in the legislation restricting secrecy to cases of demonstrable need.

TITLE III—CONGRESSIONAL ACCESS TO DOCUMENTS

A House of Congress, a Congressional Committee, or ten per cent of a House of Congress (10 Senators or 43 Representatives) can request the Board to release to it a document that the Executive has refused to release to Congress. In such cases, the Board holds a hearing of those requesting the documents and the agency or department refusing to release the documents. The Board weighs the Congressional need for information versus the claim of executive privilege and decides the issue in a written opinion. No documents of an advisory nature or less than two years old are subject to release. Documents given to Congress can be subject to protective orders of the Board to retain their confidentiality. The President can modify these decisions.

Board decisions and any Presidential modifications of them are subject to appeal to the U.S. Court of Appeals and then the Supreme Court.

TITLE IV—PUBLIC ACCESS TO DOCUMENTS

In order to increase direct access to government documents by the public, the bill liberalizes the Freedom of Information Act by:

1. Providing reasonable attorney's fees for those who successfully seek the release of documents in court under the Freedom of Information Act;

2. Granting the courts the power to review the reasonableness of a claim of executive privilege under the Freedom of Information Act;

3. Making declassification by the Board a *prima facie* case that the information being sought under the Freedom of Information Act was not subject to executive privilege.

By Mrs. SMITH:

S. 2966. A bill making a supplemental appropriation for the fiscal year ending June 30, 1972, and for other purposes. Referred to the Committee on Appropriations.

Mrs. SMITH. Mr. President, in this "environmental decade" we hope the American people are learning to invest and to build more constructively than in the past. This should be a principle in the areas that affect the quality of both our national and our personal lives.

A point of reference is our agricultural land use adjustment programs, and a specific point of application should be in title VIII of the Agricultural Act of 1970. That title of this most important piece of legislation provides for a land use adjustment, or cropland conversion, program of long-term agreements between farmers and the Secretary of Agriculture—with the authorized acreage adjustments beginning in each of the calendar years 1971, 1972, 1973, and 1974.

In part due to the relatively limited acreage impact—perhaps something like one-half million acres that could be accepted under the $10 million authorization per year—and in part due to the reliance on the larger annual set-aside programs specifically for feed grains, wheat, and cotton, this long-term agreement provision of the act was not implemented for 1971. And funds were not budgeted or appropriated for this modest-size program for 1972.

In my State of Maine—and I daresay in many other States—there is a special need to operate this additional—already authorized—program. To a great extent this land use adjustment program would be more important to help individual farm families make needed changes in the use of their land than it would be in the strictly crop adjustment sense—though it would make its contributions in both areas, and would have important benefits for nonfarm people.

The aid to helping people make such adjustments can be stated this way: Each year many farmers find it necessary to reduce or discontinue their farming operations due to age, health, or other physical disabilities; but they cannot afford and, in many instances, do not want, to leave their farm home. The relatively small adjustment payments would permit them to retain their family farm and continue to be a viable part of their community, while the cropland retired would also contribute to needed production adjustment, which is in the public interest.

Other benefits would be these:

There is need to keep substantial acreages of some kinds of row crops and small grain out of production for at least a decade. Conversion of this cropland to other public-benefit uses for periods of 5 to 10 years will be less expensive to the Federal Government than to deal with these surplus acreages on a year-to-year basis.

The part of the needed cropland conversion that could be obtained under such a program would be at a lower Federal cost of production avoided then is probable under annual production adjustment programs. The program would provide important benefits to nonfarm people. In many instances, the environmental benefits derived from adjustment of land adjacent to streams, rivers, and lakes to conserving uses would serve as a catalyst to better conservation and antipollution uses. Through the use of permanent grass strips in rolling areas of this country we could reduce soil erosion and enhance the beauty for the benefit of nonfarm people.

The program would increase the resources and opportunities for outdoor recreation. This is especially true for those farms which enter into the supplemental public access agreements which are authorized under this legislation. Under these agreements, the general public can have free access to the converted acres for hunting, trapping, fishing, and hiking. These benefits are made available without regard to race, creed, or color.

Mr. President, I urge that prompt action be taken on my proposal for a supplemental 1972 appropriation of $10 million to put this small, but important, land-use adjustment program into effect in calendar year 1972, for farm families which have a specific need for it. By committing annual payments in this amount for 10 years, much good of the type I have outlined can be accomplished.

This aid should start early in calendar year 1972, for the need is now and the farmers needing this program assistance should have the opportunity to plan before spring to make the needed adjustments.

My bill in this regard is as follows:

S. 2966

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated out of any money in the Treasury not otherwise appropriated, to supply a supplemental approriation for the fiscal year ending June 30, 1972, and for other purposes, namely:

DEPARTMENT OF AGRICULTURE, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

For necessary expenses to carry into effect the land use adjustment program authorized in section 16(e) of the Soil Conservation and Domestic Allotment Act ,as amended (16 U.S.C. 590p(e)). "$10,000,000.00."

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1438

At the request of Mr. ERVIN, the Senator from South Dakota (Mr. McGOVERN) was added as a cosponsor of S. 1438, a bill to protect the 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.

S. 2273

At the request of Mr. TOWER, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 2273, a bill to provide a tax credit for expenditures made in the exploration and development of new reserves of oil and gas in the United States.

S. 2676

At the request of Mr. TUNNEY, the Senator from New Hampshire (Mr. McINTYRE) was added as a cosponor of S. 2676, the National Sickle Cell Anemia Prevention Act.

S. 2734

At the request of Mr. SCHWEICKER, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 2734, a bill to amend the Fair Packaging and Labeling Act to provide for the establishment of national standards for nutritional labeling of food commodities.

S. 2850

At the request of Mr. TAFT, the Senator from Hawaii (Mr. FONG) was added as a cosponsor of S. 2850, to amend the Labor-Management Relation Act, 1047, and the Railway Labor Act to provide for the settlement of certain emergency labor disputes.

S. 2875

At the request of Mr. METCALF, the Senator from Illinois (Mr. STEVENSON) was added as a cosponsor of S. 2875, a bill to restore certain rights to free or reduced rate rail passenger transportation granted by railroads to employees upon retirement.

S. 2898

At the request of Mr. HARTKE, the Senator from Ohio (Mr. TAFT) was added as a cosponsor of S. 2898, a bill to provide college tutors for the homebound handicapped.

S. 2944

At the request of Mr. BUCKLEY, the Senator from Virginia (Mr. BYRD), the Senator from Utah (Mr. MOSS), the Senator from New Jersey (Mr. CASE), the Senator from Colorado, (Mr. DOMINICK), the Senator from California (Mr. TUNNEY), the Senator from California (Mr. CRANSTON), the Senator from Illinois (Mr. PERCY), the Senator from Alaska (Mr. STEVENS), the Senator from Hawaii (Mr. FONG), the Senator from North Dakota (Mr. BURDICK), the Senator from Ohio (Mr. TAFT), the Senator from Maryland (Mr. BEALL), the Senator from Vermont (Mr. STAFFORD), and the Senator from Minnesota (Mr. MONDALE) were added as cosponsors of S. 2944, a bill to amend section 112 of the Internal Revenue Code of 1954 to exclude from gross income the entire amount of the compensation of members of the Armed Forces of the United States and of civilian employees who are prisoners of war, missing in action, or in a detained status during the Vietnam conflict.

S. 2945

At the request of Mr. BUCKLEY, the Senator from Utah (Mr. Moss), the Senator from Virginia (Mr. BYRD), the Senator from Colorado (Mr. DOMINICK), the Senator from Illinois (Mr. PERCY), the Senator from Alaska (Mr. STEVENS), the Senator from California (Mr. CRANSTON), the Senator from Hawaii (Mr. FONG), the Senator from North Dakota (Mr. BURDICK), the Senator from Ohio (Mr. TAFT), the Senator from Maryland (Mr. BEALL), and the Senator from Minnesota (Mr. MONDALE) were added as cosponsors of S. 2945, a bill to amend title 10 of the United States Code to permit the appointment by the President of certain additional persons to the service academies.

S. 2952

At the request of Mr. SPONG, the Senator from South Carolina (Mr. HOLLINGS) and the Senator from California (Mr. TUNNEY) were added as cosponsors of S. 2952, a bill to authorize a Federal payment for the construction of a transit line in the median of the Dulles Airport Road.

SENATE RESOLUTION 210—SUBMISSION OF A RESOLUTION CALLING FOR THE PRINTING AS A SENATE DOCUMENT A REPORT ENTITLED "A REPORT TO THE DELEGATES FROM THE CONFERENCE SECTIONS AND SPECIAL CONCERNS SESSIONS"

(Referred to the Committee on Rules and Administration.)

Mr. FONG. Mr. President, for Senator FRANK CHURCH, chairman, and myself as ranking minority member of the Special Committee on Aging, we are submitting a resolution for referral to the Committee on Rules and Administration calling for the printing as a U.S. Senate document, "A Report to the Delegates From the Conference Sections and Special Concerns Sessions," resulting from the 1971 White House Conference on Aging, held in Washington, D.C., November 28 through December 2.

The Conference Chairman, Dr. Arthur S. Flemming, has personally indicated his interest in having such a reprint published by the Senate.

The resolution reads:

S. RES. 210

Resolved, That the report of the 1971 White House Conference on Aging (A Report to the Delegates from the Conference Sections and Special Concerns Session), held in Washington, D.C., November 28-December 2, 1971, be printed as a Senate document, and that there be printed three thousand eight hundred additional copies of such document for the use of the Special Committee on Aging.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

AMENDMENTS NOS. 784 AND 785

(Ordered to be printed and to lie on the table.)

Mr. ERVIN submitted two amendments intended to be proposed by him to the bill (S. 2512) to further promote equal employment opportunities for American workers.

ADDITIONAL STATEMENTS

THE RUSSIAN ARMADA AND DOMINATION OF THE STRAITS

Mr. GOLDWATER. Mr. President, I believe the time has come for us to recognize the tremendous ramifications of the great new Soviet superfleet which is now facilitating a rapid Russian move to fill the power vacuum east of Suez created by the withdrawal of British forces from the Persian Gulf area.

We have read much in recent months about the extent of the Soviet naval buildup but very little about what it portends for the future of the United States and the entire free world.

There is no doubt in my mind that the Soviet thrust east of Suez is just the latest move in a strategy aimed at world domination.

It underscores the vast and all-too-often unrecognized importance of growing Soviet strength in the straits which control the waterways of the world. Only recently have naval planners in this and other nations begun to consider seriously the strategic theory which holds that the country that dominates the important straits around the oceans of the world will also control ocean shipping and have a strong, if not decisive, influence upon the economies of other countries. Domination of these straits could make it impossible for any country to use the oceans freely if the power controlling the straits denied them access. In the event of war, of course, such control would be conclusive.

Strategists in this country who seriously credit the "domination of the straits" theory believe that it explains many recent Soviet moves such as the enormous buildup of Russian ships in the Mediterranean Sea, in the Indian Ocean, in the North Sea, and elsewhere. It also accounts for Soviet efforts to gain naval base rights and privileges in many widely separated areas of the world. And it heightens enormously the strategic importance of the Suez Canal and shows dramatically how a reopening of the canal in the near future might advance Soviet designs. The estimate is that a reopening of the canal would bring the important Indian Ocean 9,000 miles closer for the Soviet fleet and only 2,000 miles closer for ships of the United States.

Mr. President, there is sound reason to believe that the Soviets have been building their enormous seapower in an effort to take over completely the Mediterranean Sea, including both the Strait of Gibraltar and the Suez Canal. This would give them easy and quick access to the Indian Ocean, in which they have shown such obvious interest. The control of the Indian Ocean would, of course, result in Soviet domination of the Strait of Malacca and mark a strong beginning in a drive to dominate all the important waterways of the world used for shipping.

Mr. President, it frightens me when I hear people who should know better dispute the "domination of the straits" theory with the argument that it is no longer important to control the oceans. It obviously has escaped the notice of these people that in any war of any size a vast majority of the equipment tonnage as well as the great majority of troops would have to be transferred by sealift. The kind of aircraft it would take does not exist, nor is it foreseen.

There can be no doubt that the latest moves in the global game plan of the Soviet Union have begun to have an alarming impact on strategic planners in the United States and other parts of the free world. And for the first time many Americans are beginning to understand that ours is an island continent and that our international influence is related directly to free access to the sea.

Amazingly, this is only a recent concern. It is so easy for the vast majority of Americans not to understand its tremendous implications. This is because the Soviet Naval buildup has been conducted with amazing speed at a time when American attention was riveted primarily on the Indochina war and homefront problems.

It must be understood that 6 years ago the Soviet Navy was just a coastal defense system of no great concern to anyone but the Kremlin.

Today the Soviet fleet is an ocean-spanning super navy which may soon be able to deny us free use of the seas and to drive us from positions needed to support our allies.

This is a true estimate of a real and growing peril to the United States and the entire Free World. It is a condition which has been pointed out in recent months by just about every important naval authority in the world.

The situation has placed Soviet submarines so close to our shores that it has been necessary for the Strategic Air Command to move some of its bases further inland. It is a situation which has made Soviet warships so prevalent on the waterways of the world that special conferences have been called between United States and Soviet officials in an effort to avoid collisions at sea.

And it is a situation which has been estimated as follows:

By Raymond V. Blackman, editor of "Jane's Fighting Ships," writing in the 1971–72 edition:

> The situation for the U.S. Navy is serious. By any standards, the Soviet fleet now represents the super Navy of a super power.

By the President's Blue Ribbon Defense Panel:

> The Soviet Naval buildup is a major element in the shifting balance of military power, although not itself a direct threat to the United States (except the submarines), the new and growing Soviet Naval strength affects adversely the diplomatic and economic position of the United States throughout much of the world. It also threatens an historic American policy, freedom of the seas.

By the Joint Congressional Committee on Atomic Energy:

> The United States, unless it moves quickly to counter a rapidly expanding Soviet Naval threat, faces a future in which it will have to surrender to the Soviet on all issues or risk nuclear annihilation. Any delay may mean "no future."

Pentagon officials trace the Soviet naval buildup directly to the Cuban missile crisis of 1962, when the weakness of the Soviet navy forced them to back down in the face of a show of naval strength by the United States. Since that time, the Kremlin has allocated vast resources to its naval program. For example, between 1966 and 1971, when the United States produced 88 combatant and amphibious ships, Soviet shipyards produced over 200. The Soviet fleet is thus rapidly approaching the U.S. fleet in total numbers of combatant ships.

The increase in Soviet naval power has taken place in concert with a similar buildup of the Soviet merchant marine. Together these Soviet activities on the high seas represent an entirely new dimension in the balance of world affairs. And, tragically, very few Americans understand the true meaning of the development in terms of their own security.

Too few Americans understand that the Soviet Union has never before been a sea power. It emerged from World War II as the greatest of European land power, but when it sought to capitalize on that power to acquire new territory the United States and her allies were able to halt the expansion through a series of mutual defense agreements. To a large degree our agreements, such as with NATO, were maritime alliances in that they depended upon the United States to be able to freely use the seas to support its allies and prevent their encirclement.

Two products of the Soviet buildup are seen as direct threats to the ability of the United States to make free use of the seas. These are the expanding Soviet antiships missile and submarine forces which are increasing in such numbers as to make the adequacy of our counterforces questionable. Soviet antiship missile-launching platforms have increased fourfold since 1960. The Soviet submarine numbers over 300 attack and cruise missile submarines as compared to 57 which the Germans had in the beginning of World War II. Without counting ballistic missile types, the Soviet passed us in total nuclear submarine in 1963.

At the same time the Soviets have passed us in the total number of merchant ships and are overtaking us in terms of total tonnage. More than half of the merchant fleet is less than 10 years old while over half of the U.S. merchant fleet is more than 20 years old. What is more, the Soviet merchant fleet is centrally controlled and coordinated by the state and, consequently, it is completely responsive to Soviet foreign policy and available to bolster the Soviet navy.

There can be no doubt that the Soviets can pull all elements of their maritime strength together at any time. We saw this last year when the Russians conducted a worldwide naval operation, including attacks on simulated U.S. aircraft carriers, antisubmarine operations, and amphibious movements and landings, and underway replenishments. These occured simultaneously in the Atlantic and Pacific Oceans, the seas of Okhotsk and Japan; the Barents, Norwegian, North Philippine, Mediterranean, Black, and Baltic Seas.

But nowhere in the world has the influence of Soviet naval strength been more markedly demonstrated than in the strategic areas of the Mediterranean Sea and the Indian Ocean. In the Mediterranean, once regarded as an "American lake," the Soviet naval ships surpassed the U.S. 6th Fleet in total annual ship days by mid-1969. The increasing presence of Soviet ships has contributed to a marked change in political alliance of the region. With their maritime forces playing a major role, the Soviets have exploited the insurgency movements and the local antagonisms of the Eastern Mediterranean. As we have seen, they have made important clients of certain Arab nations such as Egypt and Syria. And by means of these client relationships and their newly developed naval strength the Soviets have leap-frogged NATO's southern flank and have sought to establish increasing political leverage along the African and Asian littorals of the Mediterranean.

This is what President Nixon was alluding to in his foreign policy statement of February 25, 1971, when he said:

> The Middle East is heavy with the danger that local and regional conflict may engulf the great powers in confrontations.

As I pointed out earlier, the Soviet Union is bidding for control of the old British imperial route to the Indian Ocean and the Far East. This is being furthered through the skillful manipulation of local conflicts and direct military intervention along the Suez Canal.

In the Indian Ocean, particularly, the Soviet influence is becoming important. The Soviet naval presence there became continuous in 1969 and now exceeds ours by a factor of two. Coupled with numerous port visits and displays of naval strength have been offers of Soviet technical and construction assistance to Sudan, Somalia, South Yemen, India, Ceylon, and Singapore.

American officials claim the Soviets are seeking naval base rights and privileges in both the Eastern Mediterranean and Indian Ocean. Their base developments have been recorded in Alexandria and Mersa Matruh in Egypt; in Port Sudan; and in Berbera, Somalia. Overtures also have been made to India, Ceylon, and Singapore, according to well-founded intelligence reports. Meanwhile, the Russian naval forces are using anchorage facilities in the vicinity of Socotra, Seychelles, Maldives, and Mauritius islands. Indeed, if the Soviets succeed in acquiring the bases they now seek they will soon stand astride the strategic oil supply lines of Europe and Japan.

The volatile politics of this distant area are ripe for exploitation—as was seen in the recent abortive coup in Sudan, and the left-wing uprising in Ceylon. And of course, the withdrawal of the British from the Persian Gulf area has already left pro-Communist regimes in Somalia and South Yemen.

But none of this should come as any great surprise. The Soviet leaders have never concealed their interest in the area east of Suez. We do not even have to go back to historical references to Csarist

statements at the time of Catherine the Great about warm water ports—which are known to almost every history student—in order to document the abiding Soviet interest in the Persian Gulf-Arabian Sea area. We have only to recall the effort made by the Soviets to carve out a sphere of influence in this area south of Baku and Batun "in the general direction of the Persian Gulf." This was disclosed when the Molotov-Ribbentrop protocols of 1940 were opened to the public.

Anyway it is figured, the Soviet Union's naval buildup confronts the United States with the most serious challenge it has faced in this century. The enormous nuclear advantage which the United States once held over the Soviet Union no longer exists. The dynamic defense and foreign policies which Washington once pursued are being forcibly modified, primarily as a result of U.S. weariness with the long and costly war against Soviet-supported Communist forces in Vietnam.

Consequently, the United States may be forced to curtail its overseas commitments while the Soviets push their greatest expansion in history. The danger is great and the outcome depends almost entirely on what response the United States finally decides to make to the growing Soviet challenge to its global role.

Because of our land mass most Americans do not understand how dependent the United States is on its maritime might and its overseas alliances. President Nixon 2 years ago noted the maritime position of the United States in these words:

> What the Soviet Union needs in terms of military preparedness is different from what we need. They are a land power primarily, with a great potential enemy on the East. We are primarily a sea power and our needs, therefore, are different.

Another way to say this is to consider the relative positions of our friends and our potential adversary. Almost all of our allies are overseas. Soviet allies, for the most part, border directly on Soviet territory. And by the same token, the potential opponents who could threaten our naval interests are overseas, while the principal threats to their vital interests are overland.

Since World War II, the balance of world power has depended on a series of countervailing Western alliances which in turn depended to a great extent upon a magnificent U.S. Navy which was a product of that war. And, of course, superior nuclear arms and naval strength were the military factors which tipped the balance in freedom's favor throughout the 1950's and 1960's. But today our superiority no longer holds and Soviet arms are on a par with our own. We are involved in a nuclear standoff where neither of the superpowers dares to use its capability for fear of devastating reprisal.

What does this mean? It means that the United States must look once again to conventional forces to provide the means of protecting our national interests. Without strong conventional forces we have only two options where our interests are threatened—engage in nuclear war, or back down.

These are hard facts. They are more than sufficient reason for rebuilding our naval strength as rapidly as it can be done. Our Navy must be refitted and modernized. Our merchant marine must be brought up to its required strength and new, modern ships added to our commercial readiness. For, in the foreseeable future, it will be conventional rather than nuclear forces which will be the deciding factors wherever United States and Soviet interests clash.

Our commitments everywhere require free access to the sealanes and an adequate sealift strength. Even with the availability of the newest cargo aircraft over 90 percent of our overseas military cargoes must travel to their destination on the surface of the oceans. Any time we decide to deploy forces overseas, we must be able to control the sea lines of communication. And there is no longer an easy assumption that this can be done. Since we no longer possess nuclear superiority Soviet naval expansion actually threatens to negate our sole remaining capabilities to support our alliances and protect our economy.

The level of Soviet naval strength is causing our naval planners great and justified anxiety. They do not worry that we might lose a battle if it occurred between the two super fleets; they worry that we might be denied the use of the seas for our commerce and sealift. If this happens we would not even come to the point of open conflict. As soon as they are reasonably sure of the outcome, the Soviets are free to try a Cuba in reverse. It might help Americans to visualize such a situation if they were to consider the possibility of a Soviet blockade of the Mediterranean. In the near future, if Soviet strength continues to grow in concert with American weakness, we would be hard pressed to challenge such a blockade. We would be in the same position as the Russians fund themselves in when we announced the blockade of Cuba and they found their naval forces incompetent to challenge.

The truth is that in face of Soviet naval expansion, our own Navy is encountering a reduction in strength and resources. If we express the Navy budget of the past 11 years in terms of 1972 dollars, it shows that while an estimated $3 billion per year is needed for shipbuilding to maintain our fiscal year 1971 naval strength, we have not approached that amount for 8 years. It is true that Navy budgets increased in the Vietnam years, but the increases did not cover even the full annual cost of the Indochina operations. As a result, shipbuilding allocations were pared down to compensate. In essence, the Navy was accepting obsolescence and "eating down" its stores to finance the war.

Since fiscal year 1968, our Navy budgets have declined as defense matters have been accorded less and less precedence in national planning. This is not readily apparent, because in absolute dollars an increase of 7 percent seems to have taken place. But when the budgets are expressed in terms of fiscal year 1972 dollars to allow for the effects of inflation, a decline of buying power of 11 percent is seen. And the upshot of all of this is that for almost a decade our naval modernization has been held back—first by war and later by the debilitating effects of inflation. Since 1965, the Navy has been forced to reduce 25 percent of its ships, 20 percent of its combat aircraft, and 7 percent of its total personnel. The combat commitments of the Navy at the time the reductions were carried out naturally affected the nature of force reductions. Because our carrier and amphibious forces were heavily involved in Southeast Asia between 1968 and 1970, forced cutbacks in those years had to be concentrated in the less committed sea control forces. Since then, in 1971 and in 1972 planning, efforts have been made to balance reductions between the two force categories so as to retain some sort of overall naval balance in the face of Soviet capabilities.

But balance in depleted existing forces alone is not sufficient. New initiatives to consolidate, to simplify, and to increase forced effectiveness were ordered by Adm. Elmo R. Zumwalt, Jr., U.S. Chief of Naval Operations, but all of the Navy initiatives taken together do not offset the effects of recent forced reductions in the face of onrushing Soviet naval expansion. There is a cutoff point where mere quality of fighting forces is not sufficient—where numbers are required in addition to quality. Adequate forces must be available in advance to sustain the first onslaught of a naval war. Following this, surviving units must be in numbers sufficient to sustain a war of attrition as we seek to destroy enemy forces and to maintain movements of men and supplies overseas.

Admiral Zumwalt has described our sea control forces as "high risks baseline forces from which we must build." And he has informed Congress of a vastly reduced margin of adequacy in connection with naval projection forces in a war with the Soviets.

This is necessarily a restrained and modest view of a dire situation. When the editor of "Jane's Fighting Ships" says "the situation for the U.S. Navy is serious" and when a Presidential blue ribbon panel says "American freedom of the seas is threatened," we are in deep trouble.

In addition, experts overseas are beginning to view the shifting balance of naval power with concern and are openly wondering at the value of future alliances with the United States. Under the circumstances we must acknowledge that the elements of national power are clearly understood by both our allies and our enemies. Today, our allies and the uncommitted nations of Eurasia and Africa see themselves as increasingly encircled by offshore Soviet naval might. The frequent Soviet naval exercises in the Atlantic and the continued Soviet naval presence in the Mediterranean Sea and the Indian Ocean are in their eyes directly related to what they discern as a growing distaste in the United States for overseas commitments.

This is one of the prices we already are beginning to pay for the neoisolationism which has become so pronounced in the Senate of the United States. Our allies are beginning to interpret what they see

in terms of estimating how they can fend for themselves. And their natural reaction can be expected to be increased accommodation to Soviet power with the attendant dissolution of NATO and other alliances which have rested on U.S. maritime power.

We are not far from the point where the American people must decide whether they want this country to become an island standing alone.

In the final analysis, the Navy is the deciding military factor which enables the United States to be an international power. And it is a serious situation when we permit a wave of war weariness and neoislationism to force a deduction of one-third of our fleet strength at a time when the Soviet Union is doubling and tripling hers.

It must be remembered that in the past few centuries, Russian objectives of territorial expansion were forestalled by the British, the Japanese and, most recently, the U.S. fleets. Throughout the 19th century, the might of the British fleet laid behind and gave sustenance to a series of European land alliances which held Russia in check. The decisive defeat of the Russian fleet by the Japanese at the turn of this century prevented the earlier development of Russia as a naval power. Subsequent to World War II, the U.S. fleet has been the guarantee to ourselves and our allies that a flow of seaborne commerce and strategic material was assured and that our alliances were underwritten in naval strength.

But now the once great British and Japanese fleets, as well as those of other allies, have declined to mere coastal defense forces, incapable of holding open even their own vital oil supply lines from the Middle East. So the door is now ajar for the Soviet to break free of the entanglements of encircling land alliances and to spread power and influence toward historical objectives in the Middle East, Asia and even in Europe. Stung by their impotency in the face of the U.S. Navy to force a successful conclusion to the Cuban missile crisis, the Soviets have forged an unprecedented naval expansion. And they have chosen their weapons well. The Soviet navy is designed not to overpower us on the surface of the sea and to attack our shores, but to deny us the use of the sea and to drive us from the position from which we support our alliances. The large Soviet submarine and missile fleets are admirably suited to the task.

So what can we expect the men in the Kremlin to do in the circumstances prevailing today?

First. They will avoid nuclear war.

Second. They will continue their build-up of nuclear weapons.

Third. They will continue their Naval expansion in blockade and missile forces.

Four. They will attempt to capitalize on political unrest in Eurasia and Africa and other strategic areas of the world.

Five. They will increase "showing the flag" and continue "gunboat diplomacy" in Eurasia and Africa.

Six. They will foster communism on a worldwide basis through aid and subversion.

Seven. When they are ready, they will confront us with superior force in a place like Israel or Korea and we will be forced to back down.

PEARL HARBOR DAY

Mr. GRIFFIN. Mr. President, on behalf of the distinguished Senator from Florida (Mr. GURNEY), who is necessarily absent, I ask unanimous consent to have printed in the RECORD a statement by him relating to Pearl Harbor Day.

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

PEARL HARBOR DAY

(By Senator GURNEY)

Lest we forget, today is December 7—a memorable day in our history. On this date, 30 years ago, this Nation was at peace. While the sounds of war rumbled in other parts of the world, America slept, unaware that it was about to be plunged into the bloodiest conflict in the history of mankind.

At the U.S. Navy Yard, Pearl Harbor, all was peaceful and quiet early that Sunday morning. Little did anyone suspect that, in the cold waters to the northwest of Hawaii, six aircraft carriers of the Japanese navy had launched two major air strikes against the most important U.S. naval base in the Pacific. Hence, when the little black dots appeared in the morning sky, there was no warning—no realization of what they meant. Our planes were at rest on the airstrips; our ships made beautiful targets as they lay peacefully at anchorage in the harbor. A more attractive target can hardly be imagined.

With deadly efficiency, the Japanese fighters and bombers wreaked havoc amongst our unprepared fighting men. Many awoke to the sounds of bombs or torpedoes crashing into their vessel; for some, those were the last sounds they ever heard. Many died in the valiant efforts to rescue comrades or to save their ship. Battleships, cruisers and destroyers went up in columns of smoke, soon the heart of our Pacific fleet sank to the bottom of the harbor. For many brave American sailors, their floating home suddenly became their tomb. When the smoke had cleared, it was found that 2,036 sailors had died, and another 759 had been wounded. In addition, the Army suffered an additional 215 killed and 360 wounded. It was indeed, as author Walter Lord has termed it "a day of infamy."

Today, thirty years later, we honor the memories of all those who made the ultimate heroic sacrifice on the "day of infamy." No more could have been asked from any group of men. Indeed, the men of Pearl Harbor characterized that day the qualities that have helped make this Nation great. And while we are remembering and honoring all those who fought and died at Pearl Harbor, we must also remember the larger significance of the day—the horrors of war and the price of unpreparedness.

December 7, 1941, marked an end and a beginning; the end of an era of relative isolationism and the beginning of a gigantic effort to restore world peace. Before the war was over some 16 million American servicemen had participated in the effort to stop what Pearl Harbor had started. Of these 291,557 were killed in action. We must recognize the sacrifice of these men, and of all the veterans of World War II, when we memorialize those who made the supreme sacrifice at Pearl Harbor. And if these remembrances are to mean anything, we must also rededicate ourselves to preventing the possibility of any future Pearl Harbors. The lessons of Pearl Harbor must not be forgotten, or simply considered "past history"; they have too much applicability to contemporary times for us to dare forget them. The challenge to freedom is still present today, just as it was in 1941. We must be ready to meet the challenges to our freedoms—freedoms that the men of Pearl Harbor fought, bled and died for—whenever they arise. If we do not, then the 2,251 soldiers and sailors that died there that infamous day thirty years ago, died in vain. As we remember, and honor, them today, I hope, pray, and believe that we have the strength to fulfill the aspirations for which they so gallantly made the ultimate sacrifice.

COMMISSIONER MOORE ON STATISTICS POLITICIZING UNEMPLOYMENT STATISTICS

Mr. PROXMIRE. Mr. President, as promised in this morning's hearing by the Joint Economic Committee on November employment-unemployment data, I ask unanimous consent to have printed in the RECORD a letter received from Commissioner Geoffrey H. Moore, Bureau of Labor Statistics, Department of Labor, and the unexpurgated version of an article entitled "Objectivity in the BLS," published in abridged form in the New York Times of November 18, under the title "It All Adds Up."

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

U.S. DEPARTMENT OF LABOR,
BUREAU OF LABOR STATISTICS,
Washington, D.C., November 19, 1971.

OBJECTIVITY IN THE BLS

In view of recent public concern over changes at the Bureau of Labor Statistics, I thought you might be interested in a copy of a statement that I sent to the New York *Times* and which appeared in abridged form in the Times of November 18.

The phrase "politicizing the Bureau of Labor Statistics" has been used recently in editorials, news columns, TV shows, speeches in the Congress, and cocktail parties. Is politics really at work in the Bureau? The question is of vital concern to the public and to policymakers, as well as to the staff of the BLS.

Since I direct the affairs of the Bureau of Labor Statistics, the issue is of particular concern to me. When I first became Commissioner of Labor Statistics in March 1969, I set forth four goals for the BLS, and one of them was to maintain a position of impartiality in the presentation and analysis of statistics. The other three were to insure that our work was kept relevant to the economic and social problems of the Nation, that the results were accurate, and that they were presented in a timely manner. If the BLS in fact is being "politicized," one of my goals is being dumped overboard.

I have another reason for concern. For nearly thirty years before coming to BLS I was associated with the National Bureau of Economic Research, Inc., in New York City. This private organization is well known for its devotion to the conduct of impartial studies of economic problems. At the NBER the goal of objectivity in economic analysis is at the forefront, and I believe it is basic to the development of economics as a science. As exponents of that idea both the National Bureau and the BLS stand out as landmark institutions.

Finally, as President of the American Statistical Association during 1968, just before I became Commissioner, I developed and helped to promote the idea that a comprehensive review of the Federal statistical system was needed, a proposal that resulted in President Nixon's appointment last year of a Commission on Federal Statistics. Clearly

the purpose of this proposal was to improve the Federal statistical system, not to destroy it.

With that background, it is evident that I did not accept the job of Commissioner in order to "politicize" the BLS, and I would regard it as a disaster if, despite my efforts, it should happen. My belief is, however, that the BLS is now in a stronger position than ever to maintain its objectivity, for two reasons. One is that the recent public attention given to the subject and the outpouring of support for the BLS as an institution whose objectivity must be maintained would make it more difficult for anyone, from either side of the political fence, to divert the Bureau from its path of strict objectivity. The second reason is that the recent reorganization of BLS and the accompanying hubbub concerning its motivation, has put all of us on our mettle. The top staff of the Bureau is particularly aware that now is the time to demonstrate afresh our capacity for objective analysis.

What is the evidence of "politicization"? Last April the news briefings that the BLS had conducted twice a month with the release of employment and consumer price figures were discontinued. This step was not taken to "politicize" the release of information, but for precisely the opposite reason—to prevent that from happening. The press briefings had personally involved the technical staff of the Bureau in situations leading to political controversy. I recognize there are differences of view regarding the usefulness of briefings for the release of statistical data—and understandably the press has criticized the decision. But the essential fact is that our written releases, which are available to everyone and not just those who can attend briefings, still contain the factual information and technical analysis they have always contained. Moreover, the staff continues to be available to answer and amplify technical questions at any time.

Last July the Office of Management and Budget requested the Departments of Labor, Commerce, Agriculture, and Health, Education and Welfare each to review their statistical organizations and to set up parallel structures following certain broad guidelines. Since the BLS conducts about 90 percent of the statistical work of the Labor Department, this request directly involved BLS. A new organization plan was worked out, and went into effect October 18. Nearly all the new members of the top staff have held important positions in the BLS for years. Only one person from outside BLS has been appointed, and his professional qualifications are of the highest. Two positions remain to be filled. The new duties and responsibilities given to the members of the top staff will in my judgment in each case better fit their professional and managerial capacities and the needs of the organization.

Although the reorganization has been cited as evidence of "politicization," the fact is that no political appointments have been made, none have been suggested to me, and none will be made as long as I am Commissioner. All new appointments and promotions have been, and will continue to be, based on the professional and managerial competence of the individual concerned.

It is not easy, in a Washington agency, to dispel the notion that any changes in personnel, in policy, or in procedures are politically motivated. Virtually every move can be so interpreted with a little imagination and political suspicion. For example, the BLS recently announced that there would be a gap during 1972 in our quarterly releases on the employment situation in low-income areas, in order to shift from 1960 to 1970 Census definitions of such area. This was immediately described in the press as a political move by the Administration to avoid reporting "bad news" during an election year. The fact is that the decision originated with and was recommended by the technical staff of the BLS and the Census Bureau.

If as a result of such episodes the Bureau should be inhibited from making technically justified decisions for fear they might be considered political, then a real "politicization of the BLS" would have begun. A real deterioration in the quality of its output would be the result.

Politics is not at work in the Bureau. We are fully mindful of the importance of an independent fact-finding agency in economic affairs, and we are dedicated to the preservation of the Bureau's reputation for objectivity and reliability.

GEOFFREY H. MOORE.

TODAY THE SUBCONTINENT—TOMORROW, HALF THE WORLD

Mr. MONTOYA. Mr. President, the situation on the Indian subcontinent has deteriorated into full-scale war between India and Pakistan. My first, most overwhelming reaction is that our country must not become enmeshed in this struggle in a military sense in any way whatsoever.

In a humanitarian sense, however, we must make our presence felt. It is utterly vital that a cease-fire be arranged as quickly as possible. Should such a condition be brought into being, the United Nations could be utilized to act as a buffer between all contending factions.

In turn, this would create a breathing space within which to repatriate refugees while mounting a major worldwide relief effort, in which I am certain the United States would join generously.

A date meanwhile could be set for a plebescite, to be administered and closely supervised by the United Nations. All Bengalis could participate. They could then opt for inclusion within Pakistan, India, or for total independence. A consortium of world powers, acting in concert with the U.N., could insure that their collective will took concrete form, immune to any outside efforts to alter the result.

Only in such a manner can we act to prevent a far larger and more dangerous conflagration.

Having staked out that position, some other pertinent observations are very much in order. India's naval forces have taken punitive actions against two American merchant vessels, which seem tc have been guilty only of the heinous crime of peacefully plying international waters.

Our State Department has lodged a formal complaint with the Government of India, giving out the following information in the process. Indian planes bombed and strafed the ship, *Buckeye State*, off Chittagong. The second American vessel, *Expediter*, was intercepted by elements of the Indian Navy and forced to proceed to the Port of Madras.

Mr. President, I regard these two acts by the naval forces of India as inexcusable and deliberate. With both flying the American flag while passing through international waters, what possibly could have motivated India to act in this manner toward them?

Perhaps it is time for the American people to reexamine their thinking and policy toward both India and Pakistan. For example, over the years many well-meaning, internationalist-minded Americans looked upon India as a unique nation. They unquestionably accepted her as an outstanding democracy, embryonic great power and an equal in the most vital decisionmaking processes in the world. Such unswerving devotion to these ideals and their elevation to policy have cost the United States dearly.

Before proceeding, let me state unequivocally that I hold no brief for the appalling regime of Yahya Khan, which has acted in so barbarous and outrageous a manner toward its own people. Whatever I say about India is in no way an endorsement of Pakistan, her policies and allies. It was wrong for our own country to fuel the arms race on the subcontinent, which we have done for years through major arms sales to both countries. Much innocent blood is being shed with American-supplied weapons. By contributing so much hardware to both sides, we have not brought honor or respect to the name of the United States.

This aside, let us again examine India's policies and how they have affected our own Nation.

Her international pronouncements have more than once seemed to be at some variance with her domestic policies. Since her independence from Great Britain became a fact, she has managed to show the world the following inconsistencies.

After agreeing to hold a full plebiscite in Kashmir, most of whose people are Moslem, India broke that promise, maintaining her hold on that strategic principality against the wishes of most of its people and in spite of repeated Pakistani requests to honor the agreement and hold the vote.

When the Naga Hill tribesmen sought some degree of autonomy, India's Government ferociously put them down by the sword with merciless slaughter. In spite of the evinced desire of France and Portugal to vacate their remaining colonial enclaves on the western coast of India, she proceeded to march in and take them by force of arms.

Each of these actions by itself is anything but the inspired act of conscience of a democratic government. Still, other nations have done similar things without being singled out for condemnation. Yet what has given so many Americans pause is that India has simultaneously sought acceptance internationally as a moral preceptor for the world. In the United Nations and in public statements generally, she has often lectured the United States on the niceties of international behavior, more often than not stridently condemning one or another American policies.

This has caused considerable consternation among Americans, and I confess that I am one of them, Particularly so in light of India's ongoing expectation of massive American foreign assistance. If any nation receiving foreign aid has, by its actions, brought the program into disrepute domestically among our people, it has been India, and I say this with regret. In fact, India has seemed to regard vast sums of American aid as her due, rather than something to be earned or repaid. Whenever the American pub-

lic complained or a Member of the Congress balked, it was regarded somehow as the act of an antihumanitarian. So the American dollars continued to pour into dams, agriculture work of a hundred kinds and a vast variety of similar projects. Gratitude was nonexistent, and if thanks were rendered, even perfunctorily, the public and Congress at large knew little of it. Mr. President, India has been the recipient of American largesse since 1946. From then until 1970, we have sent her a total of $7.5 billion in economic aid. From 1962 to 1970, total American military aid to India amounted to $92 million.

In fiscal year 1972, our total assistance came to $419 million in AID, Peace Corps, military assistance, and Public Law 480 funds, Massive quanitities of surplus food was sent to India under this program, which to my knowledge is continuing as of this day. Such help, when sent, was shipped in Indian instead of American ships. Transportation costs for this service, which are considerable, were sustained by the U.S. taxpayer. As far as I know, these moneys have not been repaid.

Yet every Member of the Senate is fully aware that millions of Americans, old and young, are without adequate diets. Millions of them will go to bed hungry tonight, as they did last night and as they will tomorrow night.

At least they show some gratitude when our Government extends this type of assistance.

At the same time, India has opposed the United States with vigor and consistency in the United Nations. She has sided with us a mere 22 percent of the time. Out of 159 votes, India was with us 45 times. Usually she was to be found allied with the Soviets or the Chinese in opposition to any and all of our policies. And India has just capped these accomplishments by signing a long term agreement with the Soviet Union, further widening that nation's already significant sphere of influence in that strategic part of the world.

Over the years, our assistance, rendered without payment in hard cash, has saved India massive quantities of foreign exchange. With the money our contributions saved her, she purchased ever-increasing quantities of weapons from Russia. It is these armaments she is using with such telling effect upon her enemies, the Pakistanis. And also upon American merchant vessels.

At this point is is well to note with deep regret the inaction of the administration in recent months in regard to this situation. All the world saw it coming, bearing down upon mankind like a juggernaut. Why did the administration not see fit to utilize its considerable influence with both Pakistan and India. We could have been far more effective as a restraining force beforehand. As usual, we are to late with too little. Let it be freely admitted that inaction by the great powers went a long way toward worsening the appalling human equation now confronting the world. The refugees are really the world's responsibility.

It is monstrous and a stark tragedy that Pakistan has seen fit to act in such a barbarous manner toward it own people. This is to be vehemently condemned. The United States must not stand aside and merely wring its hands while making sorrowful noises. We can and must help.

But at the same time let us separate this international concern from India's motives. Moral outrage has moved India previously only when her advantage was possible or when she waxed indignant in order to strike at a western power.

It is especially noteworthy at this time to call attention to her lack of outrage and support of the Russians when Soviet might obliterated the tiny yet indefatigable burst of Czechoslovakian freedom. Soviet armaments meant more to her than the desire of an old people to enjoy a new freedom. Of such fabric is morality woven in New Delhi.

The world must act out of conscience and self preservation. The geopolitical equation confronting the world is growing more ominous hourly. Communist China and the Soviet Union are competing for influence in the subcontinent. Pakistan is the client ally of the Chinese, who will not allow her to absorb too substantial a military defeat. Before allowing this to transpire, I feel China will enter the conflict, delivering a significant military rebuff to India's armed forces. She has proven easily able to accomplish this in the past, and in the present situation would find it an opportunity too good to be bypassed. If anything, China is far more able to act militarily now than in the past.

In turn, this type of an action would offer an irresistible argument and temptation to that group in the Soviet military establishment which has been arguing constantly for a surgically precise, preemptive strike against Communist China. This school of thought has already resulted in a massive arms buildup along the Sino-Soviet frontier line, innumerable small clashes and bloodcurdling saber rattling in Moscow. Removing China's burgeoning thermonuclear capacity might prove an irresistible temptation to this influential group of ranking officers within the Red army.

The entire situation is fraught with considerable peril for the world. It is imperative that a cease fire be arranged immediately, before the military situation gets too far out of balance.

THE NEED FOR RURAL DEVELOPMENT

Mr. PACKWOOD. Mr. President, a number of bills have been entered in this session of the 92d Congress, designed to improve some single phase or the entire spectrum of rural America. After studying the various measures, I have reached the conclusion that some are too complex in structure for proper administration while others are not comprehensive enough to do the immense job required for full and rapid rural development.

Mr. President, one of my distinguished colleagues has brought a bill before us which may not be the ultimate answer to all rural problems, but it definitely is closer to what I believe must be undertaken in the immediate years ahead to achieve a balance between rural and urban America that will benefit both.

I refer to S. 2800 which was recently introduced by the Senator from Kansas (Mr. DOLE) and cosponsored by 20 other Senators. It places the strongest emphasis upon making rural areas equal in public facilities, protection services and convenient transportation systems. But, at the same time it encourages resettlement of families who desire to return to the land provided their plans will not disrupt the normal agricultural production and marketing programs in existence today.

In other words, the bill to which I enthusiastically add my sponsorship would give assistance to farmers. Unless we retain agricultural producers in all sections of the Nation, rural America would have to be constructed from scratch—an impossible undertaking. To even consider such a procedure is beyond thinking.

The bill would therefore help make it possible to maintain efficient family type farmers thereby encouraging young and knowledgeable men and women to remain in rural America to build more new wealth from the soil, directly and indirectly.

My contention that rural America must be reconstructed, rather than create an entirely new concept of development, has been shown time and again by statistics and tabulations showing the declining number of men and women engaged in farming. However, I want to reiterate as a part of the record that agriculture still stands as America's number one industry in size, employing 4.6 million workers, or more than the steel industry, automobile industry, and the textile industry combined. Three out of every 10 jobs in private employment are related to agriculture. It takes 8 to 10 million people to store, transport, process, and merchandise the products of agriculture. It requires another 6 million to produce the equipment and supplies farmers use for production and family living.

Much of the vibrant power of rural America has been lost due to continuing attrition of farms. In my own State of Oregon, the number of farms and farmers has declined drastically—from 42,551 in 1960 to 29,063 in 1970. If we are to truly revitalize our rural areas, certainly every leader must recognize that agriculture must be the cornerstone of any successful rural development program as we initiate new plans for the future.

With that brief presentation of my basic belief in the approach this body must take for full and meaningful rural development, I offer a summary of what S. 2800 would accomplish:

The bill would not set up an entirely new governmental entity. Rather, it would create a Rural Development Administration out of the existing Farmers Home Administration. The purpose is to strengthen present FHA farmer programs and expand other existing FHA rural development phases. Under this plan, no agency would be created that would take months and years of trial and error to develop a workable program.

Instead, FHA could rapidly encompass the new and expanded portions

provided for under the law and get off to a fast start by mere acceleration of present and related programs.

The bill provides up to $750 million for comprehensive grants to rural communities for local planning and sparsely populated areas.

The Secretary of Agriculture would be directed to establish a preference for farmers who could take active part in community projects designed to accomplish certain desired ends.

The Secretary of Agriculture could add other eligible categories under direction of the bill, and establish the levels of participation. Loans would be possible up to 90 percent; interest subsidies could be granted up to 50 percent; and ratio of population would determine equalization grants.

The types of community programs and types of financial assistance for which each would qualify are categorized in detail.

Guaranteed loans would be amplified for water and sanitation projects, with some subsidization of interest payments and equalization grants, along with community health and protection measures. The latter categories would involve such much needed items as hospitals and clinics in addition to police, ambulance and fire protection services.

Economic expansion would qualify for guaranteed loans. Financing would be provided to make sure that establishment of income producing facilities or industries with employment opportunities would be as plentiful in rural areas as in metropolitan areas.

The loan guarantees would be set at levels to enable local financial institutions to take part in the risk and thereby assure administration of loans, and to share in the income benefits of the revitalized communities.

Comprehensive plans would provide for employment expansion along with community improvement to assure balanced growth.

To safeguard production and marketing of agricultural products against undue competition by new development, the bill would only provide for guaranteed loans on land or home construction on land up to 20 acres outside actual farms. This would give industry and families desiring to settle in healthy rural America an opportunity to do so, and share in an incentive subsidy of 1 percent of the interest charge on the loan to be paid by the Federal Government.

That, in essence, is the plan of the measure which I am cosponsoring. Study of rural development plans offered by many of the Nation's best minds are encompassed in this bill. It is designed to give that initial surge and drive, meeting the needs of that dormant initiative present and ready in all sections of rural America. Townspeople and farmers alike are awaiting the opportunity to press forward. They will now have full opportunity to make their community into more economically attractive places to live and work.

I have not found any other plans that would be an improvement on the concept of S. 2800. The important factor of this bill is that it simplifies procedures and at the same time offers farmers, communities, multicounty units, and rural families the means of taking quick action on feasible plans that will accomplish in shorter time the desired revitalization of rural America.

U.S. MILITARY INVOLVEMENT IN SOUTHEAST ASIA

Mr. FULBRIGHT. Mr. President, the Young Democratic Club of the University of Arkansas recently approved a resolution concerning U.S. military involvement in Southeast Asia.

The resolution approved by the Young Democratic Club calls for the immediate withdrawal of U.S. forces from the area—

Contingent upon the release of all United States prisoners of war to a neutral third country which will release these prisoners to the United States upon the completion of the withdrawal of forces.

Mr. President, I ask unanimous consent that the resolution be printed in the RECORD.

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

RESOLUTION

Be it resolved by the Young Democratic Club of the University of Arkansas:

1. That we are opposed to United States military involvement in the conflict in Southeast Asia and therefore call for the immediate withdrawal of all United States forces from the countries of Vietnam, Laos, and Cambodia, the waters surrounding them and the air above them.

2. That we favor limiting the involvement of the diplomatic corps and the CIA to the single role of observers to the political situation in Vietnam, Laos, and Cambodia, and thereby refraining from participation of any type in the military or political situations in those countries.

3. That the immediate withdrawal of United States forces be contingent upon the release of all United States prisoners of war to a neutral third country which will release these prisoners to the United States upon the completion of the withdrawal of forces from Vietnam, Laos, and Cambodia.

4. That this resolution be sent to the Arkansas Congressional Delegation, the Governor of Arkansas, the Majority Leader of the United States Senate, and the President of the United States, urging them to work for the adoption of this policy as that of the United States.

EXEMPTION FROM CONTROLS

Mr. GRIFFIN. Mr. President, in an editorial published on December 3, 1971, the Chicago Tribune emphasized that it expects no special privileges when it comes to wage and price controls. Some have argued that the news media should be exempt.

The editorial observed:

The country is facing a serious economic challenge. We have urged business and labor to subordinate their interests to the national interest. We are willing to do the same ourselves.

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

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

A FAVOR WE DON'T WANT

We appreciate the solicitous thoughts of the senators who voted to exempt the information media from wage and price controls, but this is a favor that THE TRIBUNE, for one, would prefer to do without.

The exemption was approved by the Senate in the form of an amendment to the wage and price control bill sponsored by a coalition of senators led by Alan Cranston of California. Their argument is that the press was exempted from controls during World War II and that, in Mr. Cranston's words, the present controls would give the government "economic life-or-death power over every publishing and broadcasting operation in the country."

THE TRIBUNE has a long tradition of opposition to special privileges for special interests, whether for the newspapers or anybody else. There is only one special privilege we demand, and that is the privilege of freedom granted to the press under the First Amendment to the Constitution. We have fought for this privilege and will continue to do so, because in fighting for this privilege we are fighting for the public's right to know and are not seeking to set ourselves apart from the public.

We don't consider that the present wage and price controls constitute a threat to the freedom of the press. We think Mr. Cranston exaggerates the danger. The Pay Board and the Price Commission are autonomous bodies, unlike the wartime control boards; and while we may not always approve of their decisions, there is no evidence that they are subject to improper political influence.

As finally passed by the Senate, the Cranston amendment does call on the press to abide by the guidelines on a voluntary basis. Even so, the appearance of favoritism is ill-becoming to the press at a time when the rest of the country is being urged to make sacrifices. If the amendment is approved by the House and the President, THE TRIBUNE will strive to live within the framework of the existing regulations and assume the same burdens and responsibilities as we expect of other businesses.

The country is facing a serious economic challenge. We have urged business and labor to subordinate their interests to the national interest. We are willing to do the same ourselves.

SOLAR ENERGY—THE MEINEL PROPOSAL

Mr. GRAVEL. Mr. President, an article called "Is It Time for a New Look at Solar Energy?" appeared in the October 1971 Bulletin of the Atomic Scientists. Written by Dr. Aden and Marjorie Meinel, of the optical sciences center at the University of Arizona in Tucson, it proposes solar farms to produce the Nation's electrical needs, pollution-free, at reasonable cost.

Mr. President, I ask unanimous consent to have the article just mentioned printed at the end of my remarks.

This article is a less technical presentation of the Meinels' proposal than the paper of theirs which I placed in the RECORD July 8, 1971, pages 20416–20418. A new paper on this subject will be presented by the Meinels in February at the American Physical Society. Also, there will probably be an article by them in the February issue of Physics Today. This week, I believe the Meinels are

giving a paper at the American Geophysical Union meeting in San Francisco.

DEMONSTRATION PLANT IN 1976

No wonder there is so much interest in their proposal. The technology is already available to implement it.

They propose completion of the first 50-megawatt demonstration plant in 1976, at a total cost of $125 million. They propose the completion of the first 1,000-megawatt electrical plant by 1980.

The year 1980 is also the AEC's accelerated target date for the first nuclear "breeder" reactor, only 300 to 500 megawatts in capacity. The first breeder is expected to cost at least $400 to $500 million, plus at least $2 billion in research and development. In all fairness, an additional $2 billion in light-water-reactor research and development ought to be charged against the breeder, since LWR technology has provided so much of the basic nuclear reactor information.

Out of this country's annual $1,000 billion gross national product, the Meinels propose that we commit $10 billion, or an average of $1 billion each year, to the development of solar energy during the next decade; $10 billion also turns out to be the figure which the AEC hopes to see committed to the nuclear breeder between 1972 and 1982.

GOOD NEWS FOR BANKERS?

The estimated cost of building a 1,000-megawatt electrical solar plant of the Meinel design, after the necessary development has been done, is $1 billion, or somewhat less than $1,000 per installed kilowatt, including the steam system and an allowance for interest at 10 percent.

Bankers ought to be interested. Solar energy may be without fuel costs during operation, but not without interest costs on the large initial capital investment required by some of the proposed systems.

CALCULATING COSTS

The Meinels approach the cost calculations in a straight-forward manner.

They consider that in a steam-cycle system such as the one they propose for using solar energy, the solar heat replaces the fuel; everything else remains the same. Therefore, if they want solar energy to be competitive, they must supply the energy at the same cost per kilowatt-hour as the conventional fuel.

At the present time, the fuel cost for electricity produced with natural gas in Arizona is 5.3 mils per kilowatt-hour, or $0.0053.

Starting with that, they calculate backward.

If we want to produce solar electricity with fuel costs of 5.3 mils per kilowatt-hour, and if we assume that the system operates 40 years, that we amortize the capital investment over 15 years, and that we pay interest at 10 percent, how much can we spend collecting the sunlight?

The answer works out to about $60 per square meter. "It looks feasible to do it for that cost," say the Meinels.

GOOD RECEPTIONS

For the last 7 months at least, one Meinel or the other has been on the road every week, tirelessly submitting the solar electricity proposal for scrutiny and challenge by business and Government experts. I am very pleased to learn that they are receiving encouragement at two AEC laboratories, Livermore under the foresight of Dr. Roger Batzel and Dr. John Gofman, and Oak Ridge under the leadership of Dr. Alvin Weinberg, as well as at the President's Office of Science and Technology under Dr. Edward David, and at one of the country's biggest engineering firms.

Does a good idea have a chance, I wonder, if its authors happen to lack the financial resources to spend months traveling and selling it? If there is a so-called "energy crisis," Congress should be providing funds to help the people with potential solutions.

I am tremendously pleased that the Meinel proposal is receiving consideration. That is not enough, however. I hope to see them receiving dollars in President Nixon's new budget next month.

HARVESTING ELECTRICITY FROM IDLE LAND

The potential of this one solar scheme alone is tremendous. The present installed generating capacity of the whole United States today is about 350,000 electrical megawatts. To produce 1 million electrical megawatts from sunlight by the Meinel proposal would require an area of land only 74 miles on each side, or about 5,500 square miles.

That figure compares with approximately 60,000 square miles of good grainland which the Department of Agriculture hopes to keep idle in 1972. It also compares with about 100,000 square miles of desert land in the Southwest United States, and with approximately 500,000 square miles of farms in this Nation. Incidentally, the Department of Agriculture may spend 1.8 billion tax dollars in 1972 for price supports and production controls for grain alone, according to the Washington Post of October 19, 1971.

MAKING IT HAPPEN

It is clear that this country has plenty of land available for harvesting a crop of solar electricity. It is clear that this country has plenty of unemployed scientists and engineers eager to tackle new assignments. It is clear that solar energy should receive far more than token funding in the administration's new budget.

If the ordinary taxpayers were ever consulted, I believe they would agree. They would do well to make their opinions on this subject known to Congress, to the Senate Interior Committee Energy Task Force, and to White House Budget Director George P. Shultz.

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

[From the Bulletin of the Atomic Scientists, October, 1971]

IS IT TIME FOR A NEW LOOK AT SOLAR ENERGY?

(By Aden Baker Meinel and Marjorie Pettit Meinel)

[The authors propose a solar power generating system which would produce 1,000 megawatts of electricity by the thermal conversion of sunshine to produce steam. They suggest the conversion can be done by the optical concentration of sunshine in ground collectors spread over desert regions. The collection of enough solar energy for a 1,000 megawatt generating system would require a solar power "farm" covering an area 3.8 kilometers on a side. Aden B. Meinel is director of the Optical Sciences Center, University of Arizona, his wife, Marjorie Pettit Meinel, has collaborated with him in this study.]

(NOTE.—Figures referred to are not printed in the RECORD.)

Amid the controversies and public acrimony over fossil and nuclear power plants one is beginning to hear solar energy mentioned as a possible solution. Can solar energy really be developed to a point where it will be a significant source of power by 1980, 1990 or 2000? Could solar energy ever supply the total national need for electrical energy, or is it at best only a minor contributor? And whatever happened to the glowing prospects for solar energy that were heard in the early 1950s? We asked ourselves these questions, and we would like to share with you the road over which they have led us during the past year.

As recently as 1969, solar energy was dismissed as holding little promise for contributing to the future energy needs of the United States. The reasons for this dim view, expressed by a committee of the National Academy of Sciences, are easy to find when one looks at the history of solar energy. Solar cells have been spectacularly successful for spacecraft applications, but they are far too expensive to be considered either now or in the foreseeable future for bulk electrical power production. Moreover, since solar energy is received only during daylight hours, one must store the energy for night use, and this is not inexpensive after the energy has been converted into electrical power by the solar cell. At the present time the total cost of silicon solar cell power and battery storage is on the order of 1,000 times more expensive than conventional electrical power. There seem to be formidable reasons why a few hundredfold improvement in cost is beyond even a mass production effort.

An improved system concept wherein the electrical output from solar cells is stored through electrolysis of water has been proposed by A. Bratenahl and J. Weingart of the Jet Propulsion Laboratory, Pasadena, California. In their plan, the gaseous hydrogen and oxygen would be stored for eventual recovery of the energy by fuel cells. A fuel cell is effectively the inverse of electrolysis, thereby recovering substantially all of the stored energy. If the hydrogen and oxygen were simply burned to provide heat for a thermodynamic conversion system, one would lose energy through the inevitable Carnot efficiency factor, and an initial 10 per cent conversion efficiency would be cut at least in half upon reconversion.

Another reason for the view expressed by the 1969 NAS committee is evident when one looks at efficiencies of conversion of solar energy by thermal means. The efficiencies of steam turbines or turbines driven by organic fluids such as ethyl chloride have been in the range of a few per cent at best. Any plan to utilize solar energy at conversion efficiencies significantly below 10 per cent, as with cadmium sulfide solar cells or old "state-of-the-art" thermodynamic systems, is doomed by the adverse economics incurred in collecting energy over an immense area, as has been pointed out by Glenn T. Seaborg, retiring chairman of the Atomic Energy Commission.

Even if we are able to use new technology, a basic obstacle to solar energy utilization is the high initial capital facilities cost. It is true that no fuel is being consumed by a solar power facility, but dollars are being consumed in the form of interest money. This is the equivalent of buying fuel for the lifetime of a system. The diluteness of solar energy, about one kilowatt per square meter at noon in a desert climate, or 4 megawatts thermal per acre, means that large collecting areas are needed even at 30 per cent conversion efficiency. It will take considerable ingenuity and manufacturing know-how to

reduce unit costs of the collector enough to yield electrical power at a price comparable to power generated by, for example, fuel oil.

In reading the literature of solar energy research done over the past 20 years, one becomes aware of a persistent theme that we feel has impeded the quest for solar energy utilization. The theme has been that solar energy is primarily for underdeveloped countries—a way to get some energy for people who cannot afford the price of fossil or nuclear fuels. A close corollary has been the goal of a roof-top unit, often devised by ingenious persons but aimed as a power generator on a microscopic scale compared to national needs; as a result it suffers from economic noncompetitiveness with bulk electrical power.

SATELLITE POWER STATION

In our literature survey, one proposal appeared to break loose from the limited vision that seems to have inhibited the field of solar energy. This proposal by Peter Glaser of A. D. Little, Inc., is for a satellite power station. Although we do not agree that his system requirements are possible goals in the next few decades we do agree with his objective, expressed to us in several conversations, that is, the desire to break people away from the limits of imagination that seem to have characterized so much work in the field. It seemed to us that equal imagination should be given to a terrestrial system, since going into space to gain less than four times as much solar energy per day hardly seems worth the added expense of building the system in space. Following the theme that Glaser emphasized—a solar energy system in the context of the total available technology and manufacturing capabilities of an advanced nation—we began a technology survey aimed at a new look at thermal conversion of solar energy.

Thermal conversion of solar energy has not been particularly successful, and it is clear that the resultant low efficiencies, less than 2 per cent, are due to low operating temperatures. The maximum extractable energy from a source of heat depends upon the maximum and minimum temperatures (degrees Kelvin) of the thermodynamic cycles, so one avenue for increasing efficiencies is to increase the input temperature of the thermal conversion cycle. Following conversations with some of our friends in the power utility business, we decided to seek a solution that would interface with the operating conditions used by most of the power industry, namely, 1,000°F (540°) steam at 1,200 pounds per square inch (84 kg/cm²). The conversion efficiency of such steam-generating plants is about 40 per cent of the energy content of the input fuel, including stack losses. If we can devise a way to meet these temperatures, we can expect similar efficiencies, which when the losses at collection and extraction are taken into account still leaves us with the prospect of converting solar energy into electrical power at about 30 per cent efficiency.

Thermal conversion of solar energy at temperatures of 540° C has another advantage: We can store the energy until used, in the form of heat. Thermal storage of energy is particularly attractive when the heat of fusion of salts or other materials is used since considerable energy can be stored or removed from such a storage medium at a constant temperature, another factor desired by user utilities. One also has at hand the extensive experience in the use of liquid metals as a heat transfer medium to convey the heat from the solar collectors to the thermal storage tank. When we talk to some of the persons working with liquid metals in the nuclear power programs, we wonder whether we really want all the problems that they are battling; but in reality the situation is simpler for solar energy since nuclear cross-sections, radio-activity and thin encapsulation of fuel elements are not involved.

The basic thermal conversion system for solar energy is shown in Figure 1. Three subsystems are needed: the collecting subsystem at the top, the liquid metal loop between the collection subsystem and the thermal storage subsystem, and the using subsystem at the bottom, shown here as a high-pressure steam system. In reality, the actual system is much more complex to carry out these three basic functions in an optimum way when the sun is and is not shining, but for the purposes of this article we will not need to delve deeper into the system functions.

COLLECTING SOLAR ENERGY

There are two ways to collect solar energy at temperatures in the vicinity of 540° C. The obvious way is to use optical concentration, wherein the sunlight is focused to some degree by means of a mirror or a lens on a collecting surface. A second way is to alter the radiative properties of the collecting surface so that sunlight is absorbed efficiently but infrared emission is inhibited—a selective surface. If a collector is vacuum encapsulated so that the dominant loss mechanism is infrared reradiation, then it is easy to show that the product of optical concentration, X, and the ratio of the absorbance in the visible, a, to the emittance in the infrared, e, must exceed 24, and preferably should be in the vicinity of 40 for efficient extraction of the collected energy, $X(a/e)$ nearly equal to 40.

A method of obtaining the desired product using normal absorbing surfaces, where a/e is nearly equal to 1, could be a long string of collectors of a mirror-type that focus energy on absorbing sections of a linear pipe containing the heat transfer fluid. The "string-of-beads" system could be made to cover large areas, and each module could be produced in large quantities, so a possible design could be evolved along these lines. We have looked briefly at the economics of mirror and Fresnel lens systems of this type, but their operating requirements for tracking the sun, maintenance and high wind characteristics convince us that the cost might not be optimum for a solar power system.

Another avenue is provided by the use of selective surfaces. Selective surfaces can be made in two ways. The first is to use a material with an intrinsic change of optical characteristics from absorbing to transparent near 1 micron wavelength in the infrared, such as silicon or some other semi-conductors. B. O. Seraphin, who has developed this type of selective surface by combining a thin film of silicon over gold, spaced by a stopper layer, points out that in contrast to silicon solar cells his selective coating depends only on the intrinsic optical and not on the electrical properties of the silicon, and costs are orders of magnitude lower than for solar cells. The second way is by use of an interference film stack, as originally developed by G. Hass and A. F. Turner. In this type of selective surface, the intrinsic materials may be transparent or reflective over both the visible and the infrared, and the absorbance is obtained by interference between layers of precisely controlled thicknesses. Refractive thin films that appear to be able to withstand years of operation at 540°C can be made of materials like molybdenum and aluminum oxide.

The current state of the art of selective films is such that ratios of 10 to 20 are attained, so some optical concentration is required for optimum operation of a system. Concentrations of 2 to 4 are possible by simple linear optical systems. Such a system has different cost and operational factors than an array of reflectors. We expect the state of the art of selective films can be advanced to a point where no boosters are required to concentrate sunlight, but we can proceed with a system at any time with today's selective coatings. Cost factors look favorable today also. A few years ago thin films of the evaporated type were very expensive, a few dollars per square centimeter, but continuous evaporators have lowered the cost for the films of the type required for solar energy into the region of a dollar per square meter. In the following description of a solar power facility of national scope we will assume that we are able to get a 30 per cent conversion efficiency by one of these methods and proceed to examine the other facets of the questions that we addressed at the beginning of this article.

GENERATING SYSTEM POSSIBLE

We propose that a solar power generating system providing the equivalent of a conventional 1,000 megawatts (electrical) generator is quite possible. Such a system would entail a peak power input at noon of 13,000 megawatts (thermal). At the efficiencies projected for this system of 30 per cent, the size of such a collector would be 14 million square meters, or equal to a square 3.8 kilometers on a side. Since solar collectors should not be densely packed lest they shadow each other for early and late sun or when the winter sun is low in the sky, the land area required is about 3 times the collector area. Nevertheless, the total collection area needed per 1,000,000 megawatts (electrical) would be equal to a square 118 kilometers, or 74 miles, on a side. We feel this area is a practical goal to be developed. In fact, the collection areas for several million megawatts could be distributed readily over the six or seven western states that have a satisfactory number of clear days.

We note on occasions when we are talking with student groups that an immediate objection is raised concerning this use of so much land. We counter with the following question: Are they aware that the United States already has an energy program that occupies 500,000 square miles of land and yields only 1 per cent of our energy needs? The usual reaction is surprise that such a project has escaped their critical attention. When we reply that the proect is called farms and the product food, and that we need only 1 per cent as much land to harvest most of the remaining energy needs, the response is, "Oh, we hadn't thought of it in those terms." Our plea is that people now begin to look at solar energy as a harvest of at least equal importance with agriculture.

One must be aware of the degrees to which words polarize people when it comes to sensitive topics. We have become aware that the moment we mention power plants some people cease to hear what we are saying because of the opposition that has been generated to power plants in the past two years. We are tempted to call our proposal one for solar farms to reap the energy harvest from the sun since in a very real sense we are not destroying a resource—we are creating one out of sunshine.

It is clear from these facts that solar energy can be a major contributor to the energy needs of the United States; in fact, it could some day carry the burden of the world's electrical energy needs. Since it can be more than a minor contributor to the total energy picture, unlike hydroelectric, tidal and geothermal energy, it would seem that considerable effort is warranted to answer the detailed technical questions and construct demonstration units in the decade ahead.

The prime lands for the solar harvest are shown in Figure 2. Other land of importance is to be found along the Rio Grande Valley in Texas and New Mexico. A major new requirement posed by solar energy is immediately obvious from this map: the great distance of the energy-gathering areas from the major energy-consuming areas of the midwest and eastern seaboard. We need the ability to deliver the power to distant load centers. The metropolitan areas of the southwest can be served by conventional overhead power lines, but the midwest and east require new transmission technology, and even in the west people would like to see overhead power

lines disappear. Current research has pointed the way to a solution: either underground cryogenic alternating current aluminum lines, proposed by P. H. Rose, or superconducting direct current lines, proposed by R. Garwin and J. Matisoo, H. Woodson and others. It is probable that a grid of trunklines of these underground types will prove both acceptable to the public and economic to the consumer. Questions of safety, redundancy, load adaptability and economics are important, and we are sure that some of the currently underutilized high-technology companies would welcome these challenges inherent in the solar power project.

The deployment of 5,000 square miles of system over the approximately 130,000 square miles of desert in the United States and northern Mexico would not appear to raise great or insolvable ecological problems. We do feel that practical reasons would tend to lead to the grouping of individual 1,000 megawatts (electrical) stations in a few areas. Manufacture and transportation are factors leading to this end. In order to get the unit costs low enough to keep the resultant power costs within the goal of 5 to 10 mills per kilowatt hour power, it will be necessary to construct an integrated manufacturing facility in the local areas where each group is to be erected. For example, Yuma, Arizona; Barstow, California; and Las Vegas, Nevada, could well be the sites for such manufacturing facilities. Another factor is the need for new cities to serve the persons employed by the solar power farms, of perhaps 1 to 2 million people per million megawatts.

ENVIRONMENTAL IMPACT

What about the environmental impact of the solar power farms? Solar energy quite clearly is a pollution-free source of energy that consumes no resource. The process of converting this energy, however, is not entirely free of pollution. No source of energy can be utilized without a price to the environment, in spite of the partisan claims made by advocates of one or another energy schemes. We all are too familiar with the characteristics of fossil and nuclear systems to repeat the story here. Fusion systems will exact their price also. Even geothermal energy has its pollution problems.

The environmental price we must pay for the solar power farms arises from:

1. Waste heat from the turbines,
2. The imbalance of either the local or the global heat balance, and
3. Land use in desert areas termed "ecologically fragile."

Waste heat results as the inevitable consequence of the laws of thermodynamics: a steam turbine driven by any energy source and operating at the same temperature and pressure has the same amount of heat to be rejected into the environment. There is no escape. The problem is to disperse it or utilize it so that the impact on the ecology is minimized. We feel that the solar power farms offer us an unprecedented opportunity to consider this waste heat as a new energy resource.

When one looks at critical needs of the southwest, the pressing need with no present alternative solution is not power—it is water. Various great projects are moving river water from abundant areas to the population centers in arid regions. These efforts are merely interim ones since the great overdraft placed upon prehistoric underground water supplies cannot be met by existing rivers. The obvious answer is to use the waste heat from the solar power facility to desalinate seawater. A short excursion into this topic shows that the amounts of water to be gained are staggering. If we take the rate of production of fresh water as promised by the new nuclear power plant being built by Pacific Gas and Electric Company, 50 million gallons per day per 1,000 megawatts (electrical), it would appear one could produce 50 billion gallons per day, or enough for 120 million people at twice the current per capita usage rate. A model of the central power-water producing facility is shown in Figure 3. (Note the scale of the parts as indicated by the vehicles in the parking lot. Thermal storage tanks are to scale for a two-day reserve of thermal energy.)

When one views this solar project as a joint power/water producing enterprise it immediately takes on an international aspect, in part because of the arid lands of northern Mexico, but also because the Gran Desierto of Mexico is the prime sunshine area of North America and the Gulf of California is the closest area capable of supplying enough seawater. Discussions are already under way with colleagues in Mexico on this dual project, and the prospect of fruitful cooperation between our countries is a pleasant one.

HEAT BALANCE

To return to environmental questions, what about the heat balance of the desert? Will the collection of solar energy alter the climate of the desert? The answer is definitely no—if you want it that way. The solar collectors are darker than the natural floor of the desert, so one collects more solar energy than would otherwise be the case, but this excess energy is delivered to cities elsewhere in the form of electrical power. It is true; that the global heat input is not balanced—a point often missed by people who claim that solar energy does not heat the earth as do nuclear and fossil fuels. If one did elect to balance the global heat input, then the additional blackening due to the collectors would have to be compensated for by whitening the intervening or other areas, but then the local desert would be cooled by the export of electrical energy elsewhere. Take your pick, but in either case the result will be very small.

A second environmental concern is with regard to the land surface and Gulf of California ecology. The desert admittedly is a fragile thing, but it is also an immensely valuable energy resource where living is delightful when water and air conditioning are added. We think that any rational person flying over the vast deserts of the southwest can not be unimpressed by the great areas of arid land lying unused. It would seem to be an acceptable price for the harvest of sunshine that some 5 per cent to 10 per cent of this desert be impressed into the service of mankind. There are spectacular and unusual areas of desert that properly should be preserved for posterity to enjoy, and steps should be taken to avoid inadvertent and irreparable damage to these selected areas. With care the solar farms could even improve conditions in their vicinity. We live in a desert area near a metropolitan center, and it seems to us that our small efforts to improve collection of rainfall runoff increase the number and vigor of the species of desert animals and flora that live about our home. Similarly, solar collectors have the potential of improving the marginal existence of desert animals and flora through the concentration of rainfall runoff on the desert floor between rows of collectors—much as is being done by the U. S. Forest Service in paving water collection areas to aid desert animals today.

The Gulf of California must be given special consideration since the plan to desalinate seawater involves moving brine back to the ocean. A proposal by the AEC a few years ago to place a large nuclear desalting plant on the shore of the Gulf stirred much opposition since the brine was to be dumped near the estuary of the Colorado River, a spawning ground for many aquatic species of life. It is clear that one must take care in dispersing brine (33 per cent concentration over seawater), but in a major binational project this could be done. The absolute effect on the Gulf is very small. The normal annual evaporation due to the dry desert air flowing over the Gulf is about 2 meters per year. The removal of 50 billion gallons per day represents an increase in evaporative loss of about 2 millimeters per year over the northern portion of the Gulf.

INFLUX OF PEOPLE

The major environmental impact of the proposed solar farms could be the influx of people into the southwest. There is a real possibility that the growth of a metropolitan area could ruin the desert for solar energy collection. Even today the daily pulse of smog from Los Angeles arrives by late afternoon as far away as at Yuma, Arizona, and Las Vegas, Nevada. Cars as we know them today would have to be prohibited in the Colorado River Metropolitan Area, but since we are talking about the first decades of the twenty-first century, gasoline cars must by then be a vanishing species since gasoline will be scarce.

The influx of people will be accentuated by the availability of power. A solar power system must be sized for production of sufficient power in January; hence there is a large surplus of "no fuel-cost" power for the remainder of the year, except at the probable peak of air conditioning load in July, August and September. This seasonally excess power could be used to pump fresh water to distant points, or it could be used by chemical or industrial processors. For example, a jet airliner or boat will never be plugged into a power outlet; hence liquid fuels remain a necessity for civilization. To synthesize clean-burning liquid fuels one needs a large supply of cheap power. As a consequence, industry may tend to move into the Colorado River Metropolitan Area. Clearly, one needs early establishment of controls over the development of these desert areas.

It is our conclusion that not only is it high time for a new look at solar energy but also that it is a key to a nonnuclear future of the world. It offers a great goal that reaches to the limits of creative imagination. We hope that this nation will recognize the immensity of the bounty to be gained from the solar harvest and give its best in this quest for solar power.

LAND REFORM IN VIETNAM

Mr. PACKWOOD. Mr. President, Prof. Roy Prosterman, of the University of Washington School of Law, is one of the acknowledged experts in this country in the area of land reform, in nations throughout the world.

Several years ago, Mr. Prosterman was a member of a Stanford Research Institute study on the possibility for land reform in Vietnam.

Based upon Professor Prosterman's study a land reform was indeed initiated in Vietnam which is proving to be immensely successful.

I ask unanimous consent to have printed in the RECORD the text of a letter from Professor Prosterman to the New York Times, indicating the success of the land reform program.

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

LAND REFORM IN VIETNAM

TO THE EDITOR:

The Times' recent field coverage from South Vietnam has persistently omitted reference to the highly successful land reform program, even though you editorially referred to it upon passage in 1970 as "probably the most imaginative and progressive non-Communist land reform of the twentieth century" (April 9, 1970). Recent stories have cryptically referred to "rural prosperity"

(e.g., Sept. 5) without further elaboration.

In fact, under the Land-to-the-Tiller Law and distribution of Government-owned lands, over 400,000 of the 800,000 South Vietnamese tenant-farmer families have now become owners of their land, free of charge. The rest will follow before the end of 1972.

There is widespread evidence from field interviewing being done by Control Data Corporation and others, of peasant enthusiasm for the program. Since tenant farmers have traditionally been the backbone of Vietcong strength, the change is doubly significant.

I would suggest that millions of prosperous peasants deserve at least as much attention as hundreds of unhappy monks in the news columns of The Times.

ROY L. PROSTERMAN.

SEATTLE, October 29, 1971.

PHILLIP WEYMOUTH, OFFICE OF SERGEANT AT ARMS, JOINS ENVIRONMENTAL PROTECTION AGENCY

Mr. McINTYRE. Mr. President, I wish to pay tribute to a distinguished servant of the U.S. Senate, Mr. Phillip Weymouth, of Lisbon, N.H., who served in the Office of the Senate Sergeant at Arms since 1957 and who recently resigned to become Assistant for Congressional and Intergovernmental Relations of the Environmental Protection Agency in Boston.

All of us in the Senate who came to know Phil realized that he personifies classic New England virtues. He is quiet, shrewd, fair, patriotic, deeply committed to the ideal of public service, and scrupulous in the exercise of his duties. Devoted to his own Republican Party in the Senate, he felt that his prime duty was to serve the Senate and above all the Nation. Few men have understood the practical workings of this body as well as Phil Weymouth. Once of the finest privileges and pleasures of my senatorship has been that Phil Weymouth is a warm personal friend of mine.

It is typical that Phil is now going to put his talents to use in one of the most critical problems of our times, environmental protection, and New England, and New Hampshire, I am sure, will proudly welcome him home.

THIRTIETH ANNIVERSARY OF THE ATTACK ON PEARL HARBOR

Mr. FONG. Mr. President, 30 years ago today Pearl Harbor was attacked.

Many wounds opened then and during the subsequent terrible fighting around the world have healed. Remnant scars are disappearing.

But none of us who lived through that day has forgotten, no one should.

I speak as I do without the least bit of vengeance. I speak because we who have survived owe it to those we commemorate on this anniversary to carry on toward the goals sought then which are still goals being sought today, the most important of which is a world at peace.

I need remind no one that the world is far from this main objective—the Indian subcontinent is aflame; the Mideast simmers as friends of both Arabs and Israelis alike worry; America is withdrawing its combat forces from Vietnam but the fighting there is not over.

However, I hope we do not despair.

During the 30 years since the attack, America has grown, the world has grown, and new generations are among us. In America, for instance, the median age is 27.7 years which means the majority of our citizens were not yet born when the attack occurred.

A sense of forgiveness does prevail in America, especially among our young.

Today we pray for peace. If this spirit can be made to prevail throughout the world, mankind, I feel, has reason for optimism and hope.

MINING THE DEEP SEABED

Mr. METCALF. Mr. President, Senators JACKSON, ALLOTT, BELLMON, STEVENS, and I introduced S. 2801, a bill to regulate U.S. nationals in their mining the deep seabed. The bill contains within it unique questions of domestic and international law. For an example of the directions this new field of law is taking, one might consult a recently published article by Mr. John G. Laylin entitled, "Past, Present, and Future Development of the Customary International Law of the Sea and Deep Seabed."

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:

PAST, PRESENT, AND FUTURE DEVELOPMENT OF THE CUSTOMARY INTERNATIONAL LAW OF THE SEA AND DEEP SEABED †

(By John G. Laylin *)

International courts and legal scholars have long recognized that customary international law contains a core of recognized, time-honored rules. They also acknowledge that the formation of customary international law is a growing process. It can grow from claims by one or more nations to new legal rights and the responses to such claims by other nations. The creation of international legal norms by reciprocal interaction between nations is particularly evident in the body of customary law known as the international law of the sea.

International law may grow from negative responses to positive claims, as well as from acquiescence in such claims. The universally accepted principle of freedom of the high seas began with the denial by the Netherlands and other states to broad claims of Spain, Portugal and England to sovereignty over large ocean areas. Through the writings of Grotius and others, freedom of the high sea was asserted as a principle of customary international law, and eventually the interested nations acquiesced in this principle, and refined it.

Since the time of Grotius, the international community has participated in the formulation of rules promoting accommodation of the principle of freedom of the high seas to existing and new uses for the world's oceans.

Examples of these formulated rules are numerous. The international community has recognized that naval vessels on the high seas may secure required space for military exercises and other activities by giving appropriate signals. Thus, the United States, the Soviet Union and other nations periodically designate certain portions of the high seas for limited periods of time as areas in which various naval exercises or tests will be undertaken. By their responses to such uses, other nations have participated in a process leading to rules governing the circumstances as to when and to what extent and in what manner there is to be no interference with such exercises under customary international law.

Some rules of customary international law applicable to the seas have required centuries within which to become established. Others have grown to maturity less slowly. The world moves faster today. For example, the United States proclaimed in 1945 the establishment of fishery conservation zones contiguous to its coast line in those areas "where fisheries have been or shall hereafter be developed and maintained by nationals of the United States alone . . ." [1] The 1945 proclamation left conservation measures in fishery areas exploited by U.S. and non-U.S. nationals to be established in future international agreements. In this same proclamation the United States provided for the protection of the interests of other states in its fisheries, and agreed to recognize similar conservation zones established by other states provided that the rights of United States fishermen were safeguarded.

Six years after the 1945 proclamation by the United States, at least 13 states had claimed the right to exclusive fishing rights in zones contiguous to their territorial sea. In 1966 the United States established by law a nine-mile fishery zone contiguous to its three-mile territorial sea. In this contiguous zone the United States has "the same exclusive rights in respect to fisheries as it has in its territorial sea. . . ." [2] By 1966, ten states claimed contiguous fishery zones more than three but less than 12 miles wide; 40 states claimed 12 miles; and 19 states claimed more than 12 miles. In that same year, the Legal Adviser of the United States Department of State testified before a Senate committee that the government considered a fishery zone 12 miles from the coast line to be consistent with international law. Thus, unilateral but similar claims to fishery zones by a number of nations, and the acceptance of those claims by other states, led, in only two decades, to a principle of customary international law recognizing the lawfulness of 12-mile fishery zones.

The international community has not agreed on the precise limits of a coastal state's territorial sea. It has agreed, however, that there are limits. Wheresoever the boundaries may be, there exist areas of the high seas that are outside of the jurisdiction of any nation. At the same time, customary international law recognizes, as we have seen, that nations may have exclusive use of the high seas for certain limited purposes over limited periods of time without violating their obligation to respect the freedom of the high seas.

Customary international law has also evolved rules permitting uses of the resources of the ocean floor beyond national jurisdiction. The best example is the acquisition of exclusive rights over sedentary fisheries such as oysters, sponges, coral, pearls, chanks and beches-de-mer. Claims to these fisheries are currently based on the continental-shelf doctrine, as embodied in the 1958 Geneva Convention on the Continental Shelf. However, prior to that Convention and to the unilateral claims to the continental shelf made subsequent to the Truman Proclamation in 1945, nations had made extensive claims to exclusive rights to exploit these fisheries. The best known examples are the pearling beyond territorial waters by nationals of India, Ceylon, and Australia, and of states along the Persian Gulf and the sedentary fishing rights asserted by Tunis up to 17 miles from its mainland.

The claims by nations to the use of resources adjacent to their coast lines but beyond their territorial waters eventually de-

Footnotes at end of article.

veloped into the doctrine of the continental shelf. When the United States made the first explicit statement of this doctrine in a unilateral claim which has come to be known as the Truman Proclamation of 1945, no state protested, and many emulated it.[3] The international community codified this doctrine[4] in the 1958 Geneva Convention on the Continental Shelf.

As a result of the widespread claims by nations to the continental shelf during the previous two decades, the International Court of Justice was able to state in its 1969 judgment in the *North Sea Continental Shelf* cases, that Articles 1–3 of the 1958 Convention "reflect pre-existing or emergent customary law." The I.C.J. characterized the doctrine of the continental shelf as a "recent instance of encroachment on maritime expanses which, during the greater part of history, appertained to no-one." The Court left to be determined which rights in Articles 1 through 3 were pre-existent or emergent. That coastal states had certain rights to exploit seabed resources adjacent to their coast line the Court seemed to agree had been established. How far out this area of special rights extended was, perhaps, emergent.

The International Law Commission in the commentary on its draft of a convention on the high seas recognized that freedom of the high seas included "freedom to explore or exploit the subsoil of the high seas" including the area beyond national jurisdiction.[5] Article 2 of the 1958 Geneva Convention on the High Seas, which was based on the ILC draft, recognized that freedom of the high seas included the right to the use of ocean spaces for certain enumerated freedoms and others "which are recognized by the general principles of international law . . . ." The Convention provided that all of these freedoms would be exercised by all states "with reasonable regard to the interests of other States in their exercise of freedom of the high seas." In short, Article 2 recognizes the right to engage in various uses of the high seas provided that such uses do not include any claim to sovereignty over high-seas space and that they are carried out "with reasonable regard" to the interest in freedom of the high seas of other states.[6]

While the international community has not agreed on a fixed boundary of the legal Continental Shelf, it is, as stated, agreed that some areas of the deep seabed, whatever its extent, is beyond the jurisdiction of any state.[7]

On May 23, 1970, the United States proposed negotiation of a treaty establishing an international regime for the exploitation of the seabed resources in the area seaward of the 200-meter isobath. On August 3, 1970, the United States submitted to the United Nations Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction a draft convention on the international seabed area. The United States representative described the draft convention in his statement to the Committee as "a further step in a negotiation process." He acknowledged that it could be improved in the course of future sessions of the Committee.

The President's May 23rd announcement recognized that it "may take some time" before a multilateral convention could be negotiated, agreed upon and ratified.[8] The President proposed a policy to be followed in the interim by the United States and other nations interested in exploiting the resources of the deep seabed beyond the area of exclusive coastal state jurisdiction.[9] For an area between the 200-meter isobath and the seaward edge of the continental margin (the "Trusteeship Zone") the President's announcement called for coastal states' special rights but not exclusive jurisdiction; for the area beyond the continental margin, no state would enjoy special rights. This area would be subject only to an international authority. A substantial portion of the revenues collected by the United States during the interim period in the area seaward of the 200-meter isobath would be set aside to be made available, if the Congress approved, to developing nations once a sufficient number of other states adopted an interim policy comparable to that proposed.

All permits or licenses granted for the area seaward of the 200-meter isobath should, the announcement stated, be subject to the multilateral convention to be agreed upon. To reassure investors in a deep seabed project, the announcement stated that the convention should respect the integrity of all permits theretofore issued.

To anyone contemplating investment in a deepsea project, the question at once arises, how can the integrity of permits granted before a multilateral convention has been agreed upon, be assured if they are to be subject to provisions which have not even been tentatively accepted?

The August 3rd draft convention submitted by the United States to the United Nations Seabed Committee had as one of its purposes to help limit the areas of uncertainty. The draft convention also suggests lines which might usefully be followed during the interim period. The task of reconciling the terms of the interim license and the probable permanent one was shown to be manageable.

While the delegates of the many countries with their many different interests debate over the provisions of a multilateral convention, the countries that are now ready and desirous of promoting orderly development of the law for the recovery of the resources of the deep seabed can promote, by parallel legislation, the emergency of customary international law for the deep seabed.

Building on the President's May 23d announcement, the Congress could enact, with respect to areas beyond the territorial jurisdiction of the United States, legislation prohibiting every person subject to the personal jurisdiction of the United States from interfering with exploitation of the deep seabed being carried on under an exclusive license issued by the United States. The legislation would, of course, not presume to grant licensees any rights as against persons not subject to the personal jurisdiction of the United States. Any person may now carry on activities on the deep ocean floor without a license provided that he conducts these activities "with reasonable regard" to the equal right of others. The purpose of the license would be to give to persons who bind themselves to observe reasonable limitations and conditions as much protection from interferences in the recovery of resources found on or in the deep seabed as the United States has a right to give.[10]

Other nations could pass comparable legislation[11] protecting persons licensed by them from interference by persons under their jurisdiction. If their legislation also protected operators holding licenses issued by the United States, our legislation could require persons subject to United States jurisdiction to respect the rights of operators under licenses issued by them.

If the parallel or comparable legislation forbade the granting of a license to persons not under the jurisdiction of one of the cooperating or reciprocating states, a workable regime would come into being without the necessity for any formal treaties or conventions. Non-coastal states could issue licenses under their comparable legislation and participate as full as the coastal states, and such of the reciprocating states as are still developing countries would be eligible for loans or other assistance from revenues set aside as contemplated in the interim policy proposed by the President.

No state can by itself establish a rule or principle of international law, but any state can sow seeds which can grow into "a general practice accepted as law."[12] Seeds for future customary law to encourage orderly recovery of the resources of the deep seabed can be sown by informing interested nations of an intention to enact legislation which would provide reciprocal benefits to other nations disposed to follow a practice comparable to that we propose.

The principal provisions of such legislation could be along the following lines:[13]

1. The legislation will apply to areas within the Continental Shelf and to areas beyond. It will authorize the issuance of licenses to mine in both areas but the licenses for areas beyond the territorial jurisdiction of the United States will be good only against nationals and others subject to the personal jurisdiction of the United States.

2. Licenses will be limited to persons who are under or who subject themselves to the jurisdiction of the United States, who agree to abide by the restrictions laid down in the Act, and who demonstrate their competence to mine from the deep seabed. The legislation will place limitations on the extent of areas which may be licensed, the length of time for which licenses may be issued and will prescribe other conditions, including work requirements, designed to encourage early and orderly exploitation. In order to encourage exploration, the legislation will require licenses to be issued in the order applied for by qualified applicants.

3. While the legislation can operate effectively without comparable legislation by other states, our statute should provide for reciprocity with states that by one means or another require their nationals to respect licenses isued by the United States. States having comparable provisions on a reciprocal basis are here called "reciprocating States."[14]

4. Rights of action will be established which may be exercised by Reciprocating States and thier licensees against all persons within the jurisdiction of any Reciprocating State who interfere with the rights of a licensee of any Reciprocating State. Rights of action will also be established which may be exercised by any Reciprocating State against any person within the jurisdiction of a Reciprocating State which exceeds rights granted under a license. The legislation will not limit existing rights to carry on scientific research or to explore and exploit the resources of the deep seabed on a non-exclusive basis so long as the exercise of this right does not impinge upon the rights of any licensee.

5. All licenses issued by the United States shall require the licensees to observe general rules issued or subscribed to by the United States to prevent unreasonable interference with other uses of the ocean, to protect the ocean from pollution, to assure the integrity of the investments necessary for the exploitations licensed by the United States or other Reciprocating States, and to provide for peaceful and compulsory settlement of disputes.

6. Applicants, to protect their rights to priority, must notify ———[15] when they file their applications for licenses. Upon issuance of the license the Reciprocating State must also notify ———. No person will be issued a license which impinges upon the rights of any person to exploit an area under license issued by a Reciprocating State. For this purpose a license will be deemed to have been issued on the date of notification of filing of the application.

7. An escrow fund shall be established to become available eventually for assistance to developing Reciprocating States. With the notification of the issuance of a license, the United States (and every other Reciprocating State) shall deposit in its escrow fund $——— for the rights granted to its licensees to exploit each unit quadrangle of the deep seabed area. Annually it shall deposit $——— for such right to each such unit not relinquished.

Each Reciprocating State may draw from its fund to the extent necessary to cover any payments it makes to its licensees to reimburse them for losses suffered by interference with the exercise of their rights by a non-Reciprocating State or persons not within the jurisdiction of a Reciprocating State.

8. The United States Licensees will pay a nominal registration fee to the United States. Licensees who are United States citizens, residents or corporations are, of course, presently subject to the income-tax laws of the United States on a worldwide basis. Licensees who are not, will nevertheless be subject to the tax jurisdiction of the United States with respect to their income arising from the exploitation under the United States license. Minerals recovered from the deep seabed area under license issued by the United States will be entitled to free entry into the customs territory of the United States.

9. In conformity with the President's statement of May 23rd, 1970, the proposed legislation will require that all licenses issued during the interim period be "subject to the international regime to be agreed upon" provided that such régime includes "due protection for the integrity of investments made in the interim period," as proposed by the President.

10. While the President's statement seeks to assure that the international regime to be established would "include due protection for the integrity of investments made in the interim period" in the course of the negotiation of a multilateral convention for such an international régime, the government may find it desirable for reasons of high policy to agree to restrictions which impinge upon the rights of operators under licenses issued during the interim period.[16] In order to allow the negotiators the necessary freedom of action, and yet to implement the President's call for protection of investments necessary to finance operators during the interim period, the legislation should provide for insurance analogous to that now issued by the Overseas Private Investment Corporation (OPIC). This insurance would cover losses suffered by U.S. licensees from limitations imposed by or under the international régime.

11. During the period before achievement of a multilateral convention for the international régime, protection for the integrity of investments made in such interim period is required against losses suffered by interference by non-Reciprocating States, or persons not under the jurisdiction of a Reciprocating State, with the exercise of the rights of an operator licensed by the United States. The legislation should provide that OPIC-type of insurance described in paragraph 10 should also cover losses suffered from such interferences which have not been redressed by actions against the offender, or for which the fund described under paragraph 7 is not adequate.

As the foregoing relates to the area in which no nation would have special rights, any nation that chose could establish practices during the interim period along similar lines. These might well facilitate earlier agreement on the projected multilateral treaty which would substitute conventional law relating to the deep seabed for unilateral reciprocal action by states.

The United States and many other nations wish to restrain unilateral action designed to increase coastal state jurisdiction.[17] While the proposal here made contemplates separate state action, that action is neither for the purpose of enlarging the rights of the state, nor for extending its territorial claims. The interim régime proposed here would not involve any claim by a state to an exclusive right in or sovereignty over areas of the deep seabed. Rather, the action is one of self-limitation. It is consistent with the well-recognized principle of international law that a nation has jurisdiction over its nationals, residents and persons who submit themselves to its jurisdiction. It also protects the interests of the international community in the deep seabed by providing for a mechanism which would allow developing countries to share in the revenues generated by exploitation of the seabed. Finally, from the point of view of the United States, the proposed interim regime would adhere to the principles set forth in the President's May 23rd statement by promoting progress in deepsea mining while discouraging encroachment on the freedom of the seas.

FOOTNOTES

* A. B. Cornell (1925), LL.B., Harvard (1928); member, New York and District of Columbia Bars; the Council, and Committees on Oceanography and Law of Treaties, Section of International and Comparative Law, American Bar Association; Committee on Deep Sea Mining and Executive Council of the American Branch, International Law Association; American Society of International Law. Mr. Laylin holds the following honors and awards: Commander, Order of the Lion, Finland (1949); Commander, Order of Dannebrog, Denmark (1958); Sitara-I-Pakistan, Pakistan (1961); Comendador of Order San Carlos, Colombia (1967).

† For the past development, the writer is indebted to William L. Griffin, one of the first American legal scholars to anticipate the need for early further development of the customary international law of the sea and deep seabed; for the present, to his associate, Peter D. Trooboff; for the future, to colleagues on a number of committees concerned with the developing law for the deep seabed.

[1] 13 Dept. of State Bull. 484 (1945).

[2] 16 USC §§ 1091–1094. The 1966 legislation makes the United States' rights within this zone "subject to the continuation of traditional fishing by foreign states . . . as may be recognized by the United States."

[3] 13 Dept. State Bull. 484 (1945).

[4] The Convention codified the concept that coastal states have certain rights to the resources of the adjacent continental shelf and introduced the concept of exploitability in determining the seaward boundary.

[5] The Commission's commentary on its draft Article 27, which became Article 2 of the High Seas Convention, indicated that the "list of freedoms of the high seas contained in this article is not restrictive." The Commentary explained that the "Commission has not made specific mention of the freedom to explore or exploit the subsoil of the high seas." The reason for this omission, according to the Commentary, was that "apart from the case of the exploitation or exploration of the soil or subsoil of a continental shelf . . . exploitation [of the high seas soil or subsoil] had not yet assumed sufficient practical importance to justify special regulation." 51 AM. J. INT'L L. 205–06 (1957).

[6] The 1958 Conventions on the Territorial Sea and the Contiguous Zone (Art. 24) and on the Continental Shelf recognized certain special rights of coastal states in contiguous zones of the high seas adjacent to their territorial waters and in their continental shelves beneath high seas.

[7] The existence of this area was referred to in the International Law Commission Commentary on what became Article 1 of the 1958 High Seas Convention. It was expressly recognized in 1968 by the Legal Working Group of the United Nations Ad Hoc Committee to Study the Possible Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction, in 1969 by the Permanent Committee on the Possible Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction, also in 1969 in the Secretary General's report on the resources of the deep seabed, and in Resolution 2749 (XXV) of the 1970 General Assembly. The last affirmed "that there is an area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, the precise limits of which are yet to be determined."

[8] The Convention on the Continental Shelf came into effect for the United States fifteen years after the beginning of the preparatory work in the International Law Commission. The ILC began its preparatory work on the law of the seas in 1949; it rendered its final report in 1956. The Geneva Conference first met in February 1958, and the Convention on the Continental Shelf was signed by the United States in April 1958. The Convention entered into force for the United States in June 1964.

[9] In December 1969, the United Nations General Assembly passed a resolution declaring a moratorium on all exploitation of the resources of the deep seabed beyond national jurisdiction. Although this resolution was passed by a vote of 62–28, with 28 abstentions, less than a third of the member states voting for it were parties to the 1958 Geneva Convention on the Continental Shelf and half of the member states voting against the resolution were parties to the Convention. During the debates on this resolution, the United States representative stated that the prohibition on exploitation in the draft resolution would be "without binding legal effect." One of the cosponsors of the draft resolution, the delegate from Ceylon, concurred in this opinion of the prohibition's legal effect.

The view of the states that supported the Moratorium is, of course, a political fact which must in the opinion of the writer be met with a positive response, *see Testimony Before the Special Subcommittee on the Outer Continental Shelf*, 91st Cong., 1st and 2d Sess. 117, 133 (1970).

[10] Licenses issued by the United States to non-nationals would presumably be conditioned upon consent by the licensee to the jurisdiction of the United States for all deepsea mining activities affecting United States nationals.

[11] By legislation is meant any legal arrangement requiring nationals to respect the rights of persons lawfully licensed by a reciprocating state.

[12] The Statute of the International Court of Justice directs the Court to apply, inter alia "(a) international conventions. . . .; (b) international custom, as evidence of a general practice accepted as law; . . ."

[13] The American Mining Congress Committee on Underseas Mineral Resources on January 27, 1971 submitted a statement containing in an attachment suggestions for legislation for the interim period along the lines here proposed. The report was submitted to the Departments of State and the Interior.

[14] The legislation will define a "Reciprocating State" as one certified by the Secretary of ——— as a state having legislation or state practice or agreements with the United States. which establish an interim policy and practice comparable to that of the United States, including reciprocity of treatment. References to Reciprocating States will include the United States.

[15] An international agency, presumably a specialized agency of the United Nations.

[16] For discussion of the need to provide adequate protection for licensees who obtain rights subject to "the international regime to be agreed upon," *see Special Committee on Outer Continental Shelf*, OUTER CONTINENTAL SHELF, 91st Cong., 2d Sess. 28–33 (1970).

[17] The moratorium resolution passed by the General Assembly in 1969 may have had the effect of encouraging unilateral attempts to increase coastal state jurisdiction. Brazil, for instance, shortly after voting for the resolution, announced that it claimed a 200-mile wide territorial sea.

IMPOUNDING OF CONSERVATION FUNDS HURTING NORTH CAROLINA FARMERS

Mr. ERVIN. Mr. President, earlier this year the Congress appropriated $195.5 million for the rural environmental assistance program, which until recently was known as agricultural conservation program. I understand that the Office of Management and Budget, the bureaucratic czar of all Federal spending, has apportioned only $140 million of this appropriation for actual expenditure in the current fiscal year.

The failure of OMB to apportion the full appropriation already is being felt in some 45 counties in eastern North Carolina, where our farmers suffered severe crop losses because of Hurricane Ginger and other heavy rains during the last several months. In addition to the huge crop losses, including severe damage to the peanut crop in northeastern North Carolina, our farmers have suffered soil erosion and other problems that additional REAP funds could help alleviate.

The ACP–REA program has been one of our most successful agricultural programs since its inception in 1935. It has concentrated on improving the quality of our farm lands through a program of matching farmers' money with Federal funds in order for local farmers to undertake conservation projects. Individual farmers put up one-half to two-thirds of the cost of each project, which means that the $55.5 million impounded represents at least $110 million in conservation projects that will not be undertaken this year. For North Carolina farmers, this means that they will be unable to begin projects to restore their damaged lands and to guard against crop losses because of water damage in the future.

Even before the recent natural disaster in my home State, a sampling of local ACP–REAP governing committees indicated that North Carolina farmers were willing to underwrite 239 percent over the 1971 REAP allotment. These good intentions on the part of our farmers are gone with the wind, however, because of the administration's penchant for impounding funds that have been lawfully appropriated by the Congress.

Mr. President, I am no stranger to the problem of impoundment of funds. The Judiciary Subcommittee on Separation of Powers, of which I am honored to serve as chairman, studied the issue in depth last March, and subsequent to our hearings of that month, I introduced S. 2581, the impoundment procedures bill which will provide for a congressional check on the practice. During the subcommittee's hearings, it was revealed that the administration had impounded almost $13 billion in appropriated funds, including almost $6 billion in the highway trust fund, and I have no information that this total has been decreased since March.

Compared to a total of $13 billion, the $55.5 million of impounded REAP funds seems like a drop in a bucket. However, this additional expenditure would be a very large figure indeed to the farmers of North Carolina and the Nation.

I have recently written to Mr. George P. Shultz, Director of OMB, and to Agriculture Secretary Hardin requesting that they unfreeze the full REAP appropriation so that our farmers can undertake more conservation projects in the next year. Not only will this be important in North Carolina, but more conservation projects are needed all over the country in order to halt the major source of pollution in our rivers and streams—soil itself.

The concern of farmers throughout the Nation was reflected in a letter written to me recently by Mr. Robert M. Koch, president of the National Limestone Institute, Inc. Prior to his service with the Limestone Institute, Mr. Koch was an Agriculture Department official at the local and national levels, and he is qualified to speak of the great usefulness of the ACP–REA program. Mr. Koch included with his letter a copy of a letter written to Mr. Shultz by the Honorable TOM STEED, of Oklahoma, chairman of the House Appropriations Subcommittee on Treasury, Post Office, and General Government.

Mr. President, I ask unanimous consent that my letter to Mr. Shultz, Mr. Koch's letter to me, and Mr. STEED's letter to Mr. Shultz be printed in the RECORD.

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

DECEMBER 6, 1971.

Hon. GEORGE P. SHULTZ,
Director, Office of Management and Budget, Executive Office Building, Washington, D.C.

DEAR MR. SHULTZ: As you know, the Subcommittee on Separation of Powers, of which I am Chairman, has examined in some detail the practice of Executive impoundment of appropriated funds. Recently, my attention has been called to an impoundment that is having a very direct and crucial effect on the farmers in forty-five North Carolina counties who have suffered huge crop losses recently because of heavy rains.

I understand that approximately $55.5 million appropriated for the Rural Environmental Assistance Program (REAP) has been impounded by the Office of Management and Budget. The release of these funds could help to solve many of the problems that our North Carolina farmers have experienced during this unsually wet year in our State. Also, the application of these appropriated funds in the near future would aid these farmers in establishing much-needed conservation projects in order to avoid a repeat of the recent crop disaster in years to come.

The impoundment of appropriated funds is a problem that has disturbed many members of the Congress. The problem is especially distressing when the funds are impounded in the face of a natural disaster, as is the case in North Carolina.

I strongly urge you to release the full appropriation for REAP so that the Agriculture Department can assign a reasonable amount to the counties in North Carolina which have suffered crop damages this year.

With all kind wishes, I am

Sincerely yours,

SAM J. ERVIN, JR.,
Chairman, Subcommittee on Separation of Powers.

NATIONAL LIMESTONE INSTITUTE, INC.,
Washington, D.C., November 15, 1971.

Hon. SAMUEL J. ERVIN, Jr.,
United States Senate,
Washington, D.C.

DEAR SENATOR ERVIN: I would like to call to your attention a situation which in my view requires reconsideration by our Nation's policy makers.

The Congress passed the Soil Conservation and Domestic Allotment Act in 1936. One of the strongest features was the authorization of what has come to be known as the Agricultural Conservation Program, recently renamed the Rural Environmental Assistance Program. In 1936 the Congress determined that this Nation could well afford to spend $500 million annually to go into partnership with farmers throughout the country working to improve and preserve the soil and water of this Nation.

In 1936 an excellent beginning was made in each of the 3,000 counties of the Nation. Long term conservation practices were begun with the farmers putting up part of the money and *all* of the labor, machinery, etc. necessary to carry out conservation practices on the land. *Each* year over 1 million farmers seeded millions of acres, planted millions of forest trees, strip-cropped and contoured millions of acres besides carrying out many other practices too numerous to mention.

All these conservation practices were approved by authorities at the County, State and National level. Unfortunately through the Thirties, Forties, Fifties, and even into the Sixties practically no consideration was given to the environment or ecology. Rather the ACP was dubbed a "farm subsidy."

Nothing could be further from the truth! Over the long term the farmers would benefit to be sure. But the real beneficiaries are all the Nation's citizens. Minerals were added to the soil—my own industry's sales of aglime went from 1 million tons to 30 million tons—and all consumers received more calcium (one of the most important elements to all life) in the foods they eat. (Before anyone receiving these letters jumps to the wrong conclusion, let me insert that aglime sales are only 4% of our business and that much of its sells for only $1.00 a ton at the quarry. I became completely sold on this Program as the original administrator of it in my home country of Franklin, Massachusetts from 1936–41. The following five years at USDA I was in charge of the Conservation Materials Section in the nine Northeastern States before coming to my present position 25 years ago. If this were not true, I probably would be writing to you only about the $6 billion of Highway Funds which are impounded and which represent our primary business!) Soil is the Nation's number one pollutant of our waterways, greatly exceeding sewage in this regard. Consider how much more serious this would be if we had not promoted the phenomenal increases in acreage of clover, alfalfa and grass and millions of trees through ACP practices since 1936.

During this period of time "economizers" have insisted that farm subsidies should be cut and this Program has gone from $500 million to $300 million to $250 million and more recently to $195.5 million. Even this didn't satisfy the Office of Management and Budget. In spite of strong protestations of many Congressmen, including a large number of Republican Senators who wrote a joint letter to President Nixon, OMB impounded almost a third of the amount authorized by Congress.

First they impounded $45.5 million for the 1971 Program. Now, in spite of a strong directive from the Congress not to do it, the OMB has impounded $55.5 million for 1972. Let me refer you to the enclosed speech by Congressman Jamie L. Whitten, Chairman of the House Appropriations Subcommittee on Agriculture, Environmental and Consumer Protection on this subject.

Now when literally *everyone* is concerned about the environment, how can the Administration—or two or three bureaucrats—completely overrule the entire Congress in their efforts to maintain this Program? How can these two or three men—or is it only

one?—say we are going to "save" $55.5 million when over a million farmers are ready to match it with their own money to bring about a better environment? Shouldn't Congress insist that the Nation go back to what has proven to be sound policy since 1936 and demand that $500 million be authorized? With the farmers matching this as they proved in the survey Mr. Whitten refers to, we could get a billion dollar effort completed each year through an organization which is already equipped to reach every farmer—and every acre—in the Nation.

While new efforts may be needed, shouldn't we utilize an existing effective program facility—namely the Agricultural Stabilization and Conservation Service which now functions in every county? Why must we always create a new agency and spend billions doing it when new ideas come along?

Just as an example of OMB's reasoning, they left the $154.7 million intact for the Soil Conservation Supervisors who advise farmers at the local level—these are not the administrators of the ACP–REAP—but cut the monies available to the farmers to match in getting the actual practices on the land to $140 million! And the SCS supervisors only give advice on less than 25% of the practices carried out by the farmers! Is it any wonder that there is a grass roots revolt in the rural areas?

Will you write or contact either or both the President and Mr. Shultz about the impoundment of this $55.5 million for the 1972 ACP–REAP? Farmers in the Nation are anxious to do their part in the environmental battle and ready to match Federal money with their money plus their time and labor to carry out on the land practices which will benefit all of us.

I am also enclosing a copy of a letter to Mr. Shultz concerning this written by Mr. Steed who, as you know, is Chairman of the House Appropriations Subcommittee on Treasury, Post Office and General Government.

Respectfully yours,

ROBERT M. KOCH,
President.

HOUSE OF REPRESENTATIVES,
Washington, D.C., October 29, 1971.

Mr. GEORGE P. SHULTZ,
Director, Office of Management and Budget, Executive Office Building, Washington, D.C.

DEAR MR. SHULTZ: It has just come to my attention that the OMB has once again impounded some of the funds for the ACP–REAP Program.

Over a million farmers in all of the 50 states have shown an interest in doing something about the ecology by offering to match their Federal Government's funds in carrying out soil and water conservation practices which have been approved by local and state officials. A county recently wrote that their farmers had requested $300,000 assistance, which means that they would have put up $300,000 of their own money besides carrying out the practices. Instead, the County Committee could only provide $80,000 because of the cutback. Obviously this year they will have less.

The nation's authorities in this field tell us that our nation's water is polluted a great many times more by soil runoff than by all the sewage we dump into the streams. It seems to me that rather than cut the amount authorized by the Congress under the Soil Conservation and Domestic Allotment Act of 1936—$500 million—we should be taking steps to increase this.

I urge you to reconsider this drastic action and restore the full $195.5 million directed by the Congress for the 1972 Rural Environmental Assistance Program. I believe to do so will be in the national interest.

Sincerely yours,

TOM STEED,
Member of Congress.

WYOMING COMMANDER TO JOINT CHIEFS

Mr. HANSEN. Mr. President, I am proud to note that the commander of the 90th Strategic Missile Wing of the U.S. Air Force, which is headquartered in Wyoming, will be reassigned to the Office of the Joint Chiefs of Staff early in 1972.

Gen. Harold A. Strack, who has had a distinguished military career beginning in 1943, is the subject of an article published recently in the Wyoming State Tribune. In order that he may be better known to Senators, 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 Wyoming State Tribune, Nov. 26, 1971]

GENERAL STRACK GETS NEW PENTAGON ASSIGNMENT

Brig. Gen. Harold A. Strack, commander of the 90th Strategic Missile Wing here, has been reassigned to the Office of the Joint Chiefs of Staff in Washington, effective shortly after Jan. 1, the Air Force announced today.

Strack, 48, will replace a Navy rear admiral as the chief of the Studies, Analysis and Gaming Agency, a branch of the Joint Chiefs of Staff.

The new post will involve dynamic analysis and computer war gaming for strategic and general purpose forces Strack said.

No successor to Strack as wing comamnder at Warren has been named.

Strack first was assigned to Warren as deputy commander for operations in July, 1963, and 18 months later was named wing vice-commander. He held that post until June, 1965.

He then was reassigned to the Pentagon as Chief of the Strategic Nuclear Branch, also an office of the Joint Chiefs of Staff.

In July, 1968, as a full colonel, he became deputy assistant to the chairman of the Joint Chiefs of Staff for strategic arms negotiations.

Returning to Wyoming in August, 1969, Strack assumed his duties as commander of the 90th Strategic Missile Wing. He was promoted to general officer rank last January.

Born March 29, 1923, in San Francisco, Strack received his pre-service education at schools in that area, including study at San Francisco College.

He entered military service Feb. 10, 1943, attending navigation school at Selman Field in Monroe, La., was graduated and commissioned as second lieutenant on Oct. 16, 1943.

During the following year, Strack served with the 15th Air Force in the European Theater of Operations and flew a total of 34 combat missions over the Balkans, France, Italy and Germany.

He was squadron staff navigation officer.

He took part in combat operations again in 1950, when he served as a B–29 crew radar observer on 28 missions over Korea and as the wing staff radar observer.

Between combat tours, Strack was a senior navigation instructor and head of navigation ground training at Mather AFB in California.

He furthered his military and civilian education through study at Mather, Sacramento State College and the University of Maryland.

After serving with the 22nd Bomb Wing as wing staff observer, 1951–54, Stack was named chief of the Radar Bomb Branch, working directly under the SAC headquarters director of operations.

He commanded the First Radar Bomb Scoring Group from July 10, 1956 to Aug. 16, 1959.

He was chief of the Missile Requirements Branch, Directorate of Operations, SAC headquarters, for the next three years.

Strack holds the aeronautical rating of Master Navigator and has been awarded the Master Missileman badge.

He's a member of the American Institute of Aeronautics and Astronautics.

Among his many service decorations are in Legion of Merit, Distinguished Flying Cross, Purple Heart, Air Medal with five Oak Leaf Clusters, the Joint Service Commendation Medal, Korean Service Medal and the EAME Campaign medal with six battle stars.

He also has received the World War II Victory Medal, American Campaign Medal, United Nations Service Medal, National Defense Service Medal and the Presidential Unit Citation with Oak Cluster.

Strack is married to the former Margaret Deck and the couple has three children, Carolyn, Curtis and Tamara.

EMERGENCY TRANSPORTATION DISPUTE LEGISLATION

Mr. PACKWOOD. Mr. President, the crushing economic burden of the 1971 Northwest longshore strike will long be remembered by all citizens of that region, including all those Oregonians who have suffered either directly or indirectly as a result. As we near the end of the 80-day Taft-Hartley cooling-off period, which was invoked after the strike had been in effect for over 3 long months, the economic picture in the Northwest is again beginning to cloud over. Farmers and lumbermen, the backbone of our regional economy, are doing everything in their limited power to move their crops out before the onset of a new strike, which is expected at this point around Christmastime. Importers and exporters alike are desperately seeking to make arrangements now to somehow compensate for the new losses that will inevitably be sustained if a continuation of the strike occurs at the end of the month.

How successful any preparation can be remains to be seen, but we do know for a fact that resumption of the strike will adversely affect the public, the economy, and the international trade arrangements which have painstakingly been worked out over the years. We know to expect lasting and probably irreversible damage to our foreign markets, since our major purchasers have already been forced to look to other nations to meet their monthly purchasing requirements. U.S. producers will suffer long-term as well as short-term losses because foreign purchasers will hesitate to restore trade with the United States until it can be proven, as pointed out by Federal Maritime Commission Chairman Helen Delich Bentley that:

U.S. ships won't be shut down at the drop of a hat.

I ask unanimous consent to have printed in the RECORD a text of a letter I have had from Mr. John Welbes, executive vice president of the Oregon Wheat Growers League; a letter from Mr. Lester Estergard, chairman of the Oregon Orchardgrass Seed Producers Commission; and another from Mr. W. Scott Lamb, executive secretary of the Oregon Chewings Fescue and Creeping Red Fescue Commission. In addition, I ask unanimous consent to have printed in

the RECORD a letter written by Oregon Governor Tom McCall to my distinguished colleague and chairman of the Senate Labor Subcommittee, the Senator from New Jersey (Mr. WILLIAMS), and also a copy of my most recent letter urging action on this legislation. These letters describe the dilemma facing Oregon and explain why new procedures are so desperately needed.

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

OREGON WHEAT GROWERS LEAGUE,
October 28, 1971.

Hon. ROBERT W. PACKWOOD,
Senate Office Building,
Washington, D.C.

DEAR SENATOR PACKWOOD: The Oregon Wheat Growers League urges the members of the Senate Committee on Labor and Public Welfare to do everything possible to pass legislation to up-date the Taft-Hartley law in order to prevent these long-delayed strikes. Not only is wheat concerned, but all segments of agriculture, timber and other related businesses.

During the months of July, August and September, only 93,000 bushels of wheat were exported from the Pacific Northwest and this went through the Port of Vancouver in Canada. This compares to approximately 25,000,000 bushels during the same period last year. Reliable sources inform us that the wheat industry lost $1 million a day during the strike period. The Council of California Growers reports that the strike cost them $17 million dollars daily.

We are positive that after the cooling off period they will again go out on strike. This is also the feeling of our buyers of wheat, as Japan for example, tendered for December shipment but indicate that they will not tender for January shipment. No one knows how many markets were lost during this period but some estimate 25–35%. Our foreign office representatives inform us that their countries are no longer looking at the U.S. as a dependable source of supply.

Enclosed you will find a resolution passed at our recent Workshop. This closely resembles S.B. 560 and we urge you to have hearings and pass legislation dealing with this problem before adjournment. We favor this bill.

Very truly yours,

JOHN H. WELBES,
Executive Vice President.

OREGON WHEAT GROWERS LEAGUE,
October 14, 1971.

MARKETING COMMITTEE RESOLUTION PASSED AT O.W.G.L. WORK SHOP HELD OCTOBER 13, 1971, IN PENDLETON, OREG.

The transportation strikes in our nation, both regional and nationally, have resulted in untold economic losses to the public and severely hampered interstate and export trade. These punitive strikes in our transportation system should be halted by responsive Congressional action.

The inadequacy of the Taft-Hartley Act to cope with present day labor management problems, has been amply demonstrated.

Therefore, the Oregon Wheat Growers League urges Congress to enact new labor management legislation encompassing strike prevention and settlement procedures in the interest at regional parity of public welfare and trade throughout our nation.

The Oregon Wheat Growers League recommends the following modification of the Taft-Hartley Act:

1. Taft-Hartley Act should cover regional as well as national emergencies.

2. Establishment of a committee to determine the reasonable period of time to allow a strike to continue before it becomes an emergency requiring the Taft-Hartley 80-day injunction.

3. If the strike is not settled during the 80 day period, the striking union would be allowed to resume its strike for a 15-day period. This time period would also include compulsory arbitration.

OREGON ORCHARDGRASS
SEED PRODUCERS COMMISSION,
Salem, Oreg., November 23, 1971.

Hon. ROBERT W. PACKWOOD,
U.S. Senator, Senate Office Building,
Washington, D.C.

DEAR SENATOR PACKWOOD: The Oregon Orchardgress Seed Producer Commission representing over 400 Orchardgrass seed producers in Oregon respectfully request you make every possible effort, including entering a congressional bill, to bring an end to the Longshoremen's Union strike prior to the December 25 deadline for the resumption of the strike.

According to Union spokesmen, the strike will resume after the cooling-off period and this would come about at a time when the prime movement of seed to foreign markets is underway. Many EEC countries are questioning the stability of seed supplies from the United States and encouraging more trade with nations on the continent for such supplies. It is only the competitive edge of Oregon's specialized seed growers that make it possible to sell seed to Europe. If the dock strike continues and seed cannot be shipped, Oregon stands to lose much of this trade advantage. Once lost, it will be extremely difficult to regain, if regaining would at all be possible.

The Oregon Orchardgrass Seed Producers Commission urges you to use the full authority of your office to prevent resumption of the Longshoremen's strike on December 25, 1971.

Respectfully,

LESTER M. ESTERGARD, *Chairman.*

CHEWINGS FESCUE AND
CREEPING RED FESCUE COMMISSION,
Salem, Oreg., November 12, 1971.

Senator BOB PACKWOOD,
Senate Office Building,
Washington, D.C.

DEAR MR. PACKWOOD: Attached is a letter from the Chairman of the Fine Fescue Commission to the President of the United States in regard to the current dock strike. This matter is of extreme importance to the grass seed growers as well as other agricultural producers in Oregon. It is inconceivable that our nation's lawmakers can sit idly by while the markets for Oregon agricultural products are jeopardized by a small segment of our work force.

We respectfully urge you to make every possible effort to end this strike before it is resumed at a time when Oregon grass seed trade is at its zenith.

Respectfully,

W. SCOTT LAMB,
Executive Secretary.

CHEWINGS FESCUE AND
CREEPING RED FESCUE COMMISSION,
Salem, Oreg., November 11, 1971.

President RICHARD M. NIXON,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: At the November 9th regular meeting of the Fine Fescue Commission of Oregon, the commissioners unanimously passed a resolution to call on the President of the United States and to our Congressional delegation to urge a total effort to bring an end to the dock strike before the cooling-off period ends in December.

Fine fescue growers produce some 15 million pounds of grass seed annually in Oregon. In 1970–71 approximately one-half of the seed produced moved into foreign trade channels on a cash sales basis and was shipped through the Port of Portland. The bulk of this seed was shipped during November through January for spring planting in Europe and Japan.

The Longshoremen Union leaders have indicated they intend to re-institute the strike following the 80-day moratorium. Such action by the union could virtually destroy the grass seed market abroad for Oregon seed growers, a market it has taken many years to establish. Loss of these markets, even on a temporary basis, would result in an oversupply of grass seed on the domestic market and would prove disastrous to seed prices and growers' income in Oregon.

The Fine Fescue Commission respectfully requests you use the full force of your office to bring about an immediate settlement of the strike.

Respectfully,

JOHN W. HAYWORTH,
Chairman.

OFFICE OF THE GOVERNOR,
Salem, Oreg., November 17, 1971.

Hon. HARRISON A. WILLIAMS, Jr.,
Chairman, Subcommittee on Labor, Senate Labor and Public Welfare Committee, New Senate Office Building, Washington, D.C.

DEAR SENATOR WILLIAMS: As things now stand, a resumption of the West Coast dock strike seems inevitable around next January 1, after the 80-day Taft-Hartley cooling-off period expires.

Last month the Japanese Wheat Mission came to my office to seek my pledge of deliveries of western grains through Pacific Coast ports in January, February and March of 1972. The time to place orders for these cargoes was then imminent. I assured the mission members—all highly placed officials of the Japanese Food Agency—I would explore every avenue to a possible settlement of the strike.

Meanwhile, the deadline has passed and Japan has had to turn to Canada and Australia for these winter deliveries—just as it turned to the same countries for nearly 60,000,000 bushels of wheat for shipment in July, August and September of 1971. My affidavit which helped the Federal Court in California to decide to order the cooling-off period specified that the dock impasse on this coast had inflicted $125,000,000 in damages on Oregon's economy.

These were observable damages that had already occurred. Oregon's prospective damages will exceed one billion dollars by the end of the decade if Japan continues to be denied our western wheat supplies and stays with those countries which met her needs when the United States reneged.

Portland City Commissioner Frank Ivancie's longshoremen's mission to Japan, Taiwan and Korea has just returned with intelligence of tragic concern for the whole nation. Flour mills in that area are spending millions of dollars to re-tool to process the different kinds of wheat being substituted for ours. The finality of this action in terms of door-shutting against American wheat does not need elaboration.

Officials of the International Longshoremen's and Warehousemen's Union tell me, however, that unless they prevail in the strike perhaps one-third of their members will be without employment permanently. This is because technology is forcing a situation where there are more longshoremen than jobs. At the same time officials of the union inform me they recognize that the employers group, the Pacific Maritime Association, lacks the financial capacity to meet the problem.

It is indeed a challenge that is beyond the means of the private sector. I have directed my State Employment Administrator to discuss with the union such measures as retraining and early retirement to take care of the potentially surplus members. A dilemma the size of this one, however, takes more curing than the state is capable of providing—but at least we might suggest a

remedial social program for Congress to review.

The human side of labor-management disputes with such difficult components and far-reaching implications deserves great attention. And so does the procedural side of resolving the actual impasse before the public interest is impaired and the parties themselves torn and embittered by their differences.

The sense of urgency in finding a better way is not new, nor can Republicans claim priority in asserting it.

Delivering a speech in Detroit during his campaign for the Presidency in 1952, Adlai Stevenson called for a new method of settling national emergency labor disputes. "We cannot tolerate shut-downs which threaten our national safety, even that of the whole free world," Stevenson said. "The right to bargain collectively does not include a right to stop the national economy."

Nearly two decades have passed since this challenge was issued. These two decades have seen the procedures for resolving labor disputes, first enacted in the Wagner Act and amended by Taft-Hartley, left initially unaltered; although Landrum-Griffin did effect improved intra-union procedures.

The lack of substantial reform legislation during the past two decades does not reflect tranquility in labor-management relations.

Eight times since 1963, Congress has been compelled to take temporary emergency measures to keep railroads in operation. Great cities have been paralyzed by tie-ups in relatively small, but extremely vital, enterprises. Earlier in 1971, the national economy tottered on the brink, as one rail-line after another was struck. On top of this, a multi-coast dock strike adversely affects the nation.

Your subcommittee is to be congratulated for its recognition of the fact that the time has come when Adlai Stevenson's challenge must be met. I have seen copies of a number of proposals before you, such as S. 954, S. 560, S. 1934, and S. 2583.

Farm interests in Oregon are strongly behind S. 560; but rather than address myself to specific bills, I prefer to deal with concepts.

One of the more interesting of these would empower a panel to consider the final offer of each side, and approve one—which then would become effective as the contract between the parties.

We also should review proposals that would permit regulatory authorities, particularly in the transportation industry, to order partial operation of struck carriers based on a need to insure national health and safety, provide fuel for electrical generation, and continue operation of passenger service.

It was maddening last summer to have federal intervention denied in the West Coast dock strike because it supposedly did not constitute a national emergency. When a major section of the country is economically stricken, it has to be of national concern. But the point here, since this argument failed vis-a-vis the West Coast dock strike, is that we ought to have an enactment giving the Federal government the capability to deal with emergency transportation disputes affecting major regions, as well as the entire country.

Another thought is that piling up one cooling-off period after another really doesn't solve anything. At least, in the present dock deadlock out here, work by resentful dockers is often conducted at snail's pace; and motion would be almost undetectable, I believe, during any subsequent cooling-off chapter. By the same token, a too-coercive final settlement mechanism could be self-defeating.

In searching for better ways to go, we should not ignore the experience of other nations. Australia, for example, has established a system of conciliation and arbitration under the general supervision of a Commonwealth Industrial Court. This is structured along lines of specialized courts in the United States, such as tax courts. A sub-body under the court is the Commonwealth Conciliation and Arbitration Commission of 22 members with considerable conciliation and arbitration authority.

Again, this a mere suggestion to throw into the amalgam of proposals with which your subcommittee is conjuring. What we must come up with, and soon—I respectfully urge—is a program to forestall the closing down of the United States, as so nearly happened in August, 1971, during the railroad strike, a strike that if pressed without limit, could have brought the country to darkness and squalor.

In sum, then, the nation must have updated methods of approaching the social and procedural sides of the major transportation strike problem. You have impressive backgrounds in both areas—and I thank you for your attention to this over-long letter and pledge my cooperation in your quest of answers.

For 20 years we have seen major transportation labor disputes become increasingly harmful to the public at large. And, if you were here on the edge of the Pacific watching the dock strike grow into an international disaster, you would agree we cannot wait another 20.

Sincerely,

TOM MCCALL,
Governor.

U.S. SENATE,
Washington, D.C. November 22, 1971.

Hon. HARRISON WILLIAMS,
Chairman, Senate Labor Subcommittee, New Senate Office Building

DEAR PETE: I think all would agree that the six days of hearings on emergency transportation labor disputes legislation which the Labor Subcommittee has held so far this year have been immensely helpful in allowing us to pinpoint some of the major issues and problems in this area. We have a great deal of diversity among both supporters and opponents of specific proposals, but we also have a wide range of specific proposed solutions from which to choose in reaching a decision on the most equitable permanent procedures to solve emergency labor disputes in the transportation industry where the public interest is affected.

I have been gratified that Congress now seems more willing to face up to its responsibility of protecting the public interest where emergency transportation labor disputes are concerned, and where failure of the two parties to settle results in economic catastrophe for millions of innocent Americans, in no way connected with the issues surrounding the dispute itself. Congress certainly realizes that its role as labor arbitrator in crisis situations is neither a flattering nor appropriate one. I'm convinced that if we present the choices, the arbitrators role, versus permanent legal procedures, our colleagues will agree that the latter is both more appropriate and more equitable for all concerned.

The progress we have made so far on this legislation, Pete, is certainly encouraging. We do, however, have a very long road ahead of us, and we all know the road will not be easy. However, the longer we postpone moving this legislation, the more we force Congress to impose its own decisions as a labor arbitrator. And I think it's fair to say that our task will not be made easier as time goes on. In the case of the Northwest and particularly my State of Oregon, we have already suffered untolled millions of dollars of losses as a result of first the railroad strike this summer and now the longshore strike, which is threatening to resume over the Christmas holidays. The economic losses suffered in Oregon are not just losses to wealthy businessmen and shippers. The losses are felt up and down the economic chain, from the lumber worker who loses his job to the migrant who can't find employment, to the state government, whose budget is already in a very precarious position, to the federal Treasury, which sees the losses reflected on our balance of trade sheet. People in the Northwest who have already suffered from this uncertainty for all these months would be quick to tell the Congress that the permanent legislation we are now thinking about considering is way over due. Why, they would ask the Congress, should they be asked to suffer for the failure of two parties in a labor dispute to reach a mutually satisfactory agreement, and also for the failure of Congress to act responsibly in providing the permanent legal procedures which would make such irrational and arbitrary hardships a thing of the past.

Pete, the entire Northwest is trembling again at the thought of a renewed longshore strike. Oregon cannot sustain this additional negative impact. May I again implore you to press forward with hearings on this vital legislation, with the hope that we can move a bill or bills to the floor at the very earliest time.

With kindest regards.

Cordially,

BOB PACKWOOD.

Mr. PACKWOOD. Mr. President, I cannot stand idly by while the Senate moves toward adjournment, having failed for yet 1 more year to meaningfully consider legislation to reform procedures governing emergency strikes in the transportation industry. The several days of hearings we have held in the Labor Subcommittee are certainly an indication of progress in this area. But the progress is slow, Mr. President, and does not in any way reflect the urgency of the economic disaster which befalls the public interest under existing statutes.

Clearly, the Senate will not be able to consider this badly needed new legislation before adjournment, but let me again urge Senators to find the time and the inclination at the earliest possible date in the new session to bring emergency transportation dispute legislation out into the open for rational debate and action.

CHEESE QUOTA

Mr. BENTSEN. Mr. President, President Nixon is doing our domestic dairy industry an injustice by not adopting the quotas on certain types of cheese recommended months ago by the Tariff Commission.

In January 1969 a number of cheeses were placed under quota, but it was decided that any cheese in these categories which cost 47 cents per pound or more would be exempt from the quota. This was intended to permit specialty cheeses which are not normally manufactured in the United States, to be imported. However, by 1970, increasing imports of the over 47-cent cheeses accounted for nearly 25 percent of all dairy imports. Because of this, the President asked the Tariff Commission to hold hearings and make recommendations on this type of item.

The Commission recommended that the 47-cent price break be abolished and that a quota be established for the various types of cheese involved, regardless of prices. The three quota groups decided upon are: Swiss cheese, Gruyere-process cheese, and certain other cheese. The

Commission recommended that the present quotas for each of these three categories, which had previously applied only to under 47-cent cheese, be increased by taking into account recent imports of over 47-cent cheeses. In effect, the new quota, which was to cover regardless of purchase price, would be based on the past shipment of both over and under 47-cent cheese.

Though the President made his request 8 months ago and the Tariff Commission made its recommendation over 3 months ago, there has been no further action.

Mr. President, I support very strongly the idea of trade between the United States and other countries. We need trade if we are to have a healthy economy, but trade must be a two-way street, with equal restrictions and privileges for all countries. The United States has worked hard to establish open markets; however, in this case I think the President should enforce the recommendations of the Tariff Commission. Our own dairy industry should not be sacrificed for the sake of our import policy.

A SALUTE TO GEORGE NORRIS

Mr. HRUSKA. Mr. President, it is a pleasure to invite the attention of Senators to the November 1971 issue of the magazine Rural Electrification, which shows on its cover a picture of former Senator George Norris, of Nebraska, striding along the sidewalk of—probably—his hometown of McCook in a characteristic posture. The cover is entitled "A Salute to George Norris."

The magazine contains two items of particular interest. One, a feature article entitled "George Norris at Home"; the other is a brief editorial endorsement of the bill (S. 1130) introduced by my colleague from Nebraska (Mr. CURTIS) and me which would make the Norris home place in McCook into the George W. Norris Home National Historic Site.

I ask unanimous consent that the article and the editorial be printed in the RECORD.

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

THE NORRIS HOME

George Norris's home in McCook, Nebr., is a national landmark, but it is not yet an American historical site, the highest honor given to important places in our history. It is far past time that the Norris home was given that designation.

GEORGE NORRIS AT HOME

(By Ted Shepherd)

George William Norris. What shall we say of him?

That he gave Nebraskans 40 years' service in Congress, America the TVA and REA, our Constitution its twentieth amendment?

These things are already well-known. Let us instead speak of the man.

Not the public man. He was a giant, a hero, and heroes beget legends and legends become bronze. But in these times we need reassurance that it was not bronze but poor flesh, like our own, that compiled this catalog of achievement.

Let us talk about the private George Norris.

His arms were too long. George Norris's arms were so long he had to have special made coats. That was a special pain, because he didn't like to shop for clothes, perhaps because he attached little importance to personal adornment—perhaps because he had been one of a farm family of 12 children that had known very hard times.

But his wife Ellie was determined that her husband should be decently attired. For years, then, whenever George would get a one-coat suit, Ellie would—in secret—pay the tailor to make a duplicate coat. From time to time—and this went on for years without George ever the wiser—she would switch coats so the dirty one could go out to be cleaned.

Finally he caught her.

"He sat down on the radiator and—this isn't the nicest language in the world, but it's what he said—'you beat the devil!', and then, how he laughed!"

That is the way Ellie Leonard Norris of San Jose, California, now 97 and residing in a McCook, Nebraska, nursing home, remembers her husband.

Ellie was his second wife. His first, Pluma Lashley, gave him three daughters—and, as a result of complications during the birth of the third died.

The shock of this loss and the terrible sense of responsibility thrust so cruelly upon him gradually put Norris in a certain frame of mind: he wanted to die, too. In his autobiography, *Fighting Liberal*, he spoke of that dark time.

A prolonged bout of dentistry—Norris had had extremely troublesome teeth—and general decline of spirit and health left him in serious condition, and there came a day when his physician laid things on the line. "You are battling against every bit of medicine that I give you," Dr. Greene said. "Without your assistance, I have no hope for your recovery, and I think it is up to you to decide now whether you are going to live or die."

Norris had a very human and heartbreaking reaction: "I did not tell him so, but in my own mind I thought it better under the circumstances I die."

He did not die then, of course, because, as he related in his book, one of his little girls said she would rather sit with him in a darkened room than go into the sunshine to play with her friends, and he suddenly realized that with that kind of promise and love available dying would be a most improper course to follow.

In 1903 he and Ellie, who was teaching school in McCook, married.

"I was 29. George William was also in his late twenties. I had a romance that death had ended. He had a marriage that death had ended. We picked up the pieces and made what I think was a very good life."

Not always an easy life, however. For Ellie's only children, twin boys, were stillborn. She concentrated her love upon her stepdaughters, and her feelings for them are evident when she says, "I like to think sometimes that Pluma got my boys and I got her girls."

George Norris was very much a family man. He liked to be at home, and when he was home he liked to do things with the family. This becomes apparent in a conversation with Ellie Norris.

Did he like hunting or fishing—or say, just riding?

"No, no. He used to say, 'Riding mixes my dinner up.' He loved for us to go out with the girls on picnic dinners."

Did he play any games?

"He was a crackerjack card player—but he used to get awfully disgusted with the men who, the second the Senate or House let out, would go into a poker game. He was a real baseball fan, though, and we went to the games in Washington and listened to them on the radio here."

Gardening, reading?

"He was a good gardener—but not flowers. I doubt if he knew the difference between a pansy and a sunflower. He loved to read aloud to the girls. His favorite reading was history and Dickens. His favorite novel, I think, was *Bleak House*."

Go to McCook, a town of about 8,000 persons set down in southwest Nebraska about midway between Denver and Omaha, and you can see the Norris home, currently a registered national landmark and, if legislation introduced in Congress by the state's senators passes, someday a national historic site.

A less bleak house would be hard to find. It sits on a tree-lined street (Norris Avenue) across from a park, and it holds in its appealing interior much of the personality of George Norris.

Besides the plaques—including a special one to honor his work on behalf of the nation's rural electric cooperatives—the furnishings that tend to catch the eye first are the rugs. They are orientals.

This man who spent his life hammering out the plain planks of Western populism had a real fondness for the intricacies woven into floor coverings by people of the feudal East.

In the basement a display area of books, documents, and other government memorabilia includes a carved wooden duck—personal memento of the Lame Duck amendment which finally realized George Norris's belief that after the people have decided against returning a man to Congress he should get the heck out of the place. Soon.

On the first floor one tends to pause at the study—a small room with French doors and an old desk where Norris spent more time than he really wanted to at home in work on matters of government, including, no doubt, a number of hours working over the twentieth amendment, for it took some 11 years between introduction as bill and passage as law.

There was an unbroken house rule. When George William was in that study he was not to be disturbed, for any reason. Ellie Norris can recall the evening when one of the little girls, denied the companionship of her father through most of the day and now forbidden to disturb his work, kissed the study door and went to bed. Ellie Norris, too, observed the bounds of that sanctuary.

"He would pace that study. I have sat in the living room and my heart just ached for him. But I couldn't help him."

She speaks of the day he completed his deliberations in the study and came out to tell her he had decided to oppose America's entrance into World War I, a decision that stripped him of considerable popularity and supporters, and some friends.

"I'm glad you're going to vote the way you are," Ellie Norris said, and she recalls his reply: "Yes, my girl, but it will probably cost me my seat in the Senate."

That decision did not cost him his Senate seat but in 1930 he had to embark in an all-out campaign to win the Republican nomination. Some of the old guard party leaders tried to louse up the primary election by the simple expedient of running another George W. Norris—a grocer without any political experience—so it would be impossible to tell how many votes had been cast for each candidate.

Norris had to work hard to beat that, but he did. First, after a battle that ended in court, he showed that "Grocer" Norris had filed late for the primary—and thus the other Norris's name was not allowed on the ballot. Second, Senator Norris campaigned with a vengeance. Behind the house, in the garage, is the steed he rode into a thousand political jousts: a 1937 Buick. "George William," says Ellie Norris, "said he wore out two sets of tires and two windshields campaigning over Nebraska's gravel roads."

Apart from politics, Norris could be a very private man—sometimes even to his family—and there are two illustrations that bear this out.

Examine the photographs and you will see that his eyelids tend to droop slightly. As a young man, on a shooting expedition with friends, he was accidentally shot by one of them in the face. Ellie Norris says that he knew which friend had committed this near fatal blunder—but he never mentioned the man's name, even to her.

In college days in Ohio he helped form a secret society of friends, its only purpose to encourage and retain already formed friendships, its only secret its name. The society enjoyed more than 45 annual reunions, but nonmembers, including Ellie Norris, never knew what its initials—L. U. N.—stood for (though in the society's early days some people referred to it as Lunatics Under Norris).

Ellie Norris has a spread that she made for George William's bed many years ago. It is a nice spread, but perhaps rather feminine—for, as Ellie Norris smilingly recalls, he replied to this wifely generosity with a gift to her: a saw.

The curator of the Norris home is Steve Bell, 26, a teacher of economics and government at McCook High School. He took the job because his interest in Norris developed after researching a high school project paper on the TVA. Bell finds that Norris and his work are of great interest to young people.

"Maybe 50% of the people who come through the home," he says, "are 16 and under. At first I thought they were just doing it to kill time. But I found a lot of them were coming back. Then, when I saw they were correcting me in my comments on the home the second and third time through I found out they were paying attention."

After you have viewed the house—including in its contents Jack Dempsey's hat, which was traded for a Norris model after both men decided a swap was in order—you can drive south by the Republican River and view the Norris farm, still operating, on a rural electrification system he labored so hard to secure.

Then, if you have time, return to town and drop in on Harold P. Sutton, who runs a jewelry store in McCook and who met George William in 1904 after using a Norris speech as the subject of a high school graduation theme.

He is great friends with Ellie Norris and he knows the way—for he has traveled it many times—to the nearby cemetery where, near the graves of his twin boys, George Norris rests today. Stand there awhile with Sutton and, after the discussion has drifted over TVA and REA and Nebraska's unique unicameral legislature—another, and very efficient Norris accomplishment—sooner or later you will hear him describing Norris's honesty.

This is the trait that everyone remarks upon.

One day, not so very long ago, a visitor—a little sick of hearing this continual repetition of honesty, honesty, honesty and inclined to view bronze with some suspicion—asked Ellie Norris for some examples of this honesty, some specifics please.

Ellie Norris thought a while. She was the man's wife for more than 40 years, and now his widow nearly 30 ("sometimes his death seems a long way off; other times it seems like yesterday"). She has a lot to think about.

And then she smiled and said, "The newspapermen voted him the most honest man in Congress."

THE GENOCIDE CONVENTION AND THE UNITED NATIONS

Mr. PROXMIRE. Mr. President, article 8 of the Genocide Convention states that—

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide.

Many people have voiced the fear that this article gives the United Nations the authority to interfere in the internal affairs of the United States. They fear that the U.N. will be investigating every incident involving a member of a minority group in America, constantly impinging upon our sovereignty. They fear that our Government will be unable to work with minority group members without having the U.N. constantly involving itself to check on possible acts of genocide.

But is this really the case? Is this possible? Article 2, section 7 of the United Nations Charter says:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.

Since the Genocide Convention says that any United Nations action must be according to its Charter—and, indeed, how could it act otherwise—and since the U.N. Charter specifically forbids the U.N. from interfering in a nation's internal affairs, the above outlined scenario is legally impossible. The Genocide Convention does not give the U.N. authority to intervene in our domestic affairs. We do not have to fear any limitation on our sovereignty.

So what does the Genocide Convention do? Why should the United States ratify it? By ratifying the Convention the United States tells the people of the world, that we, as a nation, abhor this horrible crime. We go on record as being against the systematic extermination of racial, national, or religious groups. When the Congress has enacted the necessary legislation we will then be able to do our share to insure that the horrors of Nazi Germany are never repeated.

Mr. President, the hour is late. The Senate must ratify the Genocide Convention.

CONQUEST OF CANCER

Mr. KENNEDY. Mr. President, recent discoveries by teams of medical scientists at the University of Southern California and Georgetown may well prove to be a monumental step forward in respect to the conquest of cancer.

These new discoveries appear to link two viruses directly to cancer. If it is possible to establish a link between viruses and cancer, it may well prove that scientists will ultimately control the disease through development of vaccines or other measures.

Mr. President, these new discoveries with respect to cancer are especially timely because the Senate and House conferees are now in the final stages of approving major new Federal legislation for the conquest of cancer. I think the articles by Harold Schmeck of the New York Times, Thomas O'Toole of the Washington Post, and Judith Randal of the Washington Star will be of interest to all my colleagues in the Congress, and I ask unanimous consent that they be printed in the RECORD.

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

TWO VIRUSES FOUND IN CANCER STUDIES

(By Harold M. Schmeck, Jr.)

WASHINGTON, December 5.—Research workers here and on the West Coast have announced the discovery of two new candidates for the ominous title of human cancer virus.

The discoveries, made independently, are part of a current ferment of research in which scientists are trying to link viruses with human cancer. When and if such a link is proved, it is expected to have profound effect on man's understanding of cancer and, potentially, his ability to deal with it. There have been several other suspected human cancer viruses, but none has yet been proved.

There are strong similarities and evidently some differences between the two new candidate viruses. Both are C type viruses, a type that is the focal point of much current cancer virus research.

Both newly found viruses are thought to stem from cells of one kind of human cancer, rhabdomyosarcoma, which affects muscle tissue. The cancer tissue studied on the West Coast was from a 7-year-old girl; that on the East Coast from a 38-year-old woman.

CELLS PROPAGATED

In each case, cells from the original cancer were propagated at length in laboratory flasks and showed no evidence of virus. It was the achievement of coaxing viruses forth at last that led to the announcements from each team at news conferences here and in Los Angeles last week.

Much experience in animal research has shown that detectable virus often disappears from cancers known to be caused by that virus. New techniques to make those hidden viruses reappear have generated much new study in recent years in regard to human cancers. It has long been known that viruses can cause cancers in animals.

The West Coast team was led by Dr. Robert M. McAllister and Dr. Murray B. Gardner of the University of Southern California School of Medicine, in collaboration with scientists here, including Dr. Robert J. Heubner, head of the viral carcinogenesis branch of the National Cancer Institute.

The other team was led by Dr. Sarah Stewart at the Georgetown University School of Medicine here.

INSTITUTE PROVIDES FUNDS

Both projects are supported by the special virus cancer program of the National Cancer Institute, a unit of the National Institutes of Health.

In the research done primarily on the West Coast, cells from a tissue culture derived from the girl's cancer cells were injected into fetal kittens. After birth, some of the kittens developed tumors that showed strong evidence of being human rather than animal cancer tissues. From one of these cancers, much virus has been obtained.

In telephone interviews, Dr. Gardner and Dr. Huebner said the evidence suggested strongly, but did not yet prove, that a human virus had been found in these cancer cells. Whether or not this or any other virus caused the original cancer is unknown. Attempts to prove that will be the focal point of future research.

NEW TECHNIQUE USED

The work by Dr. Stewart and her colleagues at Georgetown also involved tissue culture cells derived originally from a cancer patient, but did not involve animal research. Instead, the team used a new chemical technique developed by Dr. Wallace P. Rowe and colleagues at the National Institute of Allergy and Infectious Diseases to coax forth hidden viruses from cells growing in tissue culture.

The method has been used to find animal cancer viruses in cancer cells from which

all detectable trace of the viruses had disappeared.

Dr. Stewart said the new research marked the first time this method had been used to find a virus in cells derived from human cancer tissue.

"We do feel this virus is a potential human cancer virus," she said.

Virus particles similar to the virus her group has found were seen under the electron microscope in sample of the original human cancer tissue, Dr. Stewart declared. She said this argued against the possibility that the virus was a contaminating animal virus.

FUNDAMENTAL DIFFERENCE

Dr. William Feller, one of her collaborators said the new virus was fundamentally different from known animal viruses in the way it buds from the cells it infects. This also suggests that it is not an animal virus, he said.

For both of the new candidate viruses there is suggestive chemical, immunologic and other evidence that the agent in question is not just an animal virus but is one that infects human cells primarily. Whether or not these are human cancer viruses is a question that will require much further study. Research to prove this crucial point is already planned or beginning.

FIRST HUMAN CANCER VIRUS APPARENTLY ISOLATED AT USC

(By Thomas O'Toole)

A team of medical scientists in Los Angeles has discovered what appears to be a human cancer virus, the closest anybody has come to isolating and identifying a possible cause of the dread disease.

"This discovery puts us in a position where maybe we can determine to what extent this virus is involved in human cancers," said Dr. Robert J. Huebner of the National Cancer Institute. "It's a light-year ahead in terms of understanding how a cancer virus might work in humans."

The virus in question was found by scientists at the University of Southern California School of Medicine and the Childrens Hospital of Los Angeles, where the virus was observed in a seven-year-old girl with a muscle cancer called rhabdomyosarcoma.

A USC pathologist team led by Dr. Murray B. Gardner took cells of skeletal muscle from the girl's pelvis (where the cancer had spread) and injected them into embryonic kittens being carried by three cats.

One stillborn and three live kittens from the three cat litters were found to have muscle cancers. One of the three diseased live kittens had a solid tumor in the brain, which the Los Angeles scientists chose for their most exhaustive study.

"The tumor in the cat's brain," said Dr. Huebner, "looked the same as it did in the child."

When the tumor cells were "grown" in the laboratory, they were found to contain human chromosomes, the carriers of human heredity that are distinct from animal chromosomes.

"These chromosomes were quite visible after growth," Dr. Huebner said. "There was no mistaking them."

Together with a team led by Childrens Hospital's Dr. Robert M. McAllister, Dr. Gardner and his USC team then put their virus through an exhaustive series of tests, including sending samples of the virus to three other laboratories for their analysis.

Scientist teams at Flow Laboratories in Rockville, Md., and at Microbiological Associates in Bethesda, Md., found that the virus (named RD–114 by McAllister and Gardner) was not from the mouse, rat, hamster or cat—four animals whose cancer viruses have been mistaken in the past for human cancer viruses.

A third scientific team at the National Cancer Institute also discovered an enzyme in the virus that was similar to enzymes found in animal cancer viruses. Analysis by the Cancer Institute showed that this enzyme was different from any animal enzyme.

"We know conclusively that we do not have a cat virus, a hamster virus, a mouse virus or a rat virus," Dr. Huebner said. "This virus is a new virus and it is a mammalian virus, and while there is an outside chance that it comes from an animal other than man we don't think so." Where the Los Angeles discovery puts man in his fight against cancer is hard to fathom right now, but it could be a giant leap.

Dr. Huebner explained that it has taken researchers 50 years to link cancer with viruses, but that great strides have been made in the last few years.

"Four years ago, we didn't have a hamster virus and now we do," he said. "Two years ago, we didn't have a rat virus and now we do. Progress is being made."

At the same time that the Los Angeles discovery was being announced, a team from Georgetown University School of Medicine said they had isolated what they believe to be a "candidate human cancer virus."

Dr. Sarah Stewart, professor of pathology at Georgetown, said she had taken the virus from a 38-year-old woman with the same kind of muscle cancer as the seven-year-old girl at Childrens Hospital in Los Angeles.

While she said she could identify virus particles in the woman's cancer cells, Dr. Stewart admitted that she had not confirmed her finding by the same testing done by the Los Angeles team.

"We are about to embark on that now," she said over the weekend. "We feel we have a human cancer virus."

TWO NEW VIRUSES LINKED TO CANCER

(By Judith Randal)

Two federally supported scientific groups, working independently of each other, have found viruses they think will prove to be the cause of some human cancers.

The new findings, by scientists at Georgetown University here and in Los Angeles, bring to five the number of so-called "candidate" viruses reported since July.

The researchers believe that the type of viruses in question lie dormant in all people's genes in incomplete form from the time of conception and become active only if something in their environment permits them to mature.

It is unlikely, therefore, that they could be conquered by a protective vaccine. But an understanding of their nature could lead to other methods of prevention and control.

Both newly reported viruses were derived from the tumors of patients with a form of cancer called rhadbomyosarcoma, which originates in muscle. Both are "Type C," a class of spherical viruses which include those known to cause leukemia and other cancers in a broad spectrum of animals.

It is possible, therefore, that the two viruses are related or even identical. Such coincidences are not unusual in science.

One virus was found in the thigh tumor of a 38-year-old woman in June 1970. Dr. Sarah Stewart, long a leading scientist at the National Cancer Institute and now a professor of pathology at Georgetown University Medical School, kept some of the tumor cells alive in laboratory flasks for study after the growth was surgically removed.

So far most of her evidence comes from electron microscope photographs. That is, her evidence so far is primarily visual, although she and her associates have begun other tests whose results so far are promising.

The other virus, obtained from a tumor in a seven-year-old girl at Children's Hospital of Los Angeles in the late 1960s, has a similar history, but it has been more extensively tested.

Eight scientists—at the University of Southern California in Los Angeles, at Flow Laboratories in Rockville and at the National Cancer Institute in Bethesda—have collaborated in a variety of experiments to define its behavior and properties.

These scientists say their test results make "this virus . . . appear to be the most likely candidate for a human C-type virus yet described."

Dr. Stewart and her faculty colleague, Dr. William Feller, reported they had at first been handicapped by the disappearance of recognizable virus from the tumor cells after a few generations of laboratory growth.

This is a phenomenon familiar to scientists who have worked with animal cancer viruses and until this year it was a major stumbling block in research.

Then Dr. Wallace P. Rowe and his colleagues at the National Institute of Allergy and Infectious Diseases reported that such "hidden" animal cancer viruses could be made to reveal themselves in mature form if the cells were treated with either of two chemicals. Their work with mice led the Georgetown scientists to try the same technique.

CHEMICALS USED

Chemical reactivation with a substance known as IUDR has been so successful, the Georgetown team found, that it should now be possible to obtain the complete virus in sufficient quantity to isolate it and study it in great detail.

Photos taken with an electron microscope and preliminary tests already indicate, they said, that the virus differs from those known to cause sarcomas, or malignancies, in cats and mice. However, the possibility that the new virus is an animal contaminant and is not of human origin—while remote—has still not been entirely ruled out.

No one yet knows whether the virus will cause tumors in other species or lead to malignant changes in the architecture of normal human cells grown in test-tubes. Both findings are thought important to demonstrate a cause-and-effect relationship between any given virus and human cancer.

Drs. Robert M. McAllister and Murray B. Gardner, leaders of the University of Southern California School of Medicine team which together with other scientists has been studying the second virus, appear to be further along toward these goals.

For one thing, RD–114, as the virus is designated, has been isolated in cell-free filtrates as well as merely photographed and is available in large amounts. For another, it has been injected into another species and found to produce tumors.

In this experiment, cells from the child's tumor which had been nurtured in the laboratory were injected into the embryonic kittens of three pregnant cats. One stillborn and three surviving kittens of the 10 thus treated were found to have cancers similar to that of the little girl from whom the original tumor came.

This is presumptive evidence that the virus contains genetic information that programs for a human rather than a feline cancer.

From the tumor which had been growing in the stillborn kitten's brain, the scientists also grew cells whose chromosomes were clearly human rather than feline, even stronger presumptive evidence.

ENZYME RELATIONSHIP

The brain tumor was also found to contain Type C virus which further tests have demonstrated contains the recently discovered enzyme reverse transcriptase. This enzyme is associated with all the viruses known to cause leukemia in animals and many known to cause such solid tumors as sarcomas, too.

Still other tests have demonstrated that substances on the outer coat of the virus react with materials from cells treated with cancer viruses that infect mice, rats, hamsters and cats. This clearly indicates, the scientists say, that RD–114 is mammalian.

On the other hand substances in the inner core of the virus do not so react.

Because it is the inner core that governs the species which the virus can infect under normal circumstances, the scientists believe this may indicate that the virus they are studying is a human contaminant rather than an animal one. Further tests will be needed to furnish proof.

In an interview, Dr. Robert C. Huebner, who oversees the project for the Special Virus Cancer Program and has collaborated in it himself, said the study has progressed so rapidly that more definitive information may be available in as little as a month.

UNDERMINING THE CHANCE FOR PEACE IN SOUTH ASIA

Mr. BAYH. Mr. President, while it is difficult to secure precise information on the war raging between India and Pakistan, one need not belabor the need to end the bloodshed as quickly as possible. As with all such tragedies, the first goal must be a ceasefire which can then be followed by negotiations and resolution of the sources of the conflict.

Because a prompt end to the hostilities should be the primary aim of this Government, I was appalled to read the injudicious and counterproductive statement by a high official of the State Department who charged India with "major responsibility for the broader hostilities which have ensued." Not only is this incorrect, as I shall in a moment explain; it added further fuel to the flames of war at a time when this Nation might better have been playing the role of peacemaker. Moreover, by presupposing that we are capable of judging the question of guilt, we have undermined our own ability to help bring about peace in the future.

An examination of the complex history which brought about this most recent warfare can be helpful in demonstrating why the statement by the administration official was ill-timed and ill-aimed.

There are, of course, centuries of conflict between Hindus and Moslems culminating in the 1947 division of the subcontinent into India and Pakistan—with Pakistan, in turn, being divided in half.

Twice before in the last 25 years India and Pakistan went to war over territory, with religious tensions a persistent thorn in the sides of both countries.

With Pakistan itself there has been continuing hostility between East and West, between Hindus and Moslems.

Last year Pakistan held an open election in fulfillment of a longstanding commitment to democratic government. However, when the vote in East Pakistan went overwhelmingly to the Bengalis who favored separation from West Pakistan, the Pakistani Government ignored the will of the people and refused to institute the freely elected government.

Moreover, West Pakistan followed with a terrible blow against East Pakistan. Tens of thousands of Bengalis associated with the independence movement were killed. Millions fled from East Pakistan into India in fear for their lives.

This created a great problem for India who although sympathetic to the Bengalis, could not provide food or shelter to so great an influx of refugees.

The tensions which resulted brought about mobilization in both India and Pakistan with the outbreak of fighting last week.

Where was this Government during this period prior to hostilities? We quietly continued to send arms to Pakistan during the worst period of the slaughter in East Pakistan and suspended shipments only after the House voted to end military aid to Pakistan. Weeks later, we belatedly ended arms sales to India. It is a sad commentary that the war raging on the subcontinent today is being fought on both sides with U.S.-made weapons.

While we were all too free with military assistance we provided far too little in the way of humanitarian assistance needed to deal with so immense a refugee problem. We failed to go to the United Nations until the bloodshed was widespread. We failed to put the needed emphasis on a cease-fire. We failed to insist that this dispute be limited to the question of refugees rather than the historical power struggle between India and Pakistan. And now we have failed the crucial test of refraining from inflammatory rhetoric, thus denying ourselves the potential for helping to arrange even a temporary peace.

Mr. President, the errors of the past year are all too clear. The plight of millions of refugees without food, shelter, or minimal medical care, along with the mounting number of casualties, must be the center of our concern.

We must immediately demonstrate our neutrality and thereby reestablish our credibility as a peacemaker.

We must insist on action for peace in the General Assembly of the United Nations where all parties concerned—including spokesmen for the refugees—should join in the search for constructive action.

We must mobilize the resources at our command, while working with the international community, to refocus attention on the refugees and provide relief for these and other victims of the war.

Finally, we must stop the game of pointing fingers and instead give peace the priority it deserves.

To do any less than this, to engage in name calling, to falter in the drive for a cease-fire, to become lost in diplomatic gamesmanship—none of these responses would be satisfactory.

Once the fighting is stopped and relief efforts are underway we can foster an ultimate resolution of the tensions on the subcontinent by acting as a responsible member of the international community instead of functioning as munitions supplier to both sides.

There is, on the subcontinent, a crucial test for the foreign policy of the Nixon administration. It is an unfortunate reality that, to date, the administration has failed that test.

CLEAN ENERGY VIA THE WIND

Mr. GRAVEL. Mr. President, windpower, which is a variant of solar energy, is a nonpolluting form of energy available in great quantity.

The World Meteorological Organization has estimated that windpower available for turbines at favorable sites throughout the world is approximately 20 million megawatts. In comparison, the entire present installed electrical generating capacity in the United States is 350,000 megawatts.

Alaska, Hawaii, great areas of both continental coasts, and an extensive area stretching from the middle of Texas through Oklahoma, Kansas, Nebraska, South and North Dakota, plus parts of Colorado, Montana, Minnesota, Michigan, New York, and New England, experience winds which average 12 miles per hour or more. That speed may turn out to be sufficient for producing nonpolluting electricity at reasonable cost. Wind-velocity maps of the United States are available from the U.S. Department of Commerce Weather Bureau, and from the Federal Power Commission.

CERTAIN TO WORK

The capability to generate electricity from windpower was demonstrated decades ago, but development was ignored in light of claims that nuclear electricity would be "too cheap to meter."

However, at the time of the report to the Senate Interior Committee by the National Fuels and Energy Study Group in 1962, electric generators run by windmills were operating in Germany, South Africa, Russia, the United States, Britain, and elsewhere. Thousands of small 3- or 4-kilowatt generators were in use throughout the world. A 100-kilowatt wind-driven generator had been operating successfully in Denmark for several years; one that size had been installed also in the Isle of Man; and a 640-kilowatt wind generator had been tested in France.

UNITS OF 5 OR 10 MEGAWATTS

Another Government-sponsored study group, under Ali B. Cambel, concluded in 1964 as follows:

There is sufficient knowledge for construction of a 5,000- to 10,000-kilowatt prototype installation that would allow a realistic appraisal of the use of wind energy. A design study of the apparatus and a meteorologic survey of possible sites would need to precede construction. Such a program would provide important information about the economic feasibility of aerogenerators, including their integration into electric grids. . . . On a long-term basis, wind-power is a reliable energy source . . . the supply is inexhaustible, and its use has no detrimental effect on the surrounding area since there are no harmful or disagreeable byproducts.

EFFICIENT, NONPOLLUTING, AND STORABLE

New respect was paid to windpower recently in the September 1971 issue of the Scientific American. In the article, "The Conversion of Energy," Engineering Prof. Claude Summers, of Rensselaer Polytechnic Institute, says:

What about the wind? . . . A propeller-driven turbine could convert the wind's energy into electricity at an efficiency somewhere between 60 and 80 percent . . . Windpower would have the great advantage of not introducing waste heat into the biosphere.

The difficulty of harnessing the wind's energy comes down to a problem of energy storage. Of all natural energy sources, the wind is the most variable. One must extract the energy from the wind as it becomes available and store it, if one is to have a power plant with a reasonably steady output . . .

One scheme that seems to offer promise is to use the variable power output of a wind generator to decompose water into hydrogen and oxygen. These would be stored under pressure, and recombined in a fuel cell to generate electricity on a steady basis. Alternatively, the hydrogen could be burned in a gas turbine, which would turn a conventional generator.

A similar solution to the storage question was suggested in a paper entitled, "Outline of Windpower Application Data," October 18, 1963, by Engineer Hellmut R. Voigt of Sun Valley, Calif.

READY TO GO?

In fact, Professor Voigt has worked extensively on windpower designs, and has written a book-length manuscript in German which includes extensive figures and drawings for his proposed "Cyclone D–30" windpower plant.

Mr. Voigt and another engineer in Salem, Oreg., by the name of Joseph Tompkin, would like to see the construction of a prototype "Cyclone D–30" windpower plant with a 750-kilowatt capacity completed within 3 years and within a budget of $1 million.

While I am obviously not qualified to judge the merits of their particular design, there are many people who are. What I am urging is that such proposals be evaluated without delay, and that appropriate funding be provided, both for the people with nonpolluting energy ideas, and for the people who ought to assess the ideas.

ASSESSMENT: MAKING BIAS USEFUL

Assessment, of course, can make or break an idea. Sometimes a single person on a particularly important review board can delay a whole technology and its business potential with impunity and anonymity.

Since human nature probably introduces positive or negative bias into every review, bias in technology assessment can perhaps be handled only by accepting it, and making it work for society openly and equally.

If we use the Voigt windpower design as an example, we should assign one group of reviewers to assess it with a view to accelerating its development, something which often happens in the real world even when the expert reviewers are allegedly objective. We should assign another group of experts to assess it with a view to killing it, which also often happens in the real world.

GETTING THE INCONVENIENT FACTS

We generally believe that "adversary" legal procedure is an effective way to reveal inconvenient information. A system of "adversary" science and technology assessment could perform the same function for various energy sources, with great benefits for sound investment practice, for the environment, for world health, and for world peace.

Let us not fool ourselves. The production of energy is a fundamental factor in all those matters. We simply cannot afford a grand distortion through bias, or any premature dismissal of clean, inexhaustible energy sources.

PAPER PLACED IN THE RECORD

Windpower is one of the elements in the "National Network of Pollution-Free Energy Sources" which deserves prompt attention. A survey of windpower potential is provided in appendix 6 of that research proposal, which was prepared in April 1971, under the leadership of Engineering Prof. William E. Heronemus at the University of Massachusetts.

A few days ago, I placed the research proposal itself in the RECORD.

Mr. President, I ask unanimous consent to have appendix 6, entitled "Extraction of Pollution-Free Energy from the Winds," printed at the end of my remarks today.

ADDITIONAL MATERIAL

At a later time, I will place additional material on windpower in the RECORD. Thanks to the excellent help of Dr. Warren Donnelly, who is science and technology specialist in the Congressional Research Service, I can make available several papers which are not commonly easy to obtain.

A book on this subject, which I am sure is not easy to obtain, is called "Generation of Electricity by Windpower" by Edward William Golding. It was published in 1955 by E. & F. N. Spon, Ltd., 22 Henrietta Street, London W.C. 2.

There being no objection, the appendix 6 was ordered to be printed in the RECORD, as follows:

[From "A National Network of Pollution-Free Energy Sources; A Research Proposal Prepared at the University of Massachusetts Under the Leadership of Engineering Prof. William E. Heronemus"]

APPENDIX 6: EXTRACTION OF POLLUTION-FREE ENERGY FROM THE WINDS

(NOTE.—Figures referred to are not printed in the RECORD.)

During the last decades of the nineteenth century at least 30,000 windmills were being operated in Denmark, northern Germany, the Netherlands and England. The annual total energy output amounted to 10^9 Kwh [6–1]. At least three centuries earlier the wealthiest trading nation of northern Europe, Holland, owed much of its commercial prowess to home industry and agriculture powered to great extent by the wind.

Not one iota of environmental pollution accrued to this sizeable extraction of power from a natural resource. But as years rolled on, the low power-density of wind machines made them less attractive as newer engines were invented.

RECENT HISTORY

In the 1930's a most significant experiment with wind powered generation of electricity was begun by a U.S. industry—academic team, which resulted in 1941 in a 1250 KW generator feeding into a synchronized a.c. power system of the Central Vermont Public Service Corporation. That experiment effectively ended in 1945 when a fatigue-type failure in the stainless steel blade root caused the loss of a blade, the system and the concept [6–2].

Active modern research in utilization of wind power had been underway for many years prior to that time, notably in Denmark and Germany, and the failure at Grandpa's Knob, Vermont, U.S.A., was literally felt around the world.

A. Betz, one of the pioneer aerodynamicists had been particularly active in promoting greater utilization of wind power [6–3], and a large number of the early airfoil theorists addressed themselves to the idea of improved windmills.

During and after the 1939–1945 war, the U.S. government first in the form of the War Production Board and later as the Federal Power Commission, made critical analyses of the economic feasibility of wind power generation in the U.S. [6–4] and [6–5]. In 1951 an attempt was made by the Department of the Interior to obtain funds for a large prototype aerogenerator, justified by national defense needs [6–6]. That attempt failed, and the chance for a major U.S. program for generation of electricity from wind power faded with the retrenchment of the post-war years.

DEFERMENT IN FAVOR OF NUCLEAR POWER

It appeared that Britain might step ahead with wind power just as she started to do with tidal power in the late forties, but the nuclear scientists gained control. Britain opted for leadership in nuclear fission central plants and won the race. Her work in wind power was continued by an able group within the Electrical Research Association, with Golding [6–7] becoming a world leader in the technology. What had been a major thrust toward large scale utilization of wind power in the world's most heavily industrialized countries now became a matter of philosophic interest and a hope for energy-hungry emerging nations.

The World Meteorological Organization took leadership in assessing the potential for wind power around the World and, in particular, for identification of sites where the correct topography could produce an intensification of wind velocity at rather low altitude, thus making possible improved power extraction at low tower-cost and reduced fear from icing [6–8] and [6–9].

UNITED NATIONS CONFERENCE 1961

A most recent and complete report on world-wide efforts to utilize wind power, and a demonstration of the very considerable effort that has gone into perfecting design of wind turbines of many sizes, are to be found in Volume 7 of the Proceedings of the Rome 1961 United Nations Conference on New Sources of Energy [6–10].

The diversity of approach to this source of pollution-free energy is rather typified by the following statements taken from that report:

(1) The World Meteorological Organization has concluded that wind power available for turbines at favorable sites throughout the World is of the order of 2×10^{10} kw.

(2) The total wind power of the atmosphere is estimated to be about 3×10^{17} kilowatts.

(3) Great Britain still hopes to build individual aerogenerators as large as 6,000 kw.

(4) In the same volume the representatives from India speak with awe of home-made wind mills that might produce 1 to 15 kw for a village pump. One cannot help but conclude that perhaps the wind, the most obvious of natural energy sources, has held the interest of the richest and the poorest of men.

POTENTIAL AMOUNTS OF POWER

Putnam [6–11] in 1953 thought that wind turbines could extract no more than 0.10 Q Btu energy *cumulative* over the next 100 years, and he therefore considered them to be of no significance to the U.S. power industry.

If aero turbines to the total of 2×10^{10} kw. were installed at all favorable sites, if the annual production were 5000 kwh per annum per installed kw, total energy extracted would be 10^{14} kwh per year (100×10^{12} kwh).

The 1964 Energy R & D Panel projected a year 2000 U.S. requirement in an "all-electric economy" for 31×10^{12} kwh generation per year. If thirty percent of the world's favorable wind power sites were in the U.S., the total generation requirement for the U.S. for year 2000 could be met by wind power alone with an installed plant of 6.2×10^9 kw.

MANY SMALL UNITS

But there is the rub: the largest feasible wind turbine appears to be about a 6 megawatt unit, and 2 Mw units are even more desirable: one million to three million new aerogenerators would be required!

Three million generators may be a little beyond that which is practical. We do note,

however, that Russia reportedly committed herself to the contruction of 600,000 mills of about 200 Kw each, and that task was to be accomplished during one ten year plan [6–11]. Verification of accomplishment of that task has not been found. Russia has many broad areas in the steppes and in Siberian plains where moderate but persistent winds are found.

POTENTIAL OF THE GREAT PLAINS

There is at least one extensive area in the U.S. where moderate but persistent winds are found. Exhibit XIV from Thomas' "Electrical Power from the Wind" [6–5] is reproduced here as figure 6–1. Fig. 6–1 is a chart prepared by the U.S. Weather Bureau showing Lines of Equal Wind Velocities and Selected Weather Bureau Station Values, average hourly velocity of the wind, daylight hours, estimated for elevation of 100 feet throughout the U.S.

That chart shows a region of the Great Plains starting in the heart of Texas, running 1100 miles north at a width averaging 300 miles in which the average hourly wind velocity is 12 miles per hour (5.40 meters per second). There are contained within that large area two smaller but sizeable areas where the average rises to 14 miles per hour (6.29 meters per second) and one area of about 20,000 square miles where the average rises to 16 miles per hour (7.19 meters per second).

Height is a factor

Using the method of Section 2, [6–9], *Variation of Wind Speed with Height over Uniform Terrain*, we can estimate that the velocities at 200', 300', 400' and 500' above ground will vary from a minimum to a maximum as follows:

Velocity at reference height=100'	Least probable average velocity at—(cm./sec.)				Greatest probable average velocity at—			
	200'	300'	400'	500'	200'	300'	400'	500'
K equals	1.07	1.11	1.135	1.152	1.205	1.35	1.40	1.45
12 m.p.h.=5.40 m./sec	5.77	5.98	6.12	6.21	6.51	7.14	7.56	7.89
14 m.p.h.=6.29 m./sec	6.72	6.96	7.12	7.24	7.58	8.30	8.81	9.18
16 m.p.h.=7.19 m./sec	7.69	7.99	8.16	8.28	8.66	9.49	10.05	10.48
18½ m.p.h.=8.09 m./sec	8.65	8.97	9.18	9.49	9.74	10.68	11.30	11.80

A check on the calculated intensification of winds with altitude as tabulated above, against data observed at Dallas Tower, Texas, and reported in Figure 1 of [6–9], yields K values which are intermediate to the least and greatest K's tabulated above. Thomas [6–5] reports that the average of a considerable number of balloon observations gave a K factor of 1.35 to 1.45 for velocity at 500 feet against velocity at 40 feet above the ground.

The area having an average velocity of 14 mph covers about 80,000 square miles in North Texas, Oklahoma, and Kansas, plus another 11,000 square miles in South Dakota, a total of 91,000 square miles.

ADDITIONAL AREAS

There are also extensive regions of 14 mph winds in upper Minnesota and of 12 mph winds in northwestern Michigan and along the southern shores of Lake Ontario and Lake Erie. The velocity and persistence of the winds in the Green and White Mountains of New England are well known. Little is recorded about the winds in the western mountain ranges. It is expected that there may be vast areas where persistent high velocity winds prevail.

There are extensive areas on the West Coast extending north from San Francisco a distance of 150 miles over the redwood forests, and again along the entire coast of Washington State where winds with average velocities from 17 to 20 miles per hour can be found. There is a belt along the East Coast, Boston to Hatteras, where average velocities exceed 12 mph with numerous local areas with 20 mph average velocities.

ECONOMIC POWER AT 12 MILES PER HOUR

It is stated in [6–8] that in Great Britain the output of a wind generator set can be *economic* at annual mean wind speeds above 5.6 meters per second. Such a generator would have a rated capacity of no more than two megawatts. The Grandpa's Knob machine operated in a regime characterized by an annual mean wind speed of 17 miles per hour (7.6 meters per second), though the designers thought they were working in a 21 miles per hour (9.4 meters per second) annual mean wind-speed regime.

In the planning document for the 1945 survey conducted by the U.S. Weather Bureau to determine sites favorable for wind power development, it was stated ". . . but here it may be said that only at sites where the average annual wind velocity is 10 meters per second or greater, is it economically worthwhile to erect a wind turbine of large capacity."

Thomas [6–5] wanted an annual average wind of 23 to 25 miles per hour (10.3 m/sec to 11.2 m/sec) for his large 7500 Kw generator, but felt that regimes of 18 to 21 miles per hour (8.09 to 10.3 meters per second) average annual wind speed would be adequate for an economically competitive 6500 Kw unit. Thomas [6–5] permitted a capital investment of only $68 per Kw of rated capacity in his studies.

The 1964 report on "Energy R&D and National Progress" [6–11] states that an average annual wind velocity of about 30 mph (14.9 m per sec) is required to produce power economically.

STATEMENTS CHALLENGED

The validity of that statement is questioned, as are the economic factors published along with it. The published data from those groups in England, Denmark, Germany, France and Israel working with wind power do not substantiate that high value any more than does the factual experience at Grandpa's Knob (17 mph), the Thomas designs (18 mph) or the Golding designs (12.5 mph).

From the above it is concluded that there is excellent possibility of generating a considerable quantity of electricity from the winds over the Great Plains at costs competitive with any other form of generation. The rated capacity of each aero turbine might be as little as 2 to 4 megawatts, and most of the windmills would have to be set on tall towers.

It is also concluded that vast quantities of electricity could be generated from the winds over the Great Plains in the large region of 12 mph annual average winds at costs somewhat higher than those of modern oil fuel central plants, but still very competitive with the total cost of power generated by our heavily subsidized nuclear central plants.

Major elements of cost associated with plants in this marginal wind belt are:

(a) tower costs

(b) the cost of the long blades required for large swept diameters

(c) site costs.

A NEW CROP FOR THE GREAT PLAINS

The possibility of large numbers of airturbine sites "sharing" the predominantly agricultural use of the Great Plains is worthy of investigation. The design of the site and tower and connecting lines play a strong role in this concept. Productivity and utility of grazing lands, corn fields and hay fields need suffer little if anything if dotted on even 1 mile centers, with towers of appropriate design and underground transmission lines.

The leanness of the energy in the lower speed winds can best be compensated for by large swept diameters and taller towers, or, by larger numbers of smaller machines on lower towers. It would appear that a good competition exists between "x" 6 Mw generators on 500' towers against "3x" 2 Mw generators on, say, 200' towers.

ADVANTAGES GAINED SINCE 1939

1970 technology should certainly have much to offer toward making larger rotor blades much less expensive than the Grandpa's Knob blades even at 1939 prices.

Filament wound oriented fiber technology and all of the post-1942 advances in aluminum alloy, magnesium alloy, and titanium alloy metal parts for flight should make a 1972 large capacity wind turbine much more cost-effective than a 1939 or 1946 machine.

And there is certainly no reason to admit that icing of blades need be a problem in any modern machine, thus removing another of the earlier objections to high-tower machines.

FRONTAL ATTACK PROPOSED

It is therefore proposed that two controlling elements of the concept of expanded generation of electricity by wind power in Heartland America be investigated in the first phase of this pollution-free energy study:

(a) The design of towers up to 400 feet in height for 2 to 7.5 Mw aerogenerators,

(b) The design of blades for extra large swept diameter aerogenerators, 2 to 7.5 M rated capacity, diameters large enough to compensate for the 12 mph average annual wind compared against the more desirable 20 or 30 mph average annual wind.

The above suggests a frontal attack where a more sophisticated approach toward carefully selected sites has prevailed. Twenty-five years of sophisticated approach have yielded zero additional Kw of installed aerogenerator capacity in this country.

The above suggests identification of cost differentials between aerogeneration in a very large regime of steady but lean winds, and oil-fired or nuclear central plant generation. The differentials could lead to direct subsidy of pollution-free plant if necessary. There is a strong popular will in this country today to stop studying pollution and start doing something abut it. This research could show a way.

COPING WITH WIND VARIABILITY

A complete analysis of the feasibility of large scale generation of electricity from wind power in this country requires a study of wind velocity as a stochastic process indexed by the variables "time" and "geographical location." The wind will always be variable and some method of firming power taken from it must be available in any useful network.

The aerogenerators, together with other units, must supply power to meet the demand for electricity at all times. Even though average wind may be high, any periods of calm would be detrimental to a scheme where power is generated from the wind. This problem can be alleviated by providing alternative power from several sources such as

1. existing or retained fossil-fuel or nuclear central plants
2. conventional quick-start gas-turbine generators
3. storage facilities (such as pump storage)
4. other aerogenerators in other geographical locations.

The use of alternatives No. 1 and No. 2 may be necessary, but it would be partially self-defeating because some fuel would have to be burned. Also, like most standby schemes, this alternative would be expensive because the capacity required must be sufficient to meet peak needs.

Alternative 3, though expensive, is nonpolluting. However, the most attractive form of storage in which potential energy is stored by pumping water to an uphill reservoir requires terrain with a suitable gradient, space, and water. All these requirements are not always available, especially in the major wind-belt areas, unless a very broad approach to the problem is taken.

Our largest body of inland water, Lake Superior has a water level normally 22 feet above that of the next waters into which it drains. The combination of the extensive 12/14 mph wind regions in Minnesota and Michigan and a large capacity lowhead pumped storage system using Lake Superior as the upper basin may offer a unique opportunity for a vast new system of firm pollution-free power. The combination of the extensive 12 mph wind belt lying in the orchards and farm land of the southern shores of lakes Erie and Ontario with a sizeable expansion of the existing pumped storage plant astride Niagara Falls is another opportunity of grand scale which should be studied.

Alternatives 3 and 4 are therefore potentially attractive, but more study is required. The questions which must be answered are: When a given area is calm, what is the likelihood that there will be wind in another location, and how far away is this location. In other words, while it does not make sense to look at time averages, it does to look at geographical averages for any given point in time. If it could be shown that at any time the average velocity of a region is sufficiently high, then a system of nearly all aerogenerators would be feasible.

One further question of interest concerns the size of the region over which the average is taken. The larger the region, the more likely it is that there will be wind present somewhere in it. However, a large region implies that power will have to be transported over long distances. Thus, other forms of standby power might be economic even though wind-generated power is available some distance away.

MONITORING THE WIND

Some data necessary to analyze the patterns of wind are available, since the U.S. Weather Bureau undertook an initial task in 1945 to help seek out favorable wind turbine sites back in 1945. Thomas refers to that effort and the archived results, as does the World Meteorological Organization. To make the study conclusive, a large program of data collection should be activated using the U.S. Weather Bureau as the responsible task force.

Summarizing such anemometer data so they can be used for feasibility and later for economic studies is relatively straightforward, but the number of calculations necessary wil require the use of digital computers. For any regions of interest, a set of plots will be developed showing the amount of time that the average wind velocity, averaged over the geographical region, is less than various values. See Fig. 1 for an example.

As larger regions are chosen, the wind-velocity characteristics will become more favorable; e.g., in the above example region 2 might represent a much larger area than region 1. Plots can be developed for day and night hours, and for different seasons as well as for the hours of peak and minimum electricity consumption.

Once the data are on computer tapes or discs and the data-manipulation programs have been developed, several studies can be made. In particular a large geographical area can be divided into different sets of regions to find that set which yields the best average wind characteristics while insuring that the maximum distance of power transfer is less than a specified value.

DATA-ANALYSIS AND TOWER-ANALYSIS NEEDED

Work on data analysis and work on tower analysis are proposed as University of Massachusetts contributions in this area. A brief of the proposed work on towers follows:

(a) A 200 to 250 ft tower supporting a 2 Mw turbine versus a 300 to 400 ft. tower supporting a 6 Mw turbine.

(b) A single tower versus multiple towers supporting a single platform.

(c) Aluminum alloys as opposed to structural steel.

(d) Tubular members as opposed to open sections.

(e) Space trusses as opposed to a thin tower guyed by cables.

(f) Two turbines supported by a single tower as opposed to one turbine per tower.

The availability of the computer will be a great help in carrying out a comparative study among the various alternatives.

Once a configuration has been decided on, a limit analysis will be carried out. The purpose of this analysis will be to determine the collapse load of the tower. In order to design a structure economically, it is necessary to know the safety factor on failure as well as on yielding. A limit analysis will involve the nonlinear behavior of the material above the proportional limit and will therefore present a challenging problem in structural analysis.

Since the tower will be subjected to a repeated type of loading, a fatigue analysis will also be undertaken.

CONCLUSION

It is interesting to note, in conclusion that the earlier indepth analysis of feasibility of wind power [6–4] paid great attention to the design of towers, so that erection of the tower itself and then the aerogenerator on the tower could be a reasonable operation at remote sites. In 1970 the Flying Crane makes all such concern passe. Foundations and towers can be erected in the most remote locations at a fraction of the cost required to slash a new road up Grandpa's Knob and laboriously haul in and hoist up that aerogenerator, circa 1939.

The technology required to reduce all aspects of aerogenerator cost is developed, lying idle in 1971, while we persist in proliferation of polluting energy sources.

Large numbers of windmills standing tall over plain or forest will not be acceptable to all people as "free of pollution." Their presence must at best be accepted as a logical alternative. Fortunately the type of terrain suggested here for windmill siting may meet with much less objection from an aesthetics point of view than would siting in the eastern mountains.

This major question must of course be answered long before any major windmill program is started. Blue skies, clean air, and clear, cool water seem attractive tradeoffs for the aesthetic pollution that would result.

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CONSTITUTIONAL CONVENTION PROCEDURES BILL

Mr. ERVIN. Mr. President, as you know, on October 19, 1971, the Senate passed my constitutional convention procedures bill, S. 215, with one amendment, by a vote of 84 to 0, and the bill is now pending in the House Judiciary Committee.

I am very hopeful that the House will take early action on the bill, and that it will be enacted into law. Until such a measure is passed, there will continue to exist a legislative gap from which could erupt a constitutional crisis. Make no mistake—this can happen. Several times the States have come precariously close to filing the required number of petitions to call a convention, the last time in 1969, when there was lacking only one.

I am informed that some of our colleagues in the House have doubts about S. 215, not because they disagree with its provisions, but because they fear that its passage would "encourage" the States to file petitions under article V. I am compelled to take issue with this view. As I have stated a number of times, my bill seeks neither to encourage nor to discourage the filing of petitions; it merely provides severely needed procedures and guidelines in the event a convention should be called. It seems to me that the greatest danger to the Constitution is the startling lack of procedures and guidelines in the event the requisite number of States call for a convention, not in the effects predicted if the measure should become law.

The argument of "let sleeping dogs lie" fails to be persuasive. The States have not been deterred in the past from filing petitions, and I do not believe they will be deterred in the future.

Since my bill passed the Senate, newspapers throughout the country have commented upon it. Mr. President, I ask unanimous consent to have printed in the RECORD some of the press reports and editorials.

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

[From the New York Times, Oct. 20, 1971]

SENATE VOTES TO MAKE AMENDING OF CONSTITUTION MORE DIFFICULT

(By Warren Weaver, Jr.)

WASHINGTON, October 19.—The Senate approved unanimously today a new set of ground rules for amending the Constitution through calling a national convention, a action never yet taken in the 184-year history of the document.

The action was taken to allay fears of some constitutional lawyers that a convention held under present procedures could rewrite the entire Constitution.

Final passage by an 84-to-0 vote came after a group of liberal Senators won a sharply contested battle to make it more difficult for such a constitutional convention to approve any recommended changes.

On a vote of 45 to 39, the Senate approved an amendment by Senator Birch Bayh, Democrat of Indiana, that increased from a simple majority to a two-thirds' majority the convention vote required to adopt new constitutional amendments.

As finally passed by the Senate, the bill sets up a three-step process: two-thirds of the state legislatures must vote for a convention, then two-thirds of the convention delegates must approve any changes in the constitution and finally three-quarters of the state legislatures must ratify those changes before they become effective. The Constitution itself establishes the first and third steps.

DIRKSEN MOVE RECALLED

The convention bill, sponsored by Senator Sam J. Ervin Jr., Democrat of North Carolina, had its origin in a campaign by the late Senator Everett McKinley Dirksen to authorize a constitutional convention on reapportionment and overturn the Supreme Court's one-man, one-vote ruling.

By mid-July of 1969, 33 states, one short of the necessary two-thirds, had passed resolutions calling for a convention, but there was nothing in the Constitution or any Federal statute as to how or when to hold such a meeting, who would attend or what procedures would control it.

Nor, to the dismay of many constitutional lawyers, was there any guarantee that a constitutional convention would be restricted to the subject on which the states had requested action. Some authorities believed that, once constituted, such a convention could rewrite the entire Constitution as it pleased.

The Ervin bill specifically prohibits such a convention from adopting "any amendment or amendments of a nature different from that stated in the concurrent resolution calling the convention." Congress is made the judge of any disputes on this issue.

House opposition to the Ervin bill is expected to be led by Representative Emanuel Celler, chairman of the Judiciary Committee, who takes the position that the present state of uncertainty, while undesirable, is preferable to the active encouragement of a flood of new amendments that might result from setting up the new machinery.

Today's Senate debate centered almost entirely on the Bayh amendment to require a two-thirds majority for convention action. The move to make changes harder to achieve was almost uniformly opposed by Senate conservatives.

Mr. Ervin argued against the higher voting requirement, saying, "We don't need this hurdle, it's adding something to the Constitution that's not in it." In the absence of contrary language, the North Carolinian maintained, any decision should be made by majority vote.

If the Ervin bill becomes law its first test might well come on the issue of revenue sharing. Senator Ervin said that 11 states had already adopted resolutions for a constitutional convention on this subject.

The pressure for a convention on reapportionment fell off considerably with Senator Dirksen's death, and several states have since rescinded their resolutions favoring the move.

The Ervin bill would empower Congress to set the time, place and subject matter of a convention, once the requisite 34 states requested one. Each state would be entitled to a number of delegates equal to its representation in the House and Senate combined, to be elected or appointed by the Governor.

Delegates would be paid and also compensated for expenses and travel. The Vice President would preside over the convention until it chose its own officers. It would meet within one year of Congressional authorization and have one year to complete its business.

Any convention-drafted amendment that did not win the approval of 38 states within seven years would die.

[From the Washington Post, Oct. 20, 1971]

CONSTITUTIONAL CONVENTION RULES VOTED

Haunted by the spector of a runaway convention to amend the Constitution, the Senate wrote strict ground rules yesterday to head off any such possibility.

The Constitution itself provides two ways of amending.

1. Adoption of an amendment by a two-thirds majority of both houses of Congress and then ratification by three-fourths of the states.

2. A constitutional convention on petition of two-thirds of the states and then ratification by three-fourths of the states of any amendments recommended by the convention.

The first method has been used 26 times, the second never.

But after Supreme Court decisions requiring legislative reapportionment, many states sought to amend the Constitution to permit at least one house of a state legislature to be elected without regard to equal population districts.

Although the Constitution makes provision for amendment by convention, it sets no ground rules. Here are the procedures as approved by the Senate yesterday:

A state wishing to have a convention called must pass a resolution setting out the subject of the amendment to be considered. If within seven years two-thirds of the states petition for a convention to consider the same amendment, Congress is obligated to call the convention and set its date, provide for its quarters, and pay its expenses.

Delegates shall be elected, and each state is entitled to as many delegates as it has representatives and senators.

The convention would be limited to the subject of the call.

Under the original bill by Sen. Sam J. Ervin (D-N.C.), a simple majority of the convention delegates could agree to an amendment, which Congress would then be obligated to submit to the states for ratification.

But Sen. Birch Bayh (D-Ind.) succeeded in amending the bill—on a 45 to 39 roll call—to provide that a two-thirds majority of the convention would have to approve any amendment before it could be submitted.

The bill was seen as having virtually no chance of passage in the House this year.

[From the Buffalo Evening News, Oct. 23, 1971]

NEW RULES ON CONSTITUTIONAL CHANGE

Changes in the U.S. Constitution, according to its Art. V, can be initiated in two ways—by action of Congress in proposing amendments for ratification by the states; or by petition from two-thirds of the state legislatures calling for a special convention to propose amendments.

The latter method has never actually been used, but a number of efforts to bypass Congress via that route have come close to succeeding. Now the U.S. Senate has just unanimously adopted a plan that would usefully establish procedural ground rules for proposed amendments evolving from some future national constitutional convention called by the petition route.

A potentially grave danger lurks in this vague, never-used procedure whereby amendments could come from a national convention, bypassing Congress entirely via the call of 34 states. Nothing in present law or precedent would clearly prevent such a convention, though ostensibly called to consider a very limited change, from totally rewriting the Constitution and throwing its handiwork back to the states for ratification.

The central virtue of the Senate-approved plan, sponsored by Sen. Ervin (D., N.C.), is that it seeks to prevent such a runaway operation. It would require a sitting convention to confine its decisions to those areas of change for which it was called. If it were organized to consider an amendment on revenue-sharing, for example, it could act only on that issue. On the other hand, if it were plainly called for the purpose of considering a complete revision of the Constitution, then its business would range across this broadest of all areas.

In addition, the bill would require the convention to approve any proposed changes by a two-thirds, rather than a simple, majority.

The Senate bill faces an uncertain fate in the House, where some feel it would be better to leave the existing situation as it is on the theory that establishing this new machinery could actually encourage the use of this new route to change. But this overlooks the important offsetting advantages of establishing the procedures clearly now, when they can be considered on their merits, rather than hurriedly at some future time when a crisis arises and the long-term arguments for and against the convention procedures themselves could become entangled in short-term arguments for and against the specific constitutional change being sought by the States.

[From the Grand Rapid (Mich.) Press, Oct. 24, 1971]

RULES FOR CONSTITUTIONAL CHANGE

There can be no argument with the U.S. Senate's decision, on an 84–0 vote to set up ground rules for amending the Constitution through a constitutional convention.

Article V of the Constitution states simply that two-thirds of the states may call for such a convention, but in the document's usual spare language, the mechanics of the task are omitted.

Since the Constitution never has been amended through the convention route, there have been no precedents, and there has been fear, growing over the years with several attempts to call such a meeting, that some rules ought to be determined beforehand.

Sen. Sam Ervin Jr., sponsor of the Senate bill, voiced concern that a constitutional convention without ground rules, could quickly degenerate into a constitutional crisis. Given the impulsive disregard shown the Constitution by politicians during the 184 years of its existence, we would tend to agree.

Sen. Ervin's greatest fear was that constitutional convention delegates, sent by their states to amend a specific article, would get carried away by their authority and would make wholesale changes in other articles.

The rules passed by the Senate would limit a constitutional convention to a single subject, and there can be no quarrel with that.

An amendment to Sen. Ervin's measure

also would require that two-thirds, rather than a simple majority, of the convention would have to approve a change before it is submitted to the states.

Since our Constitution has performed admirably in preserving democracy and has proved to be flexible enough to be updated occasionally by men of goodwill, it would seem that any procedures which prevent brash changes in the articles are worthwhile.

[From the Louisville (Ky.) Courier-Journal, Oct. 25, 1971]

PLUGGING AN OLD HOLE IN THE CONSTITUTION

U.S. Constitution, Article V:

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by congress. . . ."

The late Senator Everett Dirksen gave his colleagues some restless nights a few years ago when he nearly succeeded in getting two-thirds of the states to petition for a constitutional convention to override the Supreme Court's one-man, one-vote doctrine of state legislative apportionment. Although enthusiasm for the so-called "Dirksen Amendment" has waned since the Senator's death, the worry he inspired has forced Congress to face up to an important job which Congresses have neglected for nearly 200 years.

The Senate last week unanimously approved a set of ground rules for amending the Constitution by the national-convention method—a method we've never employed, but may someday. The House should approve the bill, too, before the state legislatures find another cause, because a convention without guidelines could result in . . . what?

GEORGE MASON'S FEAR

The history of Article V of the Constitution, which authorizes the convention method of amendment, is an example of how democratic governments sometimes allow important matters to "fall between the stools" and lie there until crisis threatens.

During the last days of the Constitutional Convention in 1787, George Mason of Virginia complained that the amendment process of the newly drafted Constitution was entirely in the hands of the Congress, a situation he saw as highly dangerous to the states and citizens. Gouverneur Morris of Pennsylvania then proposed that Article V be amended to include the convention method, which could be used when Congress ignored the will of the people.

That Morris' method has never been used may be testimony to the sagacity of our Congresses. Or perhaps our representatives simply have been clever enough to know when the jig is up. Nevertheless, firm guidelines for the organization and conduct of constitutional conventions are long overdue, for although Congress received only 10 applications from states during the Republic's entire first century, it had received 206 by 1963. And by mid-July 1969, 33 states—only one short of the necessary two-thirds—had passed resolutions calling for a convention to consider the "Dirksen Amendment." The possibility of a constitutional convention obviously isn't dead.

But there's nothing in the Constitution or any federal statute specifying how or when to hold such a meeting, who would attend, or what procedures would control it. Nor, to the dismay of many constitutional lawyers, is there even a guarantee that such a convention would have to stick to one subject. Some fear that a convention could rewrite the entire Constitution if it decided to.

A MEASURE OF CONTROL

The Senate bill, introduced by Senator Sam Ervin (a supporter of the "Dirksen Amendment") in 1967, would fill these gaping holes. As finally passed by the Senate, it sets up a three-step process: two-thirds of the state legislatures must vote for a convention; then two-thirds of the convention delegates must approve any constitutional changes; then three-fourths of the legislatures must ratify the changes before they become effective. It would prohibit a convention from considering any amendments other than those specified in Congress' concurrent resolution calling the convention, and it provides that each state's delegates—equal in number to its representation in Congress—may either be elected or appointed by the governor.

If the Senate bill becomes law, it may, as Representative Emanuel Celler believes, encourage a flood of new amendments, which would be unfortunate. Nevertheless, we disagree with Mr. Celler's contention that the possibility of that flood makes the present limbo of Article V preferable to the order that the Senate bill would provide. The hurdles created by the bill's three-step amendment process are, we believe, difficult enough to protect us from frivolity.

Our history hasn't laid to rest George Mason's fear that our Congresses wouldn't always be composed of the wisest and most just of our citizens, so Gouverneur Morris' addition to Article V is a useful constitutional fire escape—to be used only in case of emergency. But a fire escape without steps is more dangerous than useful. The House should ignore Mr. Celler and install those steps.

[From the Louisville (Ky.) Times, Oct. 25, 1971]

THE SENATE ACTS TO DEFUSE A BOMB

More than four years after the alarm was sounded, the Senate finally has acted to defuse a time bomb which conceivably could blow the United States Constitution apart.

The danger stems from a provision in that document's Article V whereby two thirds of the states can force the calling of a constitutional convention for the purpose of submitting amendments. This could expose the entire Constitution to tampering hands, legal experts have warned. Article V itself places no limitation whatever on the agenda of such a convention.

The Senate's action seeks to fill this vacuum. The bill it has approved and sent to the House would lay down ground rules for a convention. One of these would limit such a body to the subject matter set forth in the call of the petitioning states. Another would require a two-thirds vote for any amendment the convention wished to submit.

Inclusion of the two-thirds rule was a victory for a liberal bloc led by Sen. Birch Bayh, D-Ind. It was approved 45–39 over objections from the bill's sponsor, Sen. Sam J. Ervin Jr., D-N.C. Oddly enough, opposition to this added safeguard against reckless constitutional change came mostly from conservatives who like to picture themselves as champions of the Constitution's preservation as it was handed down by the Founding Fathers.

The Ervin bill, first introduced in 1967, was in response to a threat that became imminent when state legislatures across the nation began lining up behind the late Sen. Everett Dirksen's attempt to submit an amendment overturning the Supreme Court's "one man, one vote" ruling.

Traditionally, all proposed constitutional changes have been submitted directly by Congress for ratification by the states. When Mr. Dirksen, who was Republican leader in the Senate, found this route blocked by Senate opposition to his amendment, he called upon the states to initiate action under an Article V alternative that had never been invoked in the nation's history. This says that Congress, "upon application of the legislatures of two-thirds of the states, shall call a convention for proposing amendments . . ." These then must be ratified by three-fourths of the states, the same as when Congress itself does the submitting.

The Dirksen movement came perilously close to forcing a constitutional crisis. By 1969 it had enlisted the support of 33 legislatures—only one short of the necessary two-thirds. Kentucky and Indiana, to their shame were among the petitioners. Several states since have rescinded their support, so for all practical purposes this particular threat appears dead.

However, the potential for constitutional crisis still lurks in Article V's broad language pertaining to conventions. Hence the importance of ground rules.

Those proposed by the Senate are not perfect by any means. One would allow each state's delegates to a convention to be either elected by the people or appointed by the governor. They should be elected—period. The job is much too important to be entrusted to any governor's handpicked delegation. Nowhere in the democratic process is popular representation more essential than in the drafting of constitutional proposals. We trust this defect in the Ervin bill will be corrected in the House.

Though the measure passed the Senate without a dissenting vote, there are signs of opposition in the House. This stems not from the defect we have cited but from the bill's main purpose. Rep. Emanuel Celler, D-N.Y., for one, has taken the position that the present state of uncertainty, while bad, is preferable to what he forsees as a flood of new calls for a convention from legislatures pressing for this or that amendment. As chairman of the House Judiciary Committee, his can be a vital role in determining the bill's ultimate fate.

Presumably he feels that, with the danger of a runaway convention removed, states would be less reluctant to exercise their option under Article V. That may be. Even so, we cannot agree that this would be worse than leaving the present danger unchecked. In the absence of any guidelines or ground rules, Article V is, as we have noted, a time bomb that could be triggered any time 34 state legislatures become so reckless. The sooner it is defused the better. Experience has demonstrated that the danger is far more real than imaginary.

[From the Auburn (N.Y.) Citizen-Advertiser, Oct. 26, 1971]

CONSTITUTIONAL CONVENTIONS NEED GUIDELINES

Final enactment of the Ervin bill on control of national constitutional conventions, approved unanimously by the Senate and now before the House, would solve some possible problems and raise others. It would avert for one thing the danger of a runway convention.

The basic difficulty arises from the fact that the Constitution does not clearly define such a convention's mandate. There is reason to fear that if a convention were called at the request of the states to consider a particular amendment it might jump the traces and consider others as well—perhaps even throw out parts of the Bill of Rights or other vital guarantees. There is nothing in the Constitution to prevent such a runaway convention.

This is the problem to which Senator Sam J. Ervin Jr. of North Carolina addresses himself in the bill now approved by the Senate. It would prohibit a constitutional convention from adopting "any amendment or

amendments of a nature different from that stated in the concurrent resolution calling the convention." In cases of dispute, Congress would be the judge.

The uncertainty of the present guidelines is certainly undesirable. A constitutional convention would be subject to all sorts of political, ideological and special interest pressures to make this or that change. The Ervin bill would avert this danger, confining the delegates to the specific subject of the convention call.

Meanwhile, the preferable method whereby proposed amendments must be approved by Congress and ratified by the states would remain unimpaired.

[From the Washington Post, Oct. 27, 1971]

THE DETAILS OF A CONSTITUTIONAL CONVENTION

At long last, the Senate has passed and sent to the House of Representatives a bill which would fill in one of those awkward gaps left in the Constitution. The bill is designed to implement the amending clause of that document which says Congress shall call a constitutional convention when two-thirds of the states demand one but leaves unspecified any of the details about how such demands are to be made or how such a convention should operate. While such details may seem unimportant, the lack of them has created considerable concern in recent years and the need for Congress to spell them out carefully cannot be doubted.

It was, of course, dissatisfaction with the Supreme Court's reapportionment decision that crystallized the need for this legislation. More than 30 states applied to Congress for a convention to frame an amendment wiping out that decision and, for a while, it looked as if the necessary 34 would apply. Among the problems that arose, however, were question about the power of a newly elected state legislature to rescind an application that state had filed earlier, about the duration of the effectiveness of an application, and about the limits, if any, that would be placed on a convention if one was called. Indeed, it once seemed clear that if a 34th state passed such an application, Congress was going to be the scene of a monumental fight over such details.

The Senate now, after long prodding by Sen. Sam J. Ervin, has taken a major step towards answering questions and many others. Its bill would let a state rescind an application at any time up until a 34th state acted, would limit the validity of applications to seven years, and would limit a convention to proposing amendments on the subject matter set out in the applications. Fortunately, in our view, the bill was amended on the Senate floor to provide that two-thirds of the convention delegates would have to agree before any of its proposals could be sent along to the states for ratification.

The bill worked out by Senator Ervin over the last four years is not the kind of legislation that brings instant headlines to its proponents but it is the kind that the nation sorely needs from time to time. We hope that the House of Representatives and its Judiciary Committee will grasp the need for this bill and quickly concur in eliminating the gap in the Constitution which presents the threat of an eventual crisis as long its continues to exist.

[From the Ashland (Ky.) Independent, Oct. 30, 1971]

TO CURB A RUNAWAY

The United States Constitution provides for two methods of amending that document. Congress can propose amendments by a two-thirds vote in both houses, or two-thirds of the states can require Congress to call a convention for proposing amendments. In either case, the amendments must then be ratified by three-fourths of the states before their acceptance as a part of the Constitution.

On its face, all this seems simple and straightforward enough. Behind the facade of simplicity there lurks an amorphous uncertainty. The uncertainty is with respect to the mandate of a national constitutional convention if one were ever called by the states.

This has never happened, as yet, though we have come close a few times. The question is: If a constitutional convention were called, would it be limited to action on the amendment proposed in the convention call? Might it not, rather, go beyond this and take up additional amendment proposals? Who is to say it may? The constitution is silent on this; it merely speaks of "a convention for proposing amendments," which seems to leave the door wide open.

Dealing with that problem is what the bill just unanimously passed by the Senate is all about. This measure, introduced by Sen. Sam J. Ervin Jr. of North Carolina, would prohibit a constitutional convention from adopting "any amendment or amendments of a nature different from that stated in the concurrent resolution calling the convention."

There is some feeling, notably expressed by Chairman Emanuel Celler of the House Judiciary Committee, that setting up explicit convention machinery might touch off an undesirable flood of amendment proposals. This drawback is less pernicious than the runaway convention danger, which the Ervin bill would stymie.

[From the Washington (D.C.) Evening Star, Nov. 2, 1971]

SENATOR SAM SHOWS HIS LOVE FOR CONSTITUTION

(By James J. Kilpatrick)

If Sam Ervin did not exist, as Voltaire once remarked of God, it would be necessary to invent him. In a Senate that has been briefcase gray since the death of Everett Dirksen, the canny old North Carolinian provides almost the only color. Of greater importance, he is often the only statesman in the crowd.

One thought of this a couple of weeks ago, in watching Ervin pilot a bill through the Senate that no other senator would have cared enough to fight for. To be sure, he had some help from the noblest Roman of them all, Sen. Hruska of Nebraska, but the bill was stamped with Ervin's mark: It was intended to safeguard the Constitution and it looked to the future in terms of the past.

We have had great constitutionalists on the Hill since the days of Webster, Calhoun and Clay, but we have not had many of them lately. The Constitution has fallen upon hard times. It comes and goes on Capitol Hill like some impecunious uncle-by-marriage, a visitor who has to be tolerated but not really welcomed. The Constitution is mostly in the way.

Not to Sam Ervin. He speaks of the Constitution in the same loving accents by which a man speaks of his wife, his mother, his child or, for that matter his Redeemer. We had an old scholar once at Virginia who felt the same way about Shakespeare. It is a feeling kindled out of the affection that is deeper than love—and out of a sense of the marvelous, also. Always something new! Some perfection never grasped before!

Yet not perfection. Like mother, wife and child, the Constitution has its failings. The procedures for electing a President are sorely in need of repair. The grand ambiguities of the general welfare clause provide endless trouble. There are other broken parts and patches of rust. And it is the peculiar role of Senator Sam to put things right.

Thus, he was tinkering around two weeks ago with Article V. This is the section of the Constitution that deals with amendment of the Constitution. If you care about these matters, you will know the familiar process: A resolution is introduced in Congress proposing some amendment of our basic law; if the resolution wins approval by two-thirds of both House and Senate, it goes out to the states for ratification; and if three-fourths of the states ratify, the amendment becomes part of the Constitution.

That is the familiar process. Every amendment has been adopted in this fashion. But it is one of the marvelous aspects of the Constitution, reflecting the framers' intuitive distrust of the Congress, that Article V offers an alternative route to amendment. This route never has been taken all the way. It provides that, upon the application of the legislatures of two-thirds of the states, the Congress "shall call a convention for proposing amendments."

A constitutional convention? We haven't had one since 1787. But off and on through the years, states have talked of using the bypass route. By Ervin's count, at least 304 such "applications" have been received, dealing with 251 proposals for amendment. Over the past 20 years, in a latter-day revival of Calhounian gospel, such applications have become more numerous. Between 1957 and 1969, 33 states—just one short of the magic two-thirds—asked for a convention to propose an amendment on reapportionment.

Suppose a 34th application had been received? Article V is not self-executing: It says that "Congress shall call." Call how? Call whom? Senator Sam found the uncertainties a delightful problem. Four years ago he set upon repairs. On Oct 19, his bill passed. When the House concurs, we will have created standby machinery for a contingency that may never arise. The bill defines state applications, provides for a convention, prevents a runaway body and carefully safeguards the process as a whole. It is a nice piece of probably useless work; and Mr. Madison, one imagines, would be pleased.

[From the Pasco (Wash.) Tri-City Herald, Nov. 2, 1971]

CONVENTION SAFEGUARDS

There hasn't been a constitutional convention in this country since 1787. But in 1969 the late Sen. Everett Dirksen, R-Ill., raised fears one might be called.

He came within one petition of forcing a convention under a procedure provided in the Constitution itself, but never taken in the 184-year history of the document.

Dirksen sought the convention on reapportionment to overturn the Supreme Court's one-man, one-vote ruling. His success in persuading 33 state legislatures, only one short of the two-thirds required, aroused fears that such an assembly, once convened, could, if it pleased, rewrite the Constitution.

The Constitution says that two-thirds of the state legislatures must approve a convention and three-fourths of the legislatures must ratify any changes. But it doesn't place any limitations on the convention, once it is assembled, even if it decided, as Sen. Sam Ervin, D-N.C., has pointed out to scrap the Bill of Rights and seriously alter our form of government.

The Senate a week ago acted to clear up some of the confusion by establishing firm guidelines for convention procedure. The bill written by Senator Ervin would require that two-thirds of the convention delegates must approve any changes and that they may only consider an amendment or amendments included in the concurrent congressional resolution calling the assembly.

Congress would direct the time and place for the convention and would limit it to a year. Each state would be entitled to the number of delegates equalling its combined representation in the Senate and House. Delegates would be elected or appointed by the governor.

The Ervin bill was passed by the Senate, 84-0. But there is opposition in the House. From Rep. Emanuel Celler, D-N.Y., for one. The chairman of the judiciary committee argues that precise guidelines might en-

courage states to seek redress of grievances through a convention.

Those who agree with Celler, including some constitutional lawyers, say the present state of uncertainty is a major deterrent to state legislatures.

This uncertainty didn't, however, stop Senator Dirksen from trying. Nor is it likely to stop anyone else so politically skillful and determined as Dirksen. Further, there is no justification for blocking a convention demanded by two-thirds of the states. It would be downright undemocratic to do so.

The Ervin bill proposes sensible safeguards against a runaway convention during a period of unusual political passion.

DAIRY IMPORTS CALL FOR PRESIDENTIAL ACTION

Mr. McINTYRE. Mr. President, our Nation's leaders have got to come to grips with the threat of dairy imports.

Now I am basically a free trader. I believe in the concept of free trade. But I also believe that free trade must be based on fair competition, and I can not see where dairy product competition from abroad is any more fair than competition from imported shoes that sell for less, because those shoes are produced by cheap labor.

Foreign imports are hurting the shoe manufacturers of New Hampshire and all of New England, forcing them into cutbacks, driving some of them out of business.

Dairy imports are hurting our dairy farmers in the same way. Each pound of imports displaces a market for each pound of domestically produced dairy products.

Last year it is estimated that additional purchases of surplus commodities—made necessary because of imports—topped $100 million.

In effect, this means that we are subsidizing foreign imports. This is not free trade, because is is not fair competition.

On August 15, the President announced a new foreign trade policy when he imposed a special additional duty on imports. This new policy will help many branches of American industry and agriculture which were facing unfair foreign competition for as long as the temporary additional duty lasts.

But one important sector of our economy—the American dairy industry—will not be getting much help. The administration acted to exempt most dairy imports—milk, cream, butter, cheese, ice cream, and many other dairy products—from the additional duty.

So relative to the rest of the economy which is under pressure from foreign imports, the dairy industry is in even worse competition shape now than it was before the announcement of the new economic program.

So what do we do? We can rely on existing laws and demand that they be administered as effectively as possible.

And we can let the President of the United States know what executive actions are need to promote the best interests of your industry.

The Tariff Commission has completed its investigation of dairy imports and the report is before the President.

One of those recommendations strongly deserves favorable consideration by the President, and that is the recommendation to eliminate the arbitrary price break which allows cheese based on over 47 cents a pound to be imported outside quotas.

Somehow the President must be convinced of the urgency and the legitimacy of this recommendation. Imports continue to rise every day.

As is so often the case, the need here is for balance and perspective. No one is asking the President to scuttle free trade. All the dairy industry is asking is free trade based upon fair competition.

AUDIE L. MURPHY MEMORIAL VETERANS HOSPITAL

Mr. BENTSEN. Mr. President, last Saturday, December 3, the Senate passed by a voice vote H.R. 11220, a bill to designate the veterans hospital presently under construction in San Antonio, Tex., as the Audie L. Murphy Memorial Veterans Hospital, and to direct the Administrator of the Veterans' Administration to authorize the erection of an appropriate memorial to Audie Murphy if he deems suitable. I am pleased to note that this legislation, similar to my bill, S. 2694, received the support of this body.

This legislation is a tribute to the heroism and patriotism of Audie L. Murphy who risked his life in distinguished service to his country during World War II. The Audie L. Murphy Memorial Veterans Hospital will be a living tribute to the spirit of this young Texan whose name is synonymous with bravery and love of country. This hospital, which will provide greatly needed medical services to thousands of veterans in the future, will evoke the spirit of these courageous defenders of our Nation's freedoms as well as the love of country which underlay the bravery of the late Audie L. Murphy.

ROBERT ROOSA ON AMERICA'S ROLE IN THE WORLD ECONOMY

Mr. RIBICOFF. Mr. President, few men have the depth of understanding the complex international economic issues facing the United States and the world, as does Robert Roosa, a former Under Secretary of the Treasury for Monetary Affairs. Mr. Roosa appeared recently before the Subcommittee on International Trade of the Committee on Finance to discuss the international aspects of the President's new economic program. In addition to his brilliant exposition of the issues during his testimony, Mr. Roosa agreed to submit in writing answers to a number of important questions of the members. I ask unanimous consent that Mr. Roosa's statement and written responses be printed in the RECORD at the end of my remarks.

It now appears that a solution to the short-term problem of establishing new currency parities is in the offing. However, longer term reforms in the international monetary system are required.

Of primary importance in this regard is Mr. Roosa's commentary on the role of gold in the future of the international monetary system. Not only does he persuasively argue for a reduction and, over time, an elimination of gold from the international monetary system, but he also discusses a way of arriving at that happy end.

Mr. President, I recommend careful reading of Mr. Roosa's views to Senators who are intrigued by the mysterious world of international money.

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

ANSWERS TO QUESTIONS OF THE SENATE FINANCE COMMITTEE

1. One witness at a prior hearing suggested the establishment of a mutual security fund to which all NATO countries and Japan would contribute in accordance with their ability to pay. Do you think this idea would sell to our allies?

Why shouldn't countries who have balance of payments surpluses set aside part of those surpluses in a mutual security fund for payment of NATO expenses?

The proposed "Mutual Security Fund" is the latest of a familiar line of proposals, all having a common objective: that within alliances members should not lose foreign exchange as a result of their contribution to the alliance's needs. I support that principle and, of course, we have had various declarations in support of it from our Western European and Japanese allies.

Before discussing the difficulty in securing workable arrangements at the operating level that would accomplish this unexceptionable principle, I should like to call attention to what the principle does *not* mean.

Foremost, it does *not* mean that *governments* are to be compensated for the *budgetary* costs of common defense. To the contrary, it means only that, in the case of the United States, defense dollars that are spent abroad for purposes of alliance undertakings shall be reimbursed out of a common fund, to which the U.S. and all of its allies have contributed.

Another point of clarification is that the foreign exchange costs of American overseas defense activities are far less than the actual budgetary costs of honoring and maintaining these foreign defense commitments. This is because many of the costs of meeting, say, our commitment to defend Western Europe, are in the form of Pentagon expenditures in the United States for equipment, weapons, supplies and staff salaries. These do not lead to the accumulation of dollars abroad and do not affect our balance of payments, even though the outlays represent a use of our real resources.

As reasonable as the principle is, there are many reasons why it has been difficult—at one time or another—to implement it explicitly, and why it has been practicable only in partial and indirect ways.

Most important, for most of the postwar period dollars have been an attractive and useful reserve asset. The U.S. deficits on the defense accounts helped to financed a needed growth in world-liquidity and commerce, and helped many nations to achieve balance of payments equilibrium. Certainly the existence of these dollar balances has, by their availability, resulted in some boost in U.S. exports and has also enabled private foreign interests to invest in the United States.

Of course, not all of the dollars were used in that way. Often they were deposited in the Eurodollar market where they earned a very satisfactory return and were used to finance other trade and investment flows. While obviously beneficial to our allies, some of the derivative results have certainly been consistent with our own national interests, as, indeed, have been, I trust, the defense of our major allies which occassioned the "loss" of dollars in the first place. There is, therefore, the risk of "protesting too much" in this matter.

Political resistance to U.S. "burden-shar-

ing" proposals has many elements. In foreign eyes, it sometimes appears that we are asking other people to support more military activity than may be considered necessary. Apart from that, many would argue that only the net balance of payments effect, rather than total dollar outlays abroad, should be considered—that is, they make allowance for the fact that many defense dollars are returned to the U.S. through purchases. That measure of "burden" is extremely difficult to define. Even more difficulty comes, however, in reaching agreement on the relative "ability to pay" of various countries. Is it national product? or net balance of payments position? or state of reserves?

For all these reasons, it will not ever be easy to "sell" anything so conceptually difficult and politically visible as a mutual security fund. We should certainly press our allies, however, to achieve the principle of "shared-foreign exchange costs" in other ways, and we should also continue to be on the alert for new ways to reduce these overseas expenses directly.

2. The French Finance Minister appears to be quite eager to make gold the center of the international monetary system. Perhaps the French experience with inflation has given them a deep suspicion of paper currency. If the French persist in thier view of keeping gold in the center of the system, do you feel there is much prospect for resolving critical currency and IMF reform issues that divide us today?

In his speech to the IMF and subsequently, Finance Minister Giscard d'Estaing and for that matter President Georges Pompidou have seemed to me to recognize that gold can no longer serve as the "center" of the world monetary system, and that the SDR or some other internationally-managed reserve asset must in time replace the dollar and gold as primary reserve assets. As I understand the French positions, there are other ways in which they may tend to make a settlement more difficult. First, while they seem to agree with the long-range goal, the French are said to be determined that the United States should first raise the price of gold (although not necessarily restore convertibility) as its "contribution" to a new set of exchange rates. As I will explain below in my answer to question four, I would prefer that any change of the gold price be accomplished in an indirect way, through a change in the dollar-SDR parity that will upgrade the reliance on the SDR as the basis of a new monetary order. A change in the dollar-gold parity would risk taking the steam out of the reform movement. For that reason, any change would have to be accompanied by an iron-clad agreement to go forward with the basic reform as well. The logic of the French position—and it is shared by many others, of course—is that any realignment of parities against the dollar that did not include at the same time a change in the dollar's parity with gold, would have several undesirable consequences for the countries that had revalued:

(a) Gold holdings would be worth "less" in terms of the national currency (e.g. worth fewer francs, d-mark, etc.). In countries where private gold hoarding has been substantial and widespread, such a development would of course be politically unpopular and, contrary to even the minimum expectation (that gold would not *lose* value under *any* circumstances), private hoarders would find that their gold was worth less in local purchasing power. It is perhaps too easy for Americans—who, outside the Confederacy, have never endured the catastrophic consequences of a complete debasement of paper currency—to conjure up the vision of harm being done only to a small circle of "Latin American Playboys", "gold speculators" and "gnomes of Zurich", whose losses can be safely ignored. In fact, the political consequences are far more widespread since many families of quite normal circumstances abroad purchase and save gold as a kind of insurance policy against the sort of destitution and economic chaos most European adults can remember in their lifetimes. If the U.S. Treasury were one day to announce that Savings Bonds were to be redeemed henceforth at only 95% of par, one can well imagine the outrage and political pressures that would develop here, even though, of course, the economics are quite different. Obviously, if U.S. citizens found that their dollars were "worth" less in gold, even though gold is unobtainable, foreign politicians could more easily allay political pressures in their constituencies by pointing to a U.S. "contribution" or "sacrifice" in the overall settlement, and private European gold-hoarders would at least realize some appreciation of gold in terms of dollars to offset in part the depreciation of gold vis-a-vis their own currencies when they revalued.

(b) A second objection, similar in logic to the first, (although almost certainly less important politically), is that failure to change the dollar price of gold will result in a loss of purchasing power for the gold held in national reserves, and, therefore, a "reduction in international liquidity." Since those offering this view are most often surplus countries the liquidity argument lacks persuasive conviction. More serious, perhaps, is the fact that the few countries whose national currencies are revalued against the dollar will show a "book loss" on their dollar and gold reserves—the books being expressed in the national currencies. Of course if the dollar were devalued against gold first, (and if the amount of revaluation against gold required of them were consequently reduced) then the magnitude of these book losses would be less in proportion to the gold held in the national reserves. In effect, the dollars they held would be "worth" more in gold, thus partially offsetting the book loss on any gold they held. A reasonable counter-argument is that these effects have virtually no economic impact, and that these same central banks, using dollar reserves, had been expanding their liquidity through Eurodollar deposits for many years.

(c) A third objection is more technical in nature and concerns the role of gold in central banks' reserves and transactions. There is a body of opinion that dollars should be promptly replaced in reserves and that gold should remain at least the primary numeraire in the international monetary system, and, through direct convertibility by the IMF, gold should be the "backing" for SDRs as that new reserve begins to play the greater role in world reserves. Some, but not all, of these advocates also urge the U.S. to return to dollar/gold convertibility. The difficulty with these approaches, so "reasonable" on the surface, is that they remove an important incentive for world monetary leaders to reach agreement on the thorough-going reforms that are needed for the long term health of the international monetary system.

As members of the committee know from the last ten years of hearings, any system that relies on a gold-backed U.S. dollar will almost inevitably reproduce the pressures on U.S. reserves that we have undergone over these years, with an unacceptable magnification of any valid "balance of payments disciplines" when translated into U.S. domestic policies; the same difficulties in adjusting the dollar's exchange rate against other leading currencies whenever warranted; the same mushrooming in official liabilities to foreigners—with the concomitant uncertainties, and all the other burdens that we wish to move away from.

The question then becomes whether the SDR should be "backed by gold", presumably by an IMF willing to exchange gold for SDRs on demand from central banks who regard their SDR holdings as excessive for one reason or another. There is of course a considerable body of opinion that holds that a guaranteed gold convertibility feature for SDRs will be necessary if SDRs are to ever enjoy sufficient "confidence" to replace the dollar as a primary reserve asset. Such an undertaking by the IMF, they note, would free the United States from any necessity in the future of selling gold to foreign dollar holders or to the IMF. The dollar, like any other currency, would be free to find new levels by adjusting through market-determined parity changes against the gold-backed SDR. Isn't that the heart of the U.S. demand?

The answer should be "no". In the first place gold-backing for SDRs is not necessarily required for SDRs to achieve confidence. To the contrary. An SDR that is not "backed by gold" cannot, by definition, be "devalued." It can only lose purchasing power in terms of the currencies of countries that revalue against SDRs. But apart from the historically anomalous revaluations of the yen and d-mark—reflecting the recovery of two major economies after the devastations of a World War—revaluations have been the exception and devaluations the rule because the normal pattern in inflationary periods is for national currencies to depreciate in purchasing power. Under a regime of SDRs this normal, if lamentable, depreciation will not be a threat to SDRs because when each country depreciates, it will have to agree to pay "more" of its currency for SDRs. If, say, the Mexican peso or Israeli pound depreciates, SDR holders will automatically be able to acquire enough additional pesos or pounds to offset the depreciation.

Instances of appreciation of national currencies against SDRs in any event are likely to be relatively less frequent following the present rather extraordinary upward adjustments in exchange rates between the United States and a few other key currencies. Under these circumstances, SDRs should enjoy more confidence than the dollar has in recent years, because, unlike the dollar, SDRs will be measured by definition, in the average relative value of all national currencies.* On the other hand, the dollar standard, because the dollar is itself a national currency, proved practically incapable of adjustments to reflect any diminution in its own purchasing power (or the enhanced purchasing power of other currencies relative to it.) Even more paradoxical, as demand for adequate reserves

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*To illustrate, assume that in 1972 the W. German Deutschemark is given an official parity of 3.3DM=1 SDR, and that the U.S. dollar's official parity is set at $1.00=1 SDR. If the central bank of Faroffistan accumulates reserves of 3.3DM (or $1.00) in 1972, and elects to exchange its 3.3DM or its dollar for an SDR, then Faroffistan has added one SDR to its official reserves, consistent with Faroffistan's policy of holding monetary reserves in SDRs rather than foreign currencies. But then suppose that by 1997—25 years later—the official parity of the DM declines to 5 DM=1 SDR and that the U.S. dollar's official parity declines to $2.00=1 SDR. Both national currencies would have depreciated against SDRs, but the central bank would be protected because it held SDRs. For had the bank maintained a dollar in its reserves, that dollar in 1997 would be worth only 2.5DM (i.e. 5/2) while its SDR is worth 5 DM. Had the bank held 3.3DM over the 25 years, the 3.3 DM would be worth only .66⅔ of an SDR (i.e. 3.3/5). With an SDR equal to $2, the original holding of DM would now be exchangeable into only $1.32 in U.S. currency. The worth of the SDR would, in effect, be an average (weighted) of the DM, the dollar, and all other currencies, and would rise in relative terms whenever these or any other currencies depreciated.

grew, the U.S. was virtually required to run rather permanent deficits in its payments in order to provide these needed reserves. As the volume of reserves increased, the dollar became all the more questionable and uncertain as a reliable standard of value.

This illustrates a fundamental point that monetary reformers have been trying to make for a long time. It is what is "in front" of a currency that makes it valuable, not what stands "behind" it. And when there is a large increase in the supply of a currency, the chances are that each unit of that currency will buy less. The value of a dollar or deutschmark, or yen, in economic terms, is the goods and services that can be purchased with it, not some alchemy between the currency and gold. The idea that gold "unlike the dollar" does represent a "constant" value over time is simply not supported by the evidence. In fact, a central bank that elected to hold gold at almost any time during the last 25 years, and held it until now, would be worse off, measured in terms of the present value of the holding, than if it had held an interest-bearing deposit in the national currency of about any leading country. Wide fluctuations in the price for gold in the free market that has existed since the two-tier system went into effect in March 1968 dispel the notion that there is anything "constant" about gold's value. "Apolloinaire"—as the French once called it—has undergone price fluctuations just as any other commodity—copper, aluminum, or diamonds. Instead, the dealer's greatest preoccupation seems to be that central banks—who were once the "market makers" for the material and could be relied upon to maintain a floor price that protected speculators—will cease to purchase gold and that some may in a relatively short time become net sellers, driving the price of Apolloinaire down to new lows.

The point is simply this: very little in the history of the quest for a rational monetary order is gained by establishing SDRs as a "gold-backed" reserve, or by thinking of SDRs as "paper gold." The value of SDRs will be determined by the currencies into which they can be exchanged, and that will be partly the result of the number of SDRs credited and partly of the parities set by the various countries in terms of SDRs. And the value of SDRs will be sustained so long as nations pledge their full faith and credit to exchange, on demand, their own currencies and other currencies for SDRs and to exchange SDRs for debit balancies in their accounts, in settlement of international reserve transactions, under the Articles of the IMF. Even if the IMF is not required to exchange gold for SDRs (and it should not be required to do so), the whole notion of a gold-parity for SDRs perpetuates a wrongheaded idea—long discarded in domestic monetary affairs—that what makes a currency valuable is the content of gold behind it. Nonetheless, so long as the SDR is defined as 88 grams of gold, that can serve as a useful transitional crutch until everyone has learned from experience that the SDR can walk alone.

Having presented the case against perpetrating the mythology of gold, I should be willing to see a small 5–7% devaluation of the dollar against gold if there were no other way to arrive at an interim agreement on exchange rates before the end of the year. So long as the United States does not undertake to reopen the gold-window, there is no real economic objection to such a change if it helps, under present conditions in a restoration of the confidence needed for international economic activity and finance.

The central French concern has seemed to be that the more than 30% advantage they have acquired against the Deutsche Mark (as a result of past devaluation and the two D-Mark revaluations) not be offset by a revaluation of the franc against gold, which the French feel they could not defend politically or in the foreign exchange markets. By leaving the franc unchanged against gold, and while we devalue the dollar in nominal gold content, the argument goes, the D-Mark could be further appreciated against the dollar while remaining at about its present relation to the franc. This it is argued, would ameliorate intra-EEC strains in trade and agriculture and remove the single greatest obstacle to an overall agreement of the Group of Ten.

Of course the effect on exchange rates vis-a-vis the dollar—the only important *economic* factor at stake—would be identical to the outcome we ourselves seek. Although we should persist in our insistance on eliminating gold from the underpinnings of a reformed international monetary system based on SDRs, it may be that the risks of letting the present uncertainties go unresolved outweigh the advantages to be gained for the time being by insisting on a complete dethronement of gold. So long as convertibility is understood to be out of the question, and there is a firm commitment to reach prompt agreement on the shift over to a full scale SDR system, the U.S. can afford to make a minor concession on the gold price now.

It would have been better in devaluing the dollar to devalue against SDR instead of gold, thereby enhancing the prestige of SDRs. Unfortunately this latter step would require the concurrence and actions of some eighty or more national governments and legislatures to bring about the needed changes in the IMF Articles. By devaluing simultaneously against both *numeratres* (gold and SDRs), the United States will still strengthen SDRs—although, unfortunately, perpetuating the "paper gold" mythology.

Parenthetically, it will be interesting to see whether a willingness on our part to devalue the dollar will in fact provide the needed linchpin. As I noted, the French are anxious to maintain the advantage they have appropriated for themselves (not only against the D-Mark, but also against virtually all the other European currencies) by refusing to float the franc. In the face of what they see as a burgeoning "worldwide recession", it may turn out that they will be unwilling under any circumstances to compromise on European cross-rates. In this respect the proposed Pompidou-Brandt discussions may hold the key.

3. Pierre-Paul Schweitzer, Managing Director of the International Monetary Fund has made several suggestions to get the U. S., the EEC and the Japanese to the negotiating table. It would appear that the first order of priority is the realignment of currencies. Do you have any comments on Mr. Schweitzer's plan to bring the major trading partners together?

It should be clear by now, if it was not clear in late August or at the IMF meetings in September, that the present extraordinary situation is fraught with so many important economic and political consequences for the major trading nations that an interim solution or agreement would require intense bargaining among the political leaders of the Group of Ten and OECD. Mr. Schweitzer was able to play a timely and decisive role in calling for discussions, suggesting the outlines of a broad settlement and, since that time, in maintaining communications links and transactions networks among the IMF membership that have helped to prevent the chaos and confusion that might otherwise have ensued. He and the Fund staff have also wisely and helpfully attempted to represent the concerns and interests of countries outside the Group of Ten to the principals in the EEC, G–10 and OECD discussions.

But the Fund cannot reasonably be expected to be capable of organizing a settlement on its own strength when a sizeable adjustment of the major national exchange rates (and associated levels of employment, income and business viability) is required. It ceases to be a matter of narrow monetary expertise and much more a matter of balancing off many different facets of national interest through complex multilateral and bilateral negotiations among principals at the highest political levels. Mr. Schweitzer cannot say, for instance, what Japan's contribution to the Asian Development Bank should be, what military purchases she should make from the United States *in lieu* of greater exchange rate changes, or to what extent and when the United States' own complex economic and political interests in Europe, Asia, Latin America, Canada, or the Middle East are endangered or furthered by this or that concession in the monetary, alliance, or trade discussions. For better or ill, that is what we elect our political leaders to do for us, and they must deal with each other directly. This cannot be done by an International Monetary Fund staff, no matter how competent or informed, although, as I suggested, the Fund does have a very important role. And as the political agreements take shape through compromise and negotiations, the Fund most definitely has a role to play in the more technical discussions as to what the new monetary system should be and how it shall be constituted and governed. The aim must be to design a new system that will relieve the necessity for international monetary matters ever again to require such drastic political surgery outside the Fund's own process or in spite of its Articles.

While I believe we should be grateful that the Group of Ten was in existence when it was needed, I also hope, at the same time, that the outline of the new system will be such as to accommodate normally and flexibly the kinds of pressures that in recent years have shaken Members' confidence in the Fund, with first the Sterling devaluation, the franc and Deutsche Mark speculations, the gold speculations of a few years ago, and most recently and decisively, the Dollar Crisis. I foresee the day, perhaps within two years, when the IMF will enjoy a greatly re-enhanced prestige and role, unencumbered by a system that has been getting increasingly out of step with the times, and that in the end was becoming so unworkable that the Fund itself had become a major proponent of fundamental change. Given a reformed system (founded on a political consensus) to enforce—one that is closely aligned with the modern world of gigantic capital flows, multinational enterprises, a Euromarket for money and capital, dynamic economies, and interdependence in all things—the IMF will play a central and leading role.

4. What do you think could replace gold as the center of the international monetary system to which all currencies have been pegged? Do you think it will be the special drawing rights, a combination of reserve currencies, or a system of flexible exchange rates?

I believe gold will be replaced by the SDR or another internationally-created and managed reserve asset under the IMF. SDRs will first replace gold as the numeraire for exchange rate parities to be set. Then they will begin to replace dollars as the primary reserve asset held by central banks and used to settle official accounts. Lastly the SDR, possibly in a decade or so, will largely replace gold as a reserve asset and gold will for all practicable purposes become another commodity. Although the SDR may initially be defined in terms of gold, I do not anticipate that it will be convertible and we may live to see the day that gold is devalued (against SDRs). However, individual countries will for some time elect to hold and trade gold among themselves. So long as they do not trade at below the parity price, the Articles should permit this.*

*That is, so long as they do not exchange more SDRs for gold than the SDR price of gold under the IMF.

We should have an agreement that enables all currencies, the dollar included, to be traded 2½% above or below their parities against SDRs. The possibility of such fluctuation should reduce the likelihood of disruptions caused by massive short-term capital flows since central banks will no longer "guarantee" convertibility at virtually the same rate an arbitragener paid for a currency when investing in its local market. (If margins are ±2½ for example, an investor's risk could be as great as 10%.) This also means that central banks will much less frequently be forced by speculation (and/or speculation-induced "leads and lags") to accumulate or sell gigantic quantities of international reserves to defend their parities from upward or downward pressures in the marketplace. That will be particularly the case if there is also a readiness to change parities by relatively small amounts when a currency remains at or close to its upper or lower limit for an extended period.

We should, consequently, look for a revision of the IMF Articles to permit small and more frequent adjustments of parities to reflect "natural" recognition of changes in the real purchasing power of national currencies and the relative strength of national economies and to reflect these changes close to the time when they actually occur. Such a new framework for exchange rate fluctuation and changes should greatly reduce the pressure experienced in the past for imposing restrictive fiscal and monetary policies as a means of bringing about the economic adjustments needed to remove deficits. These arrangements should also help to take the question of "devaluation" out of the context of moral and political opprobrium that built up under the old rules of the game.

TESTIMONY PREPARED FOR SUBMISSION TO THE SENATE FINANCE COMMITTEE ON SEPTEMBER 14, 1971 BY ROBERT V. ROOSA, PARTNER BROWN BROS. HARRIMAN & CO.

Mr. Chairman: I am very happy to be with you today. Since I was advised only late last week of this opportunity to testify, I regret that I cannot offer a full exposition of my views at this time. I am looking forward to the opportunity of discussing today all aspects of the President's new economic policies with which members of the Committee are concerned.

The President's new economic policies have an overriding importance for the future of the international monetary system, and for relations among the advanced nations. Although the pressures for changing the Bretton Woods system have been mounting for many years, the President's actions in imposing the 10 per cent import surcharge, suspending the gold-convertibility of the dollar and in proposing a buy-American investment credit, have created a situation of international tension requiring prompt, sensitive, and creative plans and negotiations that will result in substantial changes in the international monetary system. The outcome of these negotiations will be of great and enduring importance for the American people.

In lieu of further initial comments, I should like to submit the text of my *Open Letter to the Group of Ten and the IMF* which was published in *The New York Times* last Sunday, September 12, 1971:

By cutting the dollar loose from gold convertibility in mid-August of 1971, the President has moved forward by at least a decade the timetable which many members of the International Monetary Fund had implicitly been following toward this fundamental change in the structure of the international monetary system. To be sure, no one was ready at this time, in spirit or in planning, for the mutation to which all knew they must eventually adjust. Yet now that the golden cord has been cut, the International Monetary Fund and all its members have a fortuitous opportunity to move with deliberate speed toward a new form of the Bretton Woods system—a form which hopefully may be as well attuned to the changing world economy over the remainder of the twentieth century as the original Bretton Woods design was for the quarter century that followed World War II.

A certain amount of tidying up of presently existing arrangements will have to occur first, in order to provide a reasonably calm environment for the deliberation and negotiation that must precede agreement on a major new design. An early upward adjustment of the exchange rate parities of a handful of currencies against the dollar should be speedily agreed upon. Provided the changes are sufficient to assure the credibility of the resulting structure of exchange rates, there is undoubtedly room for considerable differences as to the precise magnitudes to be chosen. And so long as a new flexibility can be expected to emerge as part of the new design, there need be no prolonged quibbling nor international deadlocks over the details of a few percentage points in the specific parities set for the end of 1971.

The agreements which should be reached promptly represent a sort of damage control operations, in order to avert further spreading and hardening of the trade restrictions, capital controls, and multiple exchange rates which have been rapidly splintering the international economic community over recent months. Moreover, so long as these restraints are proliferating, it is impossible to expect the nominal "floating" of the currencies of other leading countries to provide a sure clue to the appropriate levels of their parities. Since a severing of gold from the dollar had to come sometime, it would be most unfortunate, however, now that the step has been taken, if other countries or the IMF should expect the United States—as a sort of penance while new parities with the dollar are being set—to glue back together some pieces of the broken idol through a hastily contrived "return to gold" at some slight change in its dollar monetary price.

Once the immediate pressures toward economic isolationism can be checked, by re-establishing the customary modalities for making payments across the exchanges, the way will be open for further constructive consultations. The members of the International Monetary Fund, spurred by initiatives of the industrialized countries in the "Group of Ten," have already demonstrated their capability for creative innovation, during the four years of preparation that preceded the historic agreement in 1967 to establish Special Drawing Rights (SDR's) as a manmade substitute for gold reserves in the IMF. It is around these SDR's, serving as a nucleus of reserves, that the world can now begin to develop a kind of monetary system that will be capable of maintaining stability—instead of permitting recurrent disruptions and distortions that inhibit international competition—in the payments flows among nations over the years ahead.

Just as the final collapse of the convertible gold-dollar version of Betton Woods was precipitated by a sudden and rapid deterioration in the international economic position of the United States, so also the first steps in preparing the stage for a new Bretton Woods system are quite properly being initiated by our Government. By acting to halt the corrosive inflation, to stimulate greater productivity, and to enlarge employment and incomes, the Administration is positioning the United States to restore sustainable two-way flows of trade and capital between itself and the rest of the world. The immediate stage setting on the part of the United States also rightly includes fresh effort to cut the dollar costs of supporting military and economic assistance programs abroad, and to attack the many non-tariff barriers to the freer expansion of trade and capital movements.

One lesson that has become clear, over the four weeks following August 15, however, is that the dimensions of any of these economic and financial efforts which impinge on other countries are so large, and so intertwined with a myriad of powerful political and social considerations in these other countries—large or small, developed or developing—that no sweeping or swift agreements are likely to be found. The Administration is surely right to attack the immediate problems confronting the United States all at once, with fresh exhilaration and determination; it is equally right to urge other countries, particularly those with large balance of payments surpluses, to initiate proposals as a basis for joint consideration and action; but it would just as surely be wrong to expect any large proportion of the imbalances among nations to be settled in a single massive negotiation. No country wants piecemeal correctives, with the risks they bring of new crises created by the disparities that still remain; but the needed total result may have to be reached through several separate, though parallel and interrelated, agreements or undertakings. In the necessary arraying of priorities, the time has come for a heightened concentration of attention on the longer range objectives to be sought in the redesign of the international monetary system.

Pleading only the special privilege of one who, in Dean Acheson's lofty phrase, was "present at the creation," I would like to put into the cauldron of discussion among the "Group of Ten," and hopefully the other members of the IMF as well, a seven-point program for adapting the Bretton Woods design to the flexibility that the world's monetary system now needs.

(1) The SDR's should be the principal reserve asset for use by central banks in making direct settlements among themselves. The dollar, and other currencies, should be held by central banks primarily as transactions balances, for use in intervening in the public markets for foreign exchange.

(2) Because most countries are not yet ready to demonetize gold completely, SDR's should be defined as a specified weight of gold in order to continue a role for gold within the Bretton Woods system. No central bank should be required to include gold within its reserves and no reserve settlement obligations should include a required gold component. All IMF requirements presently in terms of gold should be made interchangeable with SDR's. Any central bank should be at liberty to sell or buy gold, to or from anyone, provided the price does not exceed the equivalent of the established gold content of the SDR.

(3) The gold content of the SDR might be changed only through the same voting procedures as apply to a change in the Articles of the IMF itself.

(4) Each member country declaring an established parity for its currency to the IMF should define that parity in terms of SDR's.

(5) The acceptable normal range of variation in the market rate for any currency with an established parity, as defined in the Articles, should be widened from the present 1 per cent above or below the old dollar parity to 2½ per cent above or below the new SDR parity.

(6) Under conditions determined by the Executive Directors of the IMF, market rates should be permitted to fluctuate outside the 2½ per cent band for transitional periods of up to one year, by which time a new parity must be established.

(7) The scope provided in the original Articles for modest changes in parities without detailed IMF scrutiny or opprobrium has long since been fully used by most members. That original intention should be renewed by a change in the Articles to encourage more frequent and smaller adjustments of parities, subject to general provisions established from time to time by the Executive Directors.

This combination of suggestions preserves the essence of the Bretton Woods system: the IMF at the center as the ultimate source of needed reserves, and with related powers to exert some discipline upon individual countries whose actions seriously impair the well-being of the members as a whole; established parities for convertible currencies; and a numeraire for the setting of those parities. The major changes would be the increased reliance on the SDR (with the use of gold in reserves remaining a matter for the independent choice of each country), the elimination of gold convertibility requirements for the United States and the IMF, and the introduction of orderly arrangements for flexible adjustment of exchange rates and parities.

The deeper processes of change in the world economy certainly point toward the need for analysis well beyond the scope of this brief comment, and probably point toward action well beyond the range of any influences to be expected from greater or lesser flexibility in exchange rates alone. It is the rapid evolution of such forces which do in my mind, however, urgently emphasize the need for resuming the kind of intensive probing and appraisal that began in 1963, when the Deputies of the Group of Ten first began exploring the foundations of the system on which the SDR's have since been built.

AMERICA'S PLACE IN THE WORLD ECONOMY

(By Robert V. Roosa)

At no time since the end of World War II has this country's position in the world economy been more precarious, and at the same time potentially more promising, than in 1971. That paradox, which each of us sees from a slightly different angle, seems to me to account for the ambivalence in what we have been saying to each other during these three stimulating days. Most of us reject protectionism, but we applaud the President's August 15 program. Many of us seek the dismantling of what controls there are over capital flows, but we deplore this year's stupendous deficit in the American balance of payments, which is so largely the result of uncontrolled movements of short-term capital. And though I think we all hope for a major realignment of currency parities in are formed monetary system, many of us are still worried that a failure to agree on the interim steps needed now for currency stability may aggravate the tendencies toward depression that are already apparent in many parts of the world.

There is not, I am going to be so bold as to suggest, anything inconsistent about our holding all of these views at once. But one has to stand back a bit, to search out the unifying theme. To me, the theme is that the American economy is in the midst of a revolutionary change, a change as little recognized as was the industrial revolution until long after it had begun to reshape the world, and a change which may bring about new patterns in the commerce among nations as profound as those brought over the past century by the industrial revolution. Our economy is now well into the post-industrial phase in the dynamic growth pattern of advanced societies—we are experiencing what a few prescient economists have called the services revolution. That is not the popular caricature of services identified with more and more bureaucrats and automatic vending machines, although we have those too, but instead an economy in which rapidly advancing technology, sophisticated research and scientific management account for more of the marginal increments of valued output than do the additions of direct labor or invested capital in traditional manufacturing processes.

Those of us trying to form judgments on economic policy in this new environment are caught in a tangle of transition, trying to look backward and forward at the same time. And indeed we must. For just as industrialization and urbanization in the earlier phase of economic evolution did not displace the agrarian economy, but were built upon it, so the new services state is being erected on a base of support brought forward from the industrial and agrarian stages of development.

It is part of the transition, and I believe an inherent part, that new institutions must rise to new importance in the economic inter-relations among nations. There are new forces and new forms in the relations between this country, in the lead of the change, and other industrialized countries that are following along similar paths. There are other and different potentials in the relations between all of the more industrialized countries and the less developed countries which as yet have only tentatively, or often only in narrow sectors, entered into the phases of industrialization. That is why our economy—sufficiently industrialized to be able to afford a remarkably comprehensive system of education, and to afford the overheads involved both in massive programs of research and in developing management of all kinds into a science—has evolved a new kind of export, the export of technology and technique. That is why American firms have found it rewarding to father the multinational corporation, and why most other countries have readily made room for firms which bring in management and marketing capabilities to employ their assets and their people more efficiently. That is why our financial institutions, also multi-nationalizing, have gone abroad, not merely to help service the multinational corporations but also to introduce our own pioneering financial methods, wherever they seem to fit, and incidentally to service as well the vast extraterritorial market in Eurodollars and other Euro-currencies.

It is partly from the growing pains of these tremendous innovations—which have produced a declining surplus in this country's traditional trading relationships and a greater volatility in short term money flows—that the United States has derived this year's balance of payments deficit. By any past standard, that deficit, at least until August 15, was so staggering as to be almost incomprehensible. But in correcting our deficits over the years ahead, we have to look not only backward to past patterns but also forward to new opportunities. And that is what has been so encouraging about these meetings—the high proportion of attention given to where the United States can go from here. Before I go on to draw together the more promising strands from all that you have heard during these crowded days, and to add some embroidery of my own, I would like to sort out some of the features of our trade last year that help to underscore my emphasis on the significance of the services economy for the future nature of our trade. Then I will try to sum up, not as a catalogue, but with emphasis on what is new—(1) the potentials I see in our bilateral relationships with other countries, (2) what may be possible in our joint relationships with other countries through various international organizations, and finally, (3) what we might hope for in the design of the international monetary system. The limits of your patience and my competence should permit me to generalize rather glibly without providing too much elaboration.

THE COMPOSITION OF OUR TRADE IN 1970

The major shift occurring in the composition of our exports and imports of goods is almost a mirror image of the shift in our comparative advantage that has come with the transition to a predominantly services economy, at a time when most of the other leading countries were still moving into the later stages of industrialization. While we have a pronounced lead in communications hardware, computers, office machinery and air transport, for example, many of the other countries are now outdoing us in the more standardized, high volume, assembly-line production that used to be the American image.

It is this change, in addition to the various discriminatory trade barriers which we rightly try to remove, and along with the well-known differences in wage and tax rates, that helps to explain why, last year, the United States paid out for foreign automobiles, for example, $2.3 billion more than foreigners paid us for automobiles produced in this country. Even in food, beverages and agricultural products, we have paid out close to one-half billion dollars more in imports than we earned from our own exports in each of the past three years. Our deficit in consumer goods (excluding autos and food) last year was $4.8 billion. And our deficit in industrial supplies have averaged $2.2 billion since the mid-sixties. Steel alone accounted for $900 million of that deficit in 1970.

Yet we still had a merchandise trade surplus last year of $2.7 billion. Where did it come from? The answer is mainly from exports of capital goods in the high technology sectors, which produced a product-line surplus of over $10.5 billion last year—part of which represented sales to the overseas arms of our own multinational companies.

The key is that wherever the service inputs are large from highly trained staffs—management, research, skills—we still lead in export performance. And it is, of course, these same sectors which have been most vigorous and grown most rapidly here at home over the past decade. It is to these sectors of the home economy, and to the judicious expansion of American enterprise abroad, that we must look for much of the added strength that can restore viability in our payments balance with the world. The great need now is for the daring to use this strength in new ways, and in new directions—in our direct relations with other countries, in our reliance on international organizations, and in our contribution toward reform of the international monetary system.

NEW BILATERAL RELATIONSHIPS

The Administration has effectively launched its efforts to bring down the barriers blocking entry of our goods into the markets of many of our traditional trading partners. That is essential. But if my appraisal of the difference in the phasing of structural change among countries is valid, if others will be following us one by one into the services revolution, then the lowering of old barriers will not be enough—not for the longer run. We have to open up new routes, not only trade routes but services routes, that will enable us to earn abroad at least as much as we spend, or invest, or give away abroad. We have to take full advantage of the long lead we have, and the comparative advantage that gives us, in providing management, financial, and technical services to the world.

Some of the most promising territory for new ventures might appear offhand the most improbable—the Communist countries. They have all the ingredients in talent, raw materials, and savings that any management team could wish for, even though they also have their bureaucracies and the rigidities of centralized planning, not to mention their ideology. All the same, they respect, and increasingly seem eager to invite and to pay for, the management skills and high-technology goods that we have to offer. And if the world is to have what the President is calling for—a generation, or better yet, an era of peace—the sturdiest beginning is surely in establishing new working relationships in the kinds of activity where Russia, China, and other Communist (or as they would correct me, Socialist) countries and ourselves come nearest to speaking the same language, that is, in business transactions which benefit both sides.

Our allies, most notably the United Kingdom, Germany, and Japan, have opened the way for us. They have so reduced their restrictions as to encourage trade in such products as computers, advanced equipment, chemicals, and even turnkey manufacturing plants. A natural advantage that American enterprises might normally enjoy has thus far been lost by default to smaller and sometimes less efficient European and Japanese firms—often recognized as such by the Communist enterprises—and which in practice often base their products and services on technology first developed in the United States.

To finance the acquisition of the products, technology, and services they want, Socialist enterprises have been turning more frequently to joint marketing arrangements, joint ventures, subcontracts, and other arrangements with western companies that increase their ability to earn foreign exchange by increasing exports to the West. Moreover, the Soviet Union, in particular, has been aggressive in opening up markets for the products of the services-sector of the Soviet economy, as can be seen in their campaign to sell the TU144 "SST" to western airlines, and the persistent Soviet efforts to open up markets for their generally sophisticated metallurgical and construction equipment.

While for many years the Socialist countries had to insist on rigid bilateral trade agreements to be assured of the means to pay for their imports, it is now apparent that they wish to move toward greater flexibility in their choice of suppliers and markets. I suspect they would be able to pay, with hard currency earned elsewhere, for many of the high technology items they want from us. And our even greater opoprtunity is for management contracts, or joint ventures, or licensing arrangements, which may directly generate enough foreign exchange to make the necessary payments to any American firms.

Alongside the opportunities in the Communist countries, the other great area of opportunity is in expanding the role of our multinational corporations in less developed countries everywhere. The shibboleth of American imperialism, with which we are still maligned, can give way to working partnership as the patterns being pioneered by many firms become recognized. Our role no longer needs to be identified so largely with the extractive industries, nor with sole ownership. Indeed the course of the future may well be that more and more of the further increase in the world's manufacturing capability will occur in countries that are now underdeveloped, with expanding local participation in all aspects of the business.

The great multinational corporations—helping to mobilize capital, train labor, organize production, develop marketing, and open up distribution channels for the LDC's in the advanced nations—can, as working arrangements with local governments evolve, help these countries to move into a stage of the industrial revolution that the United States itself is already leaving behind. And they can help bring to the LDC's much modern technology that was not available when we were in a similar phase of the development process. So long as there is a predominance of local labor, and local participation in the capital of these projects, the place of the American firm in contributing the needed management services can continue to be creative, without reviving the image of the absentee rentier that has fostered so much antagonism in the past.

There will always, of course, be risks, the kinds of risks that are increasingly recognized as insurable in the broadest sense. They require a premium from the participating company, of course, but also a residual of contingent liability on the part of the Governments involved, reflecting the common public interest in promoting (indeed propelling) development. If American companies are to substitute for, or at any rate to complement, our Government's own programs of direct grants and loans to the less developed countries, the integrity of OPIC's facilities for providing insurance against non-commercial risks should be unquestioned. Perhaps in time, the often discussed proposal for insurance under the World Bank's auspices can be realized.

There is also a particular task for our Government in its own efforts to assist the less developed countries—a task uniquely indicated by the same elements of the new "services state" that have such profound implications for business relationships with the Communist and the less developed countries. That is in making a special effort to discover and promote capabilities for providing technical services, quite independently of specific loans or grants. The Peterson Task Force on International Development recommended to the President in March 1970 the establishment of a U.S. International Development Institute for this purpose. That recommendation was good then; it is even more urgent now.

NEW RELATIONSHIPS WITH GROUPS OF COUNTRIES

Although I am stressing here only the newer aspects of America's place in the world economy, I should not leave any misunderstanding on one great element of continuity. I hope we can remain in character; I hope we can maintain the spirit and the style of openness, tolerance, and freedom that have characterized our international economic policy throughout the post World War II period. It is distressing to hear, as we have, some voices calling for a new combativeness; for retaliatory restrictions on imports; for a beggar thy neighbor version of economic isolationism. I prefer to listen, as I did last night, to the insistence of the Secretary of the Treasury that such threats must be countered.

There are at least three important ways in which we can help to do that by strengthening our reliance on negotiation as opposed to confrontation. The most obvious is in the military field itself, and the SALT talks may carry the world some distance in that direction. The challenge to our high technology is to find, through control over the weapons systems themselves, methods to assure the ultimate in deterrence.

A second is in our economic relations with the other more developed countries. No one could read the balance of payments statistics released two days ago without recognizing that movements of capital, both short term and long, have become even larger forces in affecting the balance of our external payments than the movements of goods in trade. For influencing goods flows, the world has, in the General Agreement on Tariffs and Trade (the GATT), albeit with all its weaknesses, an agreed formulation of acceptable Governmental practices and a forum for airing complaints. The spirit of the Agreement is to encourage freer trade; the practice is at least to prick a nation's conscience when it moves in the opposite direction. Is it too much to hope that something comparable could now be undertaken for capital movements—an agreement that would affirm free capital flows as an objective and would establish some consensus as to methods for coping with such flows when they overwhelm one country's accounts or threaten to impair the functioning of the international payments system? Perhaps that is the way to bring an end to those alphabetic nightmares that bother so many of you—the OFDI and VFCR.

A third avenue for greater reliance on multilateral approaches concerns the less developed countries. There, too, the way has been pointed in the Peterson Task Force report which urged that "the international lending institutions become the major channel for development assistance, and that U.S. bilateral assistance be provided largely within a framework set by international institutions."

THE INTERNATIONAL MONETARY SYSTEM

The implications I have drawn from the structural change in the American economy literally thrust it outward into increasing interdependence with the rest of the world. Such a view may seem quixotic at a moment when the most advanced form of interdependence, the international monetary system, seems to have broken down from hyperstimulation. Yet in my view it is that same interdependence which is now increasingly, as the weeks go by, impelling all of the leading countries toward agreement.

There is a slight perversity, to be sure, in the fact that the countries most directly affected have all along seemed much closer to agreement on the final features of basic reform—features which will, if only for procedural reasons, require a year or two to implement—while they remain rather further apart on the terms of the interim settlement needed to keep the machinery moving until the basic reform is in place. Nonetheless, despite the widespread apprehension over the risks of precipitating a European recession, or perhaps partly because of that apprehension, I suspect that a tolerably workable interim agreement will be achieved within the next few weeks. Because the United States has rightly moved to demonetize gold, it seems slightly ridiculous that there should be so much insistence abroad on our changing the bookkeeping price of a metal we have dethroned. By the same token, though, we clearly need not be fastidious ourselves about making a little change in the "price" if that breaks a log jam that is holding up the kinds of correction in currency parities on the part of other leading countries that can provide a basis for reaching equilibrium in our own balance of payments during the months ahead.

Looking beyond this interim phase, it is clear that the rigidities of the early form of the Bretton Woods System have outlived their usefulness. Even though most countries will always need and wish to have established parities for their currencies, in order to avoid the temptation for continuous self-serving manipulation of the exchange rate when there are no visible and well established rules of the road, there will have to be agreed scope for relatively flexible adaptation of parities. When the nations of the world community are undergoing dynamic change at differing rates, and are in differing stages of economic evolution, there will have to be relatively frequent modifications in the parity relationship among their currencies. But as I have said, a consensus on that has already largely formed.

We will want to see the dollar gradually shrink in use as a reserve asset held by official institutions. That aspect of the dollar's recent role has become too much for any one country to support or manage. It creates continuous friction among nations while depriving the United States of any possibility for effective initiative to help in the resolution of differences.

Instead, the world's need for a reserve asset which can be increased in quantity according to some generally agreed non-inflationary criteria can best be provided through the joint action of all countries. Fortunately the instrument for that has already been created. To be fully useful as a reserve asset, that instrument (Special Drawing Rights—the SDR's) will have to be more generally usable by official holders. Negotiations over such details will probably reveal some technical problems and differences that may strain the negotiators, but the broad outlines of the desired end result are, fortu-

nately, already quite non-controversial. And it is reassuring that the real essentials of Bretton Woods will be preserved: convertibility among currencies, capacity in the currency markets to service any volume of exchanges, and cooperation among the countries.

There will have to be new rules within the International Monetary Fund, too, providing a considerably broader basis for the adjustment of parities, widening the band of permissible fluctuation around parity, and permitting an occasional "transitional float."

When all of that has been completed, the dollar will be free to adjust its parity, just as any other currency may. This time, though, the parity adjustment will be in terms of SDR's; no longer gold. The great capacities of the American financial community will then be able to concentrate unselfconsciously on the services performed in providing dollars for the financing of world trade and the investing of capital. Freed of the obligations of a reserve currency, but increasingly used as a common medium among countries, the dollar can fit into place naturally as a principal vehicle for the financial services which this country, and perhaps others, will be increasingly able to perform.

CONCLUSION

I can conclude these remarks as I began them—in an optimistic vein. The American economy is going through a difficult transition. As the first of the service oriented economies, we have much pioneering and experimenting to undergo. But there is a discernible pattern and a clearly promising outline for what can lie ahead. And there are accelerating opportunities for American leadership. If we preserve the spirit that has guided our economic policy since World War II, we may be able to establish economic relationships which can undergird peaceful progress for the remainder of the century.

L. B. J. IN FOCUS

Mr. BENTSEN. Mr. President, Mr. Jack Valenti has written an articulate and perceptive review of President Lyndon Johnson's book, "The Vantage Point."

Mr. Valenti was in a unique position to know the President, for he served as his special assistant in the White House for several years. It is, therefore, not surprising that Mr. Valenti's own vantage point would be one that would allow him to describe with some care the texture of the events that accompanied the decisionmaking processes of President Johnson.

Mr. Valenti's review speaks for itself. It is a revealing portrait of a dedicated man who gave greatly of his enormous talents and who approached his work with the highest regard for the national welfare.

I ask unanimous consent that Mr. Valenti's review be printed in the RECORD.

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

[From the Houston Chronicle, Oct. 31, 1971]

THE BRAVEST, WISEST FRIEND

(By Jack Valenti)

That was Roy Wilkins' comment on President Johnson, a Southerner. The "flowering irony" of the remark may serve the linchpin of Johnson's administration and is reflected in his high-adventure, personal account of that time.

The Vantage Point, by Lyndon Baines Johnson, Holt, $15.

If you are at all interested in politics, presidential decision-making, and Lyndon Johnson not necessarily in that order of preference, then you will want to read "The Vantage Point."

I remember so well a meeting when President Johnson gathered with black leaders in the Cabinet Room to rejoice in the Voting Rights Act of 1965. After the meeting with LBJ had ended, a meeting with moments of genuine passion and jubilation, Roy Wilkins spoke to me: "It's strange, isn't it, that the bravest, most compassionate, wisest friend the Negro in America has ever had is a Southern President."

The flowering irony of that remark may well serve as the linchpin of the Johnson presidency, and the events recounted in this book. It is an irony neither sardonic nor deflating, but the irony of contradictions, of savage criticism of the President after a deluge of measures in education, health, medical research, conservation, anti-poverty, human rights which have left an unerasable and beneficient mark of future generations on Americans.

And there is the irony that the liberal establishment, the very people whose banners and causes were carried to legislative completion by President Johnson, are the ones who today are his most venomous critics. A psychiatrist friend of mine with a savoring comic sense once concluded that the reasons why so many liberals fumed at Lyndon Johnson is because he made all their declarations the law of the land and they had nothing more to become impassioned about. But then politics has always been a marriage broker for the mad and the practical.

What "The Vantage Point" does is to uproot and turn again to light those high adventures of the Johnson presidency which, unhappily, have been so scarred by Vietnam that is is chic to be forgetful of what he did to try to lift the quality of American life, and how he did it.

Five of the 23 chapters deal with Vietnam. With documentation that is remorseless in its sweep, one finds himself understanding the "why" of the presidential Vietnam decisions. It is fair and legitimate to debate the right-or-wrong of the decisions, but it is hard to believe any rational man reading the President's account would have, at the time, chosen a different direction had he been the chief executive.

I sat in on the crucial meetings, for example, of July 21–27, 1965 in which the anchor decision was made to dispatch large numbers of troops to Vietnam. Throughout the discussions which went at a grinding pace for long hours each day, the President asked the hardest questions, was the cruelest skeptic and searched out with more diligence all the crannies of each military statement.

When it was all done, when all the exhausting, deadly serious talk was finished, it was plain to everyone around the table that no American President could steer any other course except the solemn one President Johnson had commanded to be taken. It must be noted, not without some further irony, that no aide in the White House nor any relevant official in the government (excepting George Ball) thought the decision was wrong, at the time it was made.

What these chapters make so clear to Americans who will read them is the decision-making torment of Vietnam, the honorable men involved, and the eye-wash incredibility of much of what has been written about what the President "thought" and why he did what he did.

For those who might relish a recriminatory rebuttal by the President in which he scalds the hide off his critics, there is disappointment in store. Indeed, the President treats his classical foes—Gene McCarthy and Sen. Fulbright—and various and * * * general mishmash of opposition with cool dispassion. The legendary Johnson self-discipline is still muscular and intact.

My regret is that there is not enough present of the Johnson humor, robust, pungent, embracing, which, in between streaks of laughter, sent forth stout reminders of presidential instructions and desires.

There is in a chapter like Bite the Bullet, the Run for the Tax Surcharge, a fascinating insight into the arcane art of getting congressmen to debate a tax hike one year before an election and to vote for the tax in an election year. A tax measure and all its companion gargoyles are as welcome in a parliamentary chamber as a fresh outbreak of bubonic plague.

While it would be difficult to mark this chapter with the suspense of a Hitchcockian flick, there is readily visible that special brand of LBJ mystique which only he could apply to sometimes refractory, sometimes fretful, sometimes puzzled congressmen who find themselves voting for measures they have never supported before.

Any man who aspires to leadership in the town council, in the statehouse, or wherever, is ordered to read this chapter for Lesson One in professional skill and poise.

"The Vantage Point" is also a look at the man, whose virtures and faults dance through a turning prism, a complex, towering, endlessly contradictory, sentimental, immensely instinctive, caring man whom former Cabinet officer John Gardner described as "one of the most intelligent men I have ever known."

No man is fit to govern large societies unless he is willing to confront the most abrasive kind of decision without looking over his shoulder at the election calendar or his political critics. In all matters of prime concern to the nation, I found President Johnson, as this book will confirm, much as Churchill regarded the early 20th Century British first minister, Arthur James Balfour—a man, said Churchill, whom nothing "could overcome his central will or rupture his sense of duty."

That comes through in the book, comes through with mounting fascination.

There is also here a curious and ofttimes misty veil of fateful mischief, the intrusion of timing and luck, baggage which a leader must carry with him and without which all great enterprises are disfigured. Lyndon Johnson was the first of four Presidents to preside over the nation when events in Vietnam collided with such vehemence that he was the only one of the four Presidents who had to confront the grisly choice of "either get in with more in Vietnam or get out now." The question could neither be ignored nor casually handled.

From the first decision to give aid to Indochina in April 1950, to the summer, 1965 decisions, the hoops of commitments bound the U.S. tighter and tighter. Every President, as the record so clearly shows, found it a fact of life to regard Southeast Asia as essential to the security of the free world. Once let Southeast Asia fall to Communist domination went the prevailing official opinion, and the unravelling of that part of the world insofar as it concerned our own security would begin.

This view was staunchly held by every American administration since 1950. The holiness of this doctrine was the loom over which stretched our decision to hold on in South Vietnam. Against the possibility of an Asian quagmire had to be measured the abandonment of a keystone policy.

How could this be explained? Of course, there was risk in going in further in Vietnam, but what of the larger and even more crippling risk of total U.S. incredibility in Asia? How do we justify all that was said and done, not by one President, but by three and, counting Johnson, four Presidents, if we suddenly shifted gears and left the South Vietnamese alone to fend for themselves?

Moreover, could an American President

have withstood the fury of criticism beating in on him the day that Southeast Asia was indeed Communist encircled? Could President Kennedy have fled from Cuba or Berlin?

No matter if interment of democratic government in Vietnam was either good or bad; no matter, for the critics would have justly argued that we retreated when we didn't have to. What would have happened if there were thousands of Vietnamese massacred by a vengeful Ho Chi Minh (that he would be capable of this is aptly proved by the murders he committed in his own domain)?

Is it possible for an Administration in the face of this calumny, this bitter indictment, this careless neglect of a word firmly given, of a pledge solemnly offered, is it possible for such an Administration to find afterward any promise or purpose it pursues worthy of belief?

Every public man knows he cannot take refuge in what might have been. He had to stand or fall on what happened. President Kennedy's bleak assessment of the Bay of Pigs—"Success has a thousand fathers, but failure is an orphan"—is a very true accounting.

It is quite possible that the loudest of the critics today would be the very ones who would have insisted on the dismantling of the Johnson Administration for its lack of sensitivity in protecting the people of South Vietnam.

Every President makes key, vital decisions without knowing all the facts he should know to make the decision. But events, crises and danger do not wait for all the facts to fit. It is the unruly nature of the Presidency to force action before all the searchings are complete.

And so the President acts. When the daggers are at your belly, hindsight, that precious, protean luxury, is nowhere to be found. All that is available is a certain amount of humility, some instinct and judgment based on facts and duty, and finally that imprecise, farcial altering of logic and reason, that fickle, unpredictable miscreant we call Luck.

But even now we forget, we callously forget, it was President Johnson who got the peace talks going, who stopped the bombing of the North, slowed the war down, and put into motion the essential actions of Vietnamization, which were the first considered movements toward U.S. disengagement and withdrawal.

It was also LBJ's lot to be the steward of the land when for the first time in history of the Republic there took place a social insurrection whose portents were not foreseen by anybody but which exploded the social mores and political moral sense of the nation. The universities and the dark streets came alive in fire and fury and tangled the national conscience. From the conflict between the emerging generation and the aging one, and from the smoke of burning neighborhoods sprung the unweeded garden, rank and gross, whose seeds were latent God knows how long.

There is further peculiar irony in the twist of events that made President Johnson the focus of these luckless events. In all the wide-ranging reports of the various task forces, so populated by college professors, there was no hint of this new dimension of youthful disaffection for the society as they found it. Moreover, President Johnson in his zest to bring the finest brains into the government was given to an over-abundant pride in young people. He created the White House Fellows program, constructed the Presidential Scholars project from the high schools of the land and; counted among his highest achievements his triumphant fight to bring a college education to the poorest and the most disadvantaged youth in the land, black and white; exulted in the reach for excellence which he perceived to be the new goal of children and youth becoming adults.

History is a pitiless arbiter and it will judge the Johnson presidency with the same stern standards it applies to any great captain of a country in the middle of avalanching change. On one essential fact I think most thoughtful people would concur: History's judgment has not yet been fitted into place. The souring influence of the immediacy of the moment has, hesitantly, blurred the most impressive catalogue of social legislation since FDR by a President who cared, really cared in his gut and in his mind about the black, the sick, the aged, the handicapped, the unhoused and the unremembered, the powerless and the helpless. But it is there. It is the kind of legacy history remembers when contemporaries forget. It is in this book, and whoever now chooses to look deeply at the Johnson presidency must begin here if he wants to spring from the base rostrum.

A NATIONAL NETWORK OF POLLUTION-FREE ENERGY SOURCES

Mr. GRAVEL. Mr. President, a research proposal entitled "A National Network of Pollution-Free Energy Sources" was submitted in April 1971 to the National Science Foundation.

The proposal, which was prepared under the leadership of Engineering Prof. William E. Heronemus at the University of Massachusetts in Amherst, includes 15 appendices or chapters. I intend to place many of them in the RECORD as soon as possible. The appendix titles are as follows:

APPENDICES

Appendix 1.—Organization and Management of the Project.

Appendix 2.—Utilization of Ocean Thermal Gradients as a Pollution-Free Natural Energy Source.

Appendix 3.—Utilization of Ocean Current Momentum as a Pollution-Free Energy Source.

Appendix 4.—Extraction of Pollution-Free Energy from Fast Flowing Tidal Rivers.

Appendix 5.—Utilization of Deep Ocean Cold Water as a Low Pollution Heat Sink for Nuclear Fission Central Plants.

Appendix 6.—Extraction of Pollution-Free Energy from the Winds.

Appendix 7.—Collection and Transmission of Power from a Very Large Number of Relatively Small Generating Stations on Land or in the Sea.

Appendix 8.—Utilization of Belt Electrostatic Generators and Other Terminal Devices in a High Voltage Direct Current Transmission Network.

Appendix 9.—Anchor and Mooring Systems Suitable for Very High Pull Loads in Deep Water Sites.

Appendix 10.—The Generation of Hydrogen Fuel Utilizing Solar Energy.

Appendix 11.—Determination of the Optimal System of Power Generation: Analysis of Economic and Social Costs of Alternative Methods of Energy Generation.

Appendix 12.—An Overview of Phase One and a Preview to Phase Two.

Appendix 13.—Personnel Resources: Applicable Experience.

Appendix 14.—Resources; Facilities and Equipment.

Appendix 15.—Detailed Work Statement and Budget.

RESEARCH BUDGET

The amount of money requested for phase I of the entire research proposal is extremely modest:

First year: $749,572.

Second year: $878,714.

Third year: $887,387.

Phase I total: $2,515,673.

So far, Professor Heronemus has received no indication from the National Science Foundation about the disposition toward this proposal. Meanwhile, parts of it may be under consideration for funding also at the Interior and Commerce Departments.

One place or another, it ought to receive full funding in President Nixon's new budget, now in preparation under Budget Director George P. Shultz at the White House.

A BREATHTAKING CONCEPT

For the last 20 years, nuclear electricity has grabbed about 85 percent of the Federal research dollars for energy. In return for about $3 billion tax, we are now getting a very dangerous way to boil water, 9,000 megawatts of nuclear electricity, and a load of the ultimate pollutant—radioactivity. This is hardly inspirational progress.

Great progress would consist of learning to tap the inexhaustible, and nonpolluting natural sources of energy at reasonable cost. I am referring in particular to solar energy, the clean fusion cycles, and to geothermal hot water.

"A National Network of Pollution-Free Energy Sources" is a breathtaking concept. If there is any sincerity in government or business behind the concern over the alleged "energy crisis," projects like this will be funded fully without delay.

I ask unanimous consent that the proposal be printed in the RECORD.

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

A RESEARCH PROPOSAL SUBMITTED TO THE NATIONAL SCIENCE FOUNDATION TO INVESTIGATE A NATIONAL NETWORK OF POLLUTION-FREE ENERGY SOURCES

(By a Multidisciplinary Group of Faculty and Students in the Engineering, Business Administration, and Physics Departments—April 1971, University of Massachusetts at Amherst)

(NOTE.—Figures referred to are not printed in the RECORD.)

BACKGROUND

A major problem confronting the United States is how to meet the growing demand for energy without further serious damage to the environment. Nuclear energy appears to provide a somewhat better answer to this problem for the near future than fossil fuel energy, provided that some fairly expensive restrictions are imposed on the design and location of nuclear power plants. Furthermore, domestic sources of oil and gas are more limited than those for uranium. The result is that most of the tremendous construction of electrical generating capacity anticipated during the next 15 years will be based on nuclear energy.

But what will be the outlook in 1985? As the result of increasing consumption of fossil fuels, domestic sources of oil and gas, probably including the Alaskan source at Prudhoe Bay, will be further depleted in spite of continued imports. The demands of nuclear fission plants for cooling water may have overtaxed the capacity of our rivers and lakes. The consumption of U235 will have risen to such a level that uranium supply may pose a problem. Breeder reactors to permit the use of U238 may by then have become both a possibility and a risky necessity. Practical use of fusion energy may still not be within reach.

Meanwhile, this country and, in particular, the East Coast will have suffered on several counts. In the immediate future, we can expect the "energy gap" to result in a series of crises as peak loads are not met. The East Coast will dependent on foreign sources for most of its oil and gas. The environment will continue to deteriorate in spite of ever-increasing severity of controls. Air pollution, oil spills, thermal pollution are likely to be worse, not better in 1985.

In the face of the continuing dilemma: power versus pollution, a third alternative must be sought. It may be found in the many and varied non-pollution energy sources known to exist in the United States or its off-shore waters. In the aggregate, these energy sources, tied together in a national network, could satisfy a significant fraction of our total power needs in the year 2000. That favorable outcome could result from a serious research and development effort started now and a design and construction effort started in 1985.

QUANTITATIVE STATEMENT OF THE PROBLEM

In the year 1961 the *per capita* use of energy in the United States was 180×10^6 Btu as compared with 130×10^6 Btu in Canada, 120×10^6 Btu in the United Kingdom, and 30×10^6 Btu in Japan. Our energy came largely as a mixture of fuels: coal, oil, natural gas and uranium, with only three percent coming from hydroelectric sources. With time, the mixture of fuels has changed and the trend toward electricity utilization has continued.

Table 1 presents both extreme and balanced demands for fuels and electricity for the year 2000 based on projections made by Resources For the Future, Inc. and by the Atomic Energy Commission/Federal Power Commission. These projections are compared with past actual usage figures.

Essentially current technology is assumed for the year 2000 except for the breeder reactor. Even the austere RFF projection (last column) assumes large increases in the use of coal, oil, and natural gas, as well as of nuclear fuel. There is serious question as to whether all these assumed increases can be accomplished, or, if so, at what cost in increased pollution.

TABLE 1.—U.S. FUEL AND ENERGY USE AND PROJECTED USE

Fuel	Unit	Actual use		Projections for the year 2000		
		1959	1969	"All-Electric" model*	"All-Fuel" model†	The R.F.F. direct use fuel and electric model‡
Coal	10^9 tons	0.38	0.52	If coal alone were used: 9.7	If coal alone were used: 7	0.7
Oil	10^9 bbls	3.45	5.04	If oil alone were used: 42.2	If oil alone were used: 21.9	10.8
Gas	10^{12} std. c.f.	11.58	20.35	If gas alone were used: 244	If gas alone were used: 96	32.7
Uranium	10^3 tons		Very small	If uranium alone were used: 4.3	If uranium alone were used: 4.3	.55

*In the "All-Electric" model, 32×10^{12} kw.-hr. of electricity will be generated and 17.12×10^{15} B.t.u. of direct fuel use energy will also be consumed, per year, except in the case where uranium is the fuel. In that case all energy would be delivered to all consumers as electricity.

†In the "All-Fuel" model, 4.71×10^{12} kw.-hr. of electricity will be generated and 98.14×10^{15} B.t.u. of direct fuel use energy will also be consumed, per year, except in the case where uranium is the fuel. In that case, all energy would be delivered to all consumers as electricity.

‡The Resources for the Future, Inc. (R.F.F.) projection calls for 4 fuels to be used, each in the quantity shown. 12.72×10^{12} kw.-hr. of electricity will be generated. 93.75×10^{15} B.t.u. of direct fuel use energy will also be consumed per year.

The table does not show the distribution of electricity and direct-use fuels and the changes required therein to meet the projections. The existing electrical distribution philosophy: "shortest distance from generator to customer" has led to colocation of population centers and pollution generators. This system must be overlaid with a vast new network about ten times as large. Thus, the 1970–2000 period involves us with the choice as to whether we continue to colocate people and power-related pollution, or uncouple the two.

SOLAR ENERGY

But there is a third alternative: members of the UMass team are convinced that there is a reasonable probability of satisfying an important fraction of the U.S. demand for electricity and fuel in the year 2000 without pollution. This technological turnabout could be accomplished by utilizing solar energy stored in the oceans and the winds to generate electricity and direct solar radiation to dissociate water into hydrogen fuel. These new pollution-free sources are located geographically along parts of the East and West Coasts, along the Alabama-Florida Gulf Coast, in the Great Plains, and in the Southwest.

The fact that some of these locations are removed from population and industrial centers and from major electrical transmission networks, need not cause concern for two reasons. Available technology with reasonable extensions should permit economical transmission to existing networks or population centers. On the other hand, the availability of ample power and fuel in environmentally attractive open country should encourage the migration of industry and population away from our increasingly polluted metropolitan areas.

But these desirable developments and the general turnabout suggested earlier will occur only as the result of a series of actions and accomplishments. Pollution-free electrical power of the order of 3×10^5 Mw must be generated to satisfy a major part of the demand anticipated in the year 2000. Pollution-free sources of energy flux of many times this amount must be tapped on the assumption that only a small fraction of the potentially available energy will actually be harnessed. The technology of power generation and transmission based on these sources must be developed. Power plants and distribution systems must be designed and built. Hydrogen fuel must be generated in enormous quantities to replace natural gas as our reserves are depleted and in addition, substitute for an important fraction of the projected growth in fossil fuels. In general, a gradual transition must be made from our current pollution-rich technology to a new pollution-free technology.

This conversion in technology would bring with it a series of political, economic, and social problems. There would be problems of capitalization, management, and land use, and of ameliorating widespread economic hardship caused by the transition. There would be the question of public versus private enterprise. There would be new bookkeeping recognizing perhaps larger capital and operating costs, but no pollution costs and no fuel costs. This latter feature would have an important bearing on geopolitics. These political, social and economic problems would have to be analyzed even as the new technology was being developed.

POLLUTION-FREE ENERGY SOURCES

A preliminary exploration has brought to light a great number of pollution-free energy sources. These sources vary greatly as to their nature, their geographical distribution, their potential for making a significant contribution, and the technology needed to harness the energy. In a series of appendices, scientific and technical justification is presented for investigating several of these pollution-free energy sources.

OCEAN THERMAL GRADIENTS

The concept of an *ocean thermal gradient heat engine* has been with us for decades, was first demonstrated in 1929, and still has enthusiastic supporters. Thermal gradients in the Gulf Stream offer considerable promise, especially with a Mass concept for capitalizing on the velocity of the Gulf Stream to improve plant design and performance. (Appendix 2) If it can be extracted economically, this source alone would supply the entire U.S. requirement for electricity in the year 2000.

TETHERED KINETIC ENERGY, OCEAN

The Florida Current and Gulf Stream offer a particularly promising locale for *tethered kinetic energy machines*, machines which will extract momentum from the current. Within a core of water 10 miles wide by 450 feet deep by several hundred miles long, there appear to be velocities strong enough to turn either rotor type machines or free-stream propeller-type machines. In Appendix 3, conceptual designs are worked out for several of these machines and used for detailed calculations. These calculations show that a 240-foot diameter, 4-disc, propeller-type machine operating in a free-stream velocity of 7 feet per second might be expected to generate 24 megawatts of electrical power. Twelve of these machines might be submerged abreast across the core of the stream, and this assembly could be repeated once a mile along the stream for some 350 miles. Tapping this 100,000 megawatts of pollution-free power may not be economically feasible, but it certainly deserves serious investigation.

TIDAL RIVER KINETIC ENERGY

Tidal river kinetic energy machines have been used in the past in Europe and in this country. Today, France gets 340 megawatts of electrical power from the Rance River using a combination of potential and kinetic energy and requiring the damming of an estuary. A number of sizeable tidal rivers in New Hampshire and Maine could contribute a significant amount of power without damming or embayment, and at no appreciable cost to navigation, marine ecology, or recreation. Detailed calculations in Appendix 4 show that from two of five promising sites on the Piscataqua River, an annual average of 39 megawatts might be extracted.

NUCLEAR FISSION

As has been pointed out earlier, planned *nuclear fission power plants* will tax the cooling capacity of our rivers and lakes. In the process, these plants will inflict serious, if unknown, ecological damage on our fresh water environment. To the extent that these plants could be built into submarine hulls and moored submerged in shallow off-shore waters, especially off New England and the Middle Atlantic coast, thermal pollution problems could be eliminated. In Appendix 5, ocean thermal considerations, submarine engineering design consideration, cooling features, earthquake resistance, and servicing convenience, taken together, are shown to be quite favorable to such an installation.

WIND POWER

During the latter part of the last century, windmills in northern Europe extracted

power from the winds at an average level equivalent to at least 100 megawatts. More recently, in 1945, fatigue failure in the windmill blade shut down a 1.2 megawatt generator that had been feeding into a power system in Vermont. The concept faded with post-WWII retrenchment. More recently, the World Meteorological Organization has concluded that wind power available for turbines at favorable sites throughout the World totals 20 million megawatts. Great Britain still hopes to build individual *aerogenerators* of 6 megawatt capacity. In the United States, regions of moderately high average wind velocities are found along portions of both coasts but especially over a large area of the Great Plains. In Appendix 6, the economic and engineering feasibility of a large number of 2 to 6 megawatt aerogenerators is considered for the Great Plains area, and recommendations are made for a detailed investigation of tower and blade design and a cost comparison with other means of generation.

TRANSMISSION NETS

The ocean-based thermal gradient engines and kinetic energy machines, discussed above, will each require a combination mooring line and electrical tether. Its design presents a complex of mechanical, hydrodynamic, and electrical engineering problems. Power from the multiple sources must be combined in a compatible way and transmitted to shore. An even more complex (but perhaps not so difficult) network will be needed to tie together the multiplicity of disparate sources on land into regional networks. In Appendix 7, these problems are discussed and the geographical distribution of all the pollution-free sources discussed above, is summarized. The conclusion is that many of the new generating complexes could feed into existing regional networks but that certain other *transmission nets* would have to be added. For both underwater and land use, emphasis will be given to coaxial cable and high voltage direct current for transmission.

ELECTROSTATIC GENERATORS

Most of the pollution-free energy sources discussed above are variable and in some cases, unpredictable in strength. Furthermore, there are a very large number of relatively small sources. Combining these into a conventional three-phase A.C. network would pose very serious problems of controlling frequency, phase, and voltage. These network problems would be largely eliminated if D.C. transmission and current-limited, rather than voltage-limited generators were employed. In Appendix 8, a potentially attractive alternate to conventional techniques is described. Belt *electrostatic generators* have been employed since the turn of the century, but always for the development of voltage rather than the generation of power. And belt electrostatic generators are current limited devices which convert from a mechanical shaft rotation to high voltage D.C. power with a single moving element, the eletrostatically-charged belt. Surprising as it may seem, these generators have the potential for significant power generation at reasonable efficiencies. These possibilities and a number of design questions are discussed in the appendix. It is of particular interest that the use of high voltage D.C. in coaxial transmission lines is especially attractive in terms of low transmission line losses.

Mooring mammoth generating plants in the world's strongest oceanic current poses a new level of tethering problem. But the availability of new materials technology and submersible work vehicles allows this problem to be tackled with some confidence. The floating or submerged hulls and the deep water conduits for off-shore generating plants create problems of the sort commonly encountered in ship and submarine design. In Appendix 9, the bearing of these technologies on design problems encountered in this work, is discussed and tasks are proposed for developing and evaluating concepts for mooring systems, hull configurations, and cold water conduits.

HYDROGEN VIA SUN POWER

Natural gas is the most attractive fuel today from a cost and pollution-free point of view, but U.S. natural gas reserves will not last into year 2000 at the predicted expenditure rate. Hydrogen is an excellent substitute for natural gas as a fuel. It can be combined with oxygen to produce electricity in fuel cells or to operate clean internal or external combustion engines. In Appendix 10 a concept is proposed for generation of molecular hydrogen by dissociation of water using solar energy. A novel concept for a low-cost optical system is proposed for study.

A PLANNING METHODOLOGY

To compare various possible networks utilizing various combinations of non-polluting energy sources and to select therefrom an optimal system is an extremely complex problem involving technological and economic factors. When these systems are then compared with nuclear or fossil fuel-based systems, ecological and sociological factors are introduced. Therefore, a *planning methodology* is needed and should be developed with associated computer models. Appendix 11 lists socio-economic questions which must be answered with the aid of such methodology. The development of mathematical-computer planning models in the early phases of the research effort will help to define data needed for decision-making at various stages and will provide a framework according to which such data can be stored and analyzed. The need for certain types of information generates major projects in data collection, storage, and analysis. The existence of a computer model will make these efforts much more orderly and easier to computerize.

QUANTITATIVE SIGNIFICANCE OF POLLUTION-FREE ENERGY SOURCES

In the preceding discussion of pollution-free energy sources and in supporting appendices, arguments are presented for making a serious study of the technical and economic feasibility of harnessing these sources. But, if such a study is worthwhile, why have these sources remained unattractive to the energy industry for the last forty years and why have national review boards considered them to be insignificant? Let us take these questions in order.

The bookkeeping of private enterprise calls for maximum return on capital investment. This consideration dictates large power plants for generation efficiency built in or near population centers for transmission efficiency. The natural result is large aggregates of fossil fuel or nuclear generation plants in metropolitan areas. The bookkeeping used does not take into account consideration the pollution costs which are to be paid by others or endured by the public. Nor does it consider the depletion of non-renewable resources, the increasing dependence on foreign sources for gas and oil, and the geopolitical crises growing out of this dependence.

Over the past seventeen years national review boards and individual authors have judged non-polluting energy sources to be contribution and uneconomic in any event. These conclusions, possibly influenced by the bookkeeping of private enterprise, are in flagrant contradiction with earlier studies, all references in the appendices.

But these energy sources are by no means insignificant. Conservative calculations based on solid data demonstrate that the entire energy requirement for the year 2000, both for electrical energy and direct fuel use, could be met by a limited group of non-polluting energy sources. Nor would this demand exhaust the resource. For each of the energy sources evaluated, considerable further growth would be possible and for the ocean thermal source, growth by orders of magnitude would be possible.

The level of utilization proposed for each source is determined, not by the limitation of the source, but by the objective of examining the technical and economic feasibility of providing from that source a reasonable fraction of the national need for electrical power or fuel energy in the year 2000. According to the austere RFF estimate (Table 1), at least 10^6 Mw of connected generating capacity would be needed. In consideration of this total estimated requirement, the appendices propose for further study conceptual systems which would provide the following amounts of power:

Appendix	Source	Power per element (megawatts)	Number of elements	Total power (megawatts)
2	Ocean thermal engines.	100	2×10^3	2×10^5
3	Ocean kinetic energy machines.	24	4×10^3	1×10^5
5	Ocean moored nuclear fission plants.	100	2×10^3	2×10^5
6	Aerogenerators	2	5×10^4	1×10^5

GEOTHERMAL ENERGY

These are not the only potential sources, however, of pollution-free power. The extensive geothermal sources studied by the Department of the Interior and the development of low-head hydroelectric generation both appear to provide the opportunity for generating significant amounts of power.

GAS REQUIREMENTS

Again referring to the RFF projection of Table 1, the natural gas requirement for the year 2000 is estimated to be 32.7×10^{12} standard cubic feet. According to Appendix 10, the hydrogen gas equivalent of 100×10^{12} standard cubic feet would require 2000 sq. mi. of lens area or some 16,000 sq. mil. of total array area—formidable but quite feasible. It is proposed that a conceptual system one-tenth this large, i.e. one covering a total ground area of 1600 sq. miles be examined.

So one would be considering pollution-free generation of electrical power and hydrogen fuel at levels that are definitely significant in terms of total national needs. Furthermore it is strongly suspected that new bookkeeping which includes pollution costs, fossil fuel depletion costs, and geopolitical costs, will present the proposed new generating plant in a surprisingly favorable light.

PROPOSAL

Briefly stated, the University of Massachusetts proposes to investigate the feasibility of utilizing this variety of non-polluting sources of energy and gaseous fuel and of tying these sources together in nationwide networks of appropriate design. In three phases, totaling seven years, the University proposes:

Phase 1. To analyze and precisely define the problem of generating energy and gaeous fuel from non-polluting sources and to examine alternate solutions for feasibility;

Phase 2. To continue systems analysis and design and to conduct laboratory and field investigations in order to answer major questions raised during the first phase; and

Phase 3. To design, construct, and test developmental hardware representing components and perhaps complete sub-systems of the most promising approaches, while continuing supporting laboratory and field work.

This major research and development effort, managed by a national agency with the University providing its initial research team would be carried out by the following personnel:

A number of UMass professors (30), graduate research assistants and undergraduate

participants from eight departments in the Schools of Engineering, Natural Sciences and Mathematics, and Business Administration;

One or more research groups in other universities called in because of special competence and regional interest;

Several industrial consultants having specialized knowledge and the potential capability for contributing to the project in later production design phases.

In Appendix 1, Organization and Management of the Project, there is further discussion of project scope and method, personnel resources, project funding policies, work schedules, and key events in Phase One.

The principal contribution to be made by the University of Massachusetts to this project is the directed and concerted application of the talents of many engineering, physics, and business administration faculty and their graduate research assistants. In Appendix 13, the talent available and how it might be applied, are described. Facilities and equipment required for the project are discussed in Appendix 14.

The detailed work statement and budget proposed in Appendix 15 are based on the following considerations:

The total effort must be so divided into phases that the results reported at the end of each phase can provide adequate guidance regarding the desirability and nature of the next phase;

Succeeding phases must provide opportunities to expand participation in the effort or to transfer management of the project;

During each phase as many tasks as possible should be conducted simultaneously, with appropriate project-level planning and coordination, to shorten the time required to complete the phase.

On this basis, during the first phase at least five major research tasks will be carried along in parallel, each with a sizeable task force, but with close coordination and guidance at the project level. The budget for this first phase may be summarized as follows:

Phase one

Funds requested from sponsor:	
First year	$749,572
Second year	878,714
Third year	887,387
Phase One Total	2,515,673

Phase One Total Effort: 1,878 Man Months.

The preceding discussion refers repeatedly to the appendices. This has been necessary because its quantitative statements and its conclusions rest for their authority directly upon the appendices where designs are presented, calculations are made, and references to the literature are cited. Only by turning to these appendices will the reader come to appreciate the scholarship, attention to detail, and concern for quantitative results that has motivated the preparation of this proposal.

PROPOSED AS A MULTIDISCIPLINARY PROJECT IN THE NSF PROGRAM OF RESEARCH APPLIED TO NATIONAL NEEDS

A New Request to NSF. Proposed Starting Date: 1 February 1972.

Amount Requested: $2,515,673, for Phase One.

Proposed Duration: 36 months for Phase One, 84 months for three phases.

Endorsements

Wm. E. Heronemus, Principal Investigator.

M. P. White, Head, Dept. of Civil Engineering.

J. R. Dixon, Head, Dept. of Mechanical and Aerospace Engineering.

G. Dale Sheckels, Chairman, Dept. of Electrical Engineering.

L. R. Short, Acting Head, Dept. of Chemical Engineering.

R. W. Trueswell, Head, Dept. of Industrial Engineering.

L. C. VanAtta, Assoc. Dean of Engineering for Research.

K. G. Picha, Dean of the School of Engineering.

R. S. Porter, Chairman of the Polymer Science and Engineering Program.

L. Cook, Acting Head of the Dept. of Physics and Astronomy.

J. M. Allen, Acting Dean of the Faculty of Natural Sciences and Mathematics.

J. B. Ludtke, Chairman, Dept. of General Business and Finance.

G. B. Simmons, Chairman, Dept. of Management.

W. R. Smith, Dean, School of Business Administration.

P. W. Camerino, Coordinator of Research.

W. H. Maus, Controller.

THE CO-INVESTIGATORS IN THE RESEARCH PROJECT, "A NATIONAL NETWORK OF POLLUTION FREE ENERGY SOURCES"

C. R. Adams, Associate Professor, Civil Engineering Department.

L. L. Ambs, Assistant Professor, Mechanical Engineering Department.

M. W. Belovicz, Assistant Professor, General Business & Finance Department.

S. M. Bemben, Associate Professor, Civil Engineering Department.

C. E. Carver, Jr., Professor, Civil Engineering Department.

A. Chajes, Associate Professor, Civil Engineering Department.

G. M. Choate, Assistant Professor, General Business & Finance Department.

F. J. Dzialo, Associate Professor, Civil Engineering Department.

F. H. Edwards, Associate Professor, Electrical Engineering Department.

N. C. Ford, Associate Professor, Physics Department.

R. Giglio, Associate Professor, Industrial Engineering Department.

R. M. Glorioso, Assistant Professor, Electrical Engineering Department.

W. Goss, Assistant Professor, Mechanical Engineering Department.

W. E. Heronemus, Professor, Civil Engineering Department.

E. E. Kaczka, Associate Professor, General Business & Finance Department.

F. C. Kaminsky, Associate Professor, Industrial Engineering Department.

J. W. Kane, Assistant Professor, Physics Department.

P. A. Mangarella, Assistant Professor, Civil Engineering Department.

J. G. McGowan, Assistant Professor, Mechanical Engineering Department.

R. E. McIntosh, Associate Professor, Electrical Engineering Department.

H. J. Miser, Professor, Industrial Engineering Department.

E. C. Osgood, Professor, Civil Engineering Department.

K. G. Picha, Dean, School of Engineering.

R. H. Plattner, Assistant Professor, General Business & Finance Department.

R. F. Rikkers, Associate Professor, Industrial Engineering Department.

F. D. Stockton, Associate Professor, Civil Engineering Department.

C. A. E. Uhlig, Professor, Electrical Engineering Department, The Tuskegee Institute.

L. C. VanAtta, Associate Dean, School of Engineering.

M. P. White, Head, Civil Engineering Department.

M. S. Wortman, Professor, Management Department.

W. J. MacKnight, Associate Professor, Chemistry Department.

L. H. S. Roblee, Professor, Chemical Engineering Department.

THE COSTS OF ANOTHER DOCK STRIKE

Mr. GRIFFIN. Mr. President, I have spoken on numerous occasions about the devastating effects of strikes in the transportation industry and the need for Congress to enact reform legislation. S. 560, which I introduced on behalf of the administration, has been before Congress for nearly 2 years.

The current west coast dock dispute is a compelling example of the critical and far-reaching effects of even the threat of a strike in a vital transportation industry.

If this dispute is not settled by Christmas Eve, December 24, the union will be free once again to strike. We all hope that the parties will reach an agreement before the deadline. But even the threat of another strike is already having a serious adverse effect on farmers, consumers, and hungry people in other countries.

According to a letter which I received yesterday from Clarence D. Palmby, Assistant Secretary of Agriculture, the Commodity Credit Corporation, because of this strike threat, has already stopped purchasing processed foods for the feeding of hungry people abroad.

According to Mr. Palmby, the 1969 dock strike, which lasted 115 days, cost U.S. taxpayers over $1 million because of expenses incurred by the Commodity Credit Corporation.

I ask unanimous consent that my letter of December 3, 1971, to Assistant Secretary Palmby and his response of December 6, 1971, be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., December 3, 1971.

Mr. CLARENCE D. PALMBY,
Assistant Secretary for International Affairs and Commodity Programs, U.S. Department of Agriculture, Washington, D.C.

DEAR CLARENCE: Currently West Coast docks are operating under court order pursuant to the 80-day Taft-Hartley "cooling off" period. This 80-day period expires December 24, 1971.

As you know, legislation has been introduced by myself and others which would deal firmly with transportation strikes which affect the public interest. Unfortunately, it would appear unlikely, to say the least, that Congress will act on this permanent legislation in time to relieve farmers and consumers in the event the West Coast dock strike is not settled by December 24.

Naturally, we all hope that the parties will reach a voluntary agreement. But it is my understanding that commodity shipments are already backing up in the Midwest in anticipation of another strike. In view of the approaching deadline, can you tell me what action, if any, the Department is taking in connection with programming commodity shipments to the West Coast docks?

With warm personal regards, I am

Sincerely,

ROBERT P. GRIFFIN,
U.S. Senator.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., Dec. 6, 1971.

Hon. ROBERT P. GRIFFIN,
U.S. Senate,

DEAR SENATOR GRIFFIN: We are pleased to reply to your letter of December 3 concerning the programming of Commodity Credit Corporation commodity shipments to the west coast docks for export.

As you state in your letter, the west coast docks now are operating under the 80-day "cooling off" period provided by the Taft-Hartley Act. This 80-day period expires De-

cember 24. On October 12, 1971, west coast longshoreman labor leader, Harry Bridges wrote in his column in the union newspaper, The Dispatcher: "The program of the strike strategy committee calls for resumption of the strike after the 80-day period if necessary." Since that date we have had no word that the strike strategy committee has changed its plans nor have we had word that negotiations are progressing to the extent agreement will be reached by December 24.

During 1968–1969 the Taft-Hartley cooling off period was invoked at the east coast and gulf ports. Following the expiration of that 80-day period, work stoppages occurred for as long as another 115 days. As a result of that strike, cost to the government exceeded $1 million because CCC had to pay demurrage, rerouting, storage, and fumigation. Some losses were also incurred due to infestation and deterioration of commodities during the time they were held.

In responding to the question concerning the programming of commodity shipments to the west coast docks by CCC, it is necessary to distinguish between the shipment of CCC-owned commodities, such as grain, and processed foods which are purchased by CCC for the feeding of hungry people abroad. In the case of grain, CCC stocks have not been moving to the west coast in any volume for several months because free stocks of grain are more than adequate to meet export needs were it not for the strike. Processed foods, however, are handled differently. Most of them are purchased from the processor on a delivered port (f.a.s.) basis. The shipments are made by the suppliers. The purchase of processed commodities by CCC for delivery to the west coast was stopped after contracting for those quantities which could be delivered and loaded abord vessels prior to December 24. Substantial additional quantities would have been purchased and would now be purchased were it not for the pending strike.

We are confident the action we have taken in suspending procurement will meet with the approval of the agricultural community and others concerned with the problems imposed by the west coast dock situation. None of us desire to overload storage facilities at the docks, to stymie transportation leading to the docks, to permit spoiling of commodities, or to cause Commodity Credit Corporation to pay uncalled for charges.

We view the potential strike with great concern since this Administration full well realizes the importance of agricultural exports to our whole Nation, to the U.S. farmers, and to the successful operation of the Agricultural Act of 1970, which Congress passe only a year ago.

Sincerely,

CLARENCE D. PALMBY.

BIG CYPRESS NATIONAL RESERVE

Mr. HATFIELD. Mr. President, many hands have helped to save the Everglades through the years. The Senate has enacted several provisions in recent years, both in Department of Transportation appropriations bills and in public works authorization bills, to protect Everglades National Park.

Despite these actions, the problem of the Everglades water supply has persisted, chiefly because of the uncertain future of the Big Cypress Swamp, which adjoins the park on the north and provides more than half of the water for the Everglades National Park.

It was therefore highly encouraging to receive President Nixon's proposal to acquire the Big Cypress as a national reserve. Under this new concept, the land would be acquired by the Federal Government and managed for national public purposes by the State of Florida, which has a long history of good work in defense of the Everglades.

I look forward to sponsoring legislation to carry out the administration's proposal. The Subcommittee on Parks and Recreation, on which I serve, only last week held a field hearing in Florida on the Big Cypress question, and I am hopeful that we will be able to give the matter early consideration.

I ask unanimous consent to have printed in the RECORD the fact sheet issued by the White House, the statement by the President, and an editorial published in the New York Times of November 30, 1971.

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

FACT SHEET—PROPOSED FEDERAL ACQUISITION OF BIG CYPRESS SWAMP FOR A NATIONAL RESERVE

The Proposal: The President has today directed Secretary Morton to submit to the Congress legislation to create the Big Cypress National Reserve. This legislation, when enacted by the Congress will empower the Secretary of the Interior to acquire the requisite legal interest in the 547,000 acres which form the heart of the watershed.

This proposal is the culmination of a study of the South Florida ecosystem begun two years ago within the Department of the Interior. The State of Florida would manage the area under agreement with the Secretary of the Interior and at no cost to the Federal Government.

Location: The Big Cypress National Reserve is contiguous with the Northwestern portion of Everglades National Park and its center is about 70 miles West of Miami.

Size of Area: The proposed acquisition of Big Cypress Swamp encompasses an area of 854 square miles (547,000 acres)—an area over ¾ as large as the entire state of Rhode Island and over 12 times the size of the District of Columbia. By way of comparison, the proposed acquisition is for an area slightly larger than the Great Smokeys National Park in North Carolina.

Acquisition of Big Cypress represents the largest unit added to the park system during this Administration.

Background: South Florida is a unique ecosystem which is the only natural habitat in the continental United States for a wide variety of subtropical flora and fauna. The extraordinary growth and development of this region posed an immediate threat to this wild and untamed region. In order to safeguard the wildlife of the area from the demands for increasing land use of an expanding population. Congress in 1934 authorized the Everglades National Park. This 2,200 square mile tract has provided millions of Americans with an unparalleled opportunity to observe first hand a pristine subtropical wilderness, as well as assuring a refuge which guarantees the existence of many endangered species. Part of the original proposal for the Everglades National Park was the acquisition of the Big Cypress Swamp area, which contributes 56% of the surface water vital to the fragile ecology of the Everglades. The acquisition of the Big Cypress Swamp area, which borders the Everglades to the north, thus rectifies the oversight of the past and guarantees the future integrity of this irreplaceable national treasure.

Big Cypress, as a national fresh water reserve, extends the concept of protecting critical areas for public benefit previously utilized in the Ice Age National Scientific Reserve in Wisconsin. Through acquisition of Big Cypress, the watershed critical to the supply of Everglades National Park and the domestic supplies for Florida's southwest coast cities would be similarly protected. The loss of fresh water in Big Cypress or any impairment in its quality or change in its flow patterns would have serious repercussions in the estuaries, which are the nurseries for the famous Tortugas Pink Shrimp, an important economic food crop yielding income for many of the Gulf fishermen. The acquisition of 547,000 acres of the most critical watershed lands in the heart of the Big Cypress is necessary for preservation of Everglades National Park.

In addition to these ecological and conservation benefits, the proposed federal acquisition would guarantee the ancestral home of the American Indian tribes who have inhabited the region for thousands of years. About one hundred and fifty of these Indians (mainly Miccosukee and Seminoles, are today scattered in small family-size communities within sight of the Tamiami Trail (U.S. 41). In this area, these Indians are presently without land of their own. The National Reserve at Big Cypress will assure that the Indians will be able to maintain their traditional ways of life without fear that they will be driven from the land or that the hunting and fishing which has been their prime means of sustenance will be terminated.

Present Ownership of Tract: The area proposed for acquisition presently has about 21,000 ownership interests. Only 12 tracts are larger than 1,000 acres. Most of the acreage is in less than 2-acre parcels, and nearly all is presently undeveloped.

STATEMENT BY THE PRESIDENT

BIG CYPRESS NATIONAL FRESH WATER RESERVE

About 35 miles west of Miami lies the Big Cypress Swamp, a unique ecological preserve of paramount importance to the future of Southern Florida. In order to protect Big Cypress Swamp from private development that would destroy it, and to insure its survival for future generations, it is now essential for the Federal Government to acquire this unique and vital Watershed. I will therefore propose legislation to acquire the requisite legal interest in 547,000 acres of the swamp.

The end of Big Cypress Swamp would not only severely cut back South Florida's water supply, but would also mean the destruction of the Everglades National Park—and with it the loss of a treasure-trove of natural resources, teeming with flowering plants, rare birds and other forms of uncommon endangered wildlife. The swamp's huge stands of cypress, wet prairies, and slightly higher islands of pine trees are together an essential link in the ecology of both Everglades National Park and the rich Floridan estuaries of the Gulf of Mexico. Animals and birds move between the park and the swamp without knowledge of the artificial borders drawn by man.

This land acquisition will mark the fourth time this administration has taken steps to protect the unique natural resources of South Florida. First was the halting of the commercial jetport proposed in Big Cypress, which would have wrought irretrievable damage to the area. The pledge to locate the jetport elsewhere has given us time to examine again alternative plans for the survival of the swamp. Second, through the 1970 Rivers and Harbors Act, the Eastern portion of Everglades National Park has, for the first time, been assured an adequate supply of water. Third, by legal action, the administration has halted the threat of destruction from thermal pollution to Biscayne National Monument, one of the newest units of the National Park System, thus assuring the preservation of an important ecosystem next door to Miami.

My decision today is intended to secure the future not only of the Big Cypress, but also of an adequate water supply for the

western part of Everglades National Park. This action will also assure an adequate water supply to the growing communities on Florida's west coast, because the swamp is a natural water storage area.

To guarantee the continued availability of Big Cypress to the people, I propose that, upon acquisition of those private lands whose development would destroy the watershed, the Secretary of the Interior be authorized to enter into an agreement with the State of Florida for the management of Big Cypress. The State is in the process of acquiring other public areas nearby and is the logical agency to provide single unified management. The Nation, as a whole, will benefit through the protection of Everglades National Park and through the addition of another major wildlife haven and recreation area.

[From the New York Times, Nov. 30, 1971]

ENVIRONMENT IS GOOD POLITICS

When political rivals compete to perform a sound service, a grateful public can afford to give ample credit all around. The country finds itself in this position with respect to the simultaneous efforts of the Nixon Administration and a group of Democratic Senators to save Florida's Big Cypress Swamp "from private development that would destroy it," as the President said. Destruction of the swamp, as it happens, would also mean destruction of the Everglades National Park, which depends on the Big Cypress watershed, not to mention the loss of much of South Florida's water supply.

What the Administration proposes is to buy the 547,000 acres of the swamp from the 21,000 individuals, real estate companies and businesses that now own it. For some $156 million the Federal Government would acquire this entire area, designating it as the Big Cypress National Fresh Water Reserve but leaving its management to the State of Florida. Technically a recreation area, it would be open to hunters, fishermen and campers—as some of it is now—but would be permanently closed to any kind of construction, which has been the major threat.

The Senate Interior Committee, headed by Senator Jackson of Washington, is considering a bill introduced by Senator Chiles of Florida which is substantially the same as the Administration's proposal. Such is political life that both the White House and the Senators supporting Mr. Chiles are angling for the major share of kudos in the matter—and the claims of both sides are valid.

Senator Jackson's interest grows out of hearings he held in 1969 concerning the jetport that was to have been built in the Big Cypress area. The Administration's goes back to Walter Hickel's visit to the Everglades as one of the first acts of his tenure as Secretary of the Interior as well as to Mr. Nixon's ultimate action in forcing abandonment of the jetport.

More important than this little tug-of-war itself is the fact that environmental progress has so clearly become a political asset. The White House fortunately realizes that even in this year of financial stringency a long-term investment in the envirnment can be at once a national need, a wise economy and a popular move.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

EXECUTIVE SESSION—NOMINATION OF WILLIAM H. REHNQUIST 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. William H. Rehnquist, to be an Associate Justice of the Supreme Court.

Mr. BYRD of West Virginia. 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.

PRIVILEGE OF THE FLOOR

Mr. BAYH. 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. BAYH. I ask unanimous consent that during the debate on the Rehnquist nomination, Mr. P. J. Mode and Mr. Michael Helfer of my staff be permitted access to the Senate floor at all times.

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

Mr. HRUSKA. Mr. President, the Senator from Nebraska was unable to hear the semiaudible voice of the Senator from Indiana. Would he favor the Senator from Nebraska with an idea of what his request was?

Mr. BAYH. Mr. President, I am glad the Senator from Nebraska is interested in the semiaudible words of his colleague from Indiana, and I am glad to repeat the request. It is very similar to one that my friend from Nebraska made.

Mr. President, I ask unanimous consent that two of my staff members, Mr. P. J. Mode and Mr. Michael Helfer, be permitted access to the Senate floor during the remainder of the debate on the Rehnquist nomination.

Mr. HRUSKA. Mr. President, I have no objection.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BAYH. 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. GRIFFIN. 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 confirmation of the nomination of Mr. Rehnquist to be a Justice of the Supreme Court.

Mr. GRIFFIN. Mr. President, I will save the Senator from Indiana any embarrassment at this particular moment; but I want to tell him—or at least serve notice on him—that if he is going to conduct a filibuster, he had better stay on the floor and be talking, or the Senator from Michigan is going to ask for the question.

Mr. BAYH. Mr. President, I appreciate the courtesy of the Senator from Michigan. He has every right to do what he wishes. I think perhaps there have been times during his tenure in office when he has had a moment or two of delay, in which he has been required to ask the Senate to give him the normal courtesy. If the Senator from Michigan does not want to grant that, it is within his right to do so.

The PRESIDING OFFICER. The question is on agreeing to the confirmation——

Mr. BAYH. Mr. President, I should like to suggest that the Senator from Indiana has not said anything or done anything that would lead the Senator from Michigan to believe that he is conducting a filibuster. It is probably one of the least verbose filibusters in the history of the country.

CALL OF THE ROLL

Mr. BAYH. Mr. President, I respectfully suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRIFFIN. 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——

Mr. BAYH. Mr. President, I respectfully suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRIFFIN. Mr. President, I call for the regular order, there having been no transaction of business.

The PRESIDING OFFICER. We are in the midst of a quorum call.

Mr. GRIFFIN. I ask unanimous consent that the order for the quorum call be rescinded.

Mr. BAYH. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue the call of the roll.

The legislative clerk resumed and concluded the call of the roll, and the following Senators answered to their names:

[No. 440 Ex.]

Allen	Ellender	Mansfield
Bayh	Griffin	Sparkman
Byrd, W. Va.	Hruska	

The PRESIDING OFFICER (Mr. ALLEN). A quorum is not present.

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

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

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

Aiken	Cranston	Javits
Allott	Curtis	Jordan, N.C.
Anderson	Dole	Jordan, Idaho
Baker	Eagleton	Kennedy
Bellmon	Eastland	Long
Bentsen	Ervin	Magnuson
Bible	Fannin	McClellan
Boggs	Fong	McGovern
Brock	Fulbright	McIntyre
Brooke	Goldwater	Metcalf
Buckley	Gravel	Mondale
Burdick	Hansen	Montoya
Byrd, Va.	Harris	Muskie
Cannon	Hart	Nelson
Case	Hartke	Packwood
Chiles	Hatfield	Pastore
Cook	Hollings	Pearson
Cooper	Hughes	Proxmire
Cotton	Jackson	Randolph

Ribicoff	Spong	Talmadge
Roth	Stennis	Thurmond
Saxbe	Stevens	Tunney
Schweiker	Stevenson	Weicker
Scott	Symington	Williams
Smith	Taft	Young

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), the Senator from Wyoming (Mr. MCGEE), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

I further announce that the Senator from Utah (Mr. Moss) is absent on official business.

I also announce that the Senator from Idaho (Mr. CHURCH) is absent because of illness.

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 Florida (Mr. GURNEY), the Senator from Iowa (Mr. MILLER), the Senator from Illinois (Mr. PERCY), the Senator from Vermont (Mr. STAFFORD), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senators from Maryland (Mr. BEALL and Mr. MATHIAS) are detained on official business.

The PRESIDING OFFICER. A quorum is present.

SUPPLEMENTAL APPROPRIATIONS, 1972 (H.R. 11955)—ADDITIONAL CONFEREE

Mr. ELLENDER. Mr. President, as in legislative session, I ask unanimous consent that the Senator from New Jersey (Mr. CASE) be added as a conferee in the consideration of the supplemental appropriation bill.

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

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. BURDICK) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

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

NOMINATION OF WILLIAM H. REHNQUIST

The Senate continued with the consideration of the nomination of William H. Rehnquist to be Associate Justice of the Supreme Court of the United States.

Mr. BAYH. Mr. President, I regret any inconvenience to the Senate resulting from this live quorum call. In retrospect, perhaps it was not such a bad idea. I admit that my original intention was not to give a majority of the Senate the opportunity to hear some of the arguments of this case. I acted because of my feeling that the Senator from Michigan was totally out of order even to suggest that a filibuster was in progress, and if that was the kind of game he wanted to play, then two can play the same game. I was not proud of that feeling, but as Senators came into the Chamber I could not help but think of the irony that confronts the Senate at this particular moment.

We are in the process of debating a nomination to the highest Court in the land—a nomination that has not been without significant controversy. This nominee, if confirmed, will probably sit on the Supreme Court of the United States for 30 years. During that time he will interpret every piece of legislation that is passed in this body throughout the next three decades or so. Not wanting in any way to limit the tenure of any of our colleagues here today, I suppose it is only realistic to suggest that there will not be too many of us around in this body when the present nominee, if he is confirmed, leaves the Supreme Court of the United States.

Each Supreme Court Justice has one-ninth of the weight of the judicial branch of the entire country, whereas the Senator from Indiana finds that he has—and is proud to have, but nevertheless is limited to—only one one-hundredth of the vote of the U. S. Senate.

Yet I must admit that I find a feeling—albeit understandable—in the Senate that a great number of our colleagues are much more interested in things other than who should fill this seat on the Supreme Court.

It has been a long session. We all are tired. We all are impatient. We all are anxious to be elsewhere with our families, with our constituents. But I should hope that my colleagues will give the kind of attention to this nomination that is deserved, using as a frame of reference the amount of time that the Senate has expended in this last year on other items which will have a lesser long-range impact on the history of this country.

A number of matters are of deep concern to the Senator from Indiana. I became involved in a colloquy last night following the speech of my friend and colleague from Nebraska, Senator HRUSKA, about some assertions that he made about the feelings of the Senator from Indiana. It is a rather dangerous business for one Senator to try to interpret the feelings of another. It is sometimes a full-time job to determine one's own feelings—as I admitted here in explaining my motives for insisting on a live quorum call. The Senator from Nebraska was unwilling to continue that colloquy at that time. I hope we shall have the opportunity to do so continue this colloquy before this debate is over, because there were several points that the Senator from Nebraska raised relative to the opinions and statements of the Senator from Indiana that were simply erroneous. I am sure the Senator from Nebraska did not do that intentionally, but that is the case, nevertheless.

One of the assertions he made was that the Senator from Indiana and the others who signed the minority report were opposed to the nominee because we felt that his philosophy was simply out of step with ours. As I suggested at that time, were that the case, we would hardly have voted earlier that afternoon to confirm the nomination of Lewis Powell. Not only did I vote for him yesterday, but I had been urging for almost a month that we come to an immediate vote on the Powell nomination. He could have been sitting on that Court for almost a month if we had done that. Yet political maneuvering behind the scenes somehow kept Lewis Powell off the Court.

Why was I urging that Lewis Powell be placed on the Court? Was it because I agreed completely with his philosophy? Even the most casual student of Lewis Powell's thoughts and mine would find that there is nowhere near unanimity of thought on some of the major issues.

Lewis Powell and I agree generally on some of the basic elements that I feel constitute the necessary prerequisities and qualifications for a Supreme Court nomination. Lewis Powell is an exemplary lawyer. He is an intelligent, honest human being, and I think he has the kind of sensitivity and humaneness in the area of human rights and civil rights that any Supreme Court nominee must possess. That is why I wanted Lewis Powell on the Court. I did not support him because I agreed with him on all issues.

To one degree or another the same can be said about the nomination of the distinguished Chief Justice, Chief Justice Burger, and Justice Blackmun. The Senator from Indiana does not believe that a Supreme Court Justice should have to agree with him on every issue, or even a majority of issues. However, there are a number of tests which any nominee must pass if he is to get my vote; and I am only one Member of the Senate, but I feel very strongly about this.

One matter has been brought to our attention over the past 48 hours which under normal circumstances, if the Senate were not so involved in returning to our families and our homes and our constituencies, would have been a matter of extreme alarm to most Members of this body. But the matter to which I refer, and to which I will refer at length this morning, hardly received any notice in this body. I am referring to the recent disclosure that the nominee urged, when he was a law clerk, Justice Jackson to vote against Brown against Board of Education. Not only did he urge him to vote against Brown against Board of Education, but some of the reasoning, and some of the rhetoric in that page and a half memo is almost impossible to believe. So permit me, if I may, to explore thin for the consideration of my colleagues this morning.

I must admit, Mr. President, that the issues involved in the nomination of William Rehnquist are not headline-making issues. They are not startling revelations of incompetence or lack of personal integrity, which, unfortunately, marred previous nominations to the Court. We do not have a nomination here of a man who has said:

I yield to no man in my belief in white supremacy.

We do not have a nominee here who has been characterized by his chief proponent in the Senate as being mediocre, nor an effort to try to rationalize what mediocrity would mean on the Supreme Court. We do not have a nominee here who is involved in a whites-only covenant. We do not have a nominee here who took part in an effort to try to transform a public golf club into a private golf club so as to avoid the Supreme Court prohibition of segregation in the former.

No, we do not have the type of issue that lets our friends in the press write headlines. We do not have a blatant, easily explained, 2 plus 2 equals 4 insensitivity to human rights and civil rights, as was the case in one of the previous nominations which came before the Senate.

The issues involved in this nomination are subtle, but in the judgment of the Senator from Indiana they are crucially important, for without doubt they, indeed, call into question the nominee's views of the relationship between the individual and the Government, and between the branches of the Government itself.

A long struggle which involves the basic question of the relationship between one individual citizen and his government has existed in this country since the first Supreme Court case. In all probability it will continue to exist throughout the history of this democracy, and may it be long. How much power does the Government have to take away individual rights? On the other hand, how much power does the Government have to guarantee the citizen certain inalienable rights? "One nation, under God, indivisible, with liberty and justice for all," is a phrase familiar to every schoolchild in this country, but the means of implementing that stimulating phrase into meaningful opportunity for each of our citizens have often not been so well understood.

To my mind, the chief concern with which the Senate must and should deal, and hopefully will deal, in considering this nomination is, how important is the individual citizen to William Rehnquist? What responsibility do we in Congress have to see that the individual citizen has a full opportunity to obtain the blessings of this country? What responsibility does a State legislature have to see that the individual citizens of a given State are given similar protection? Indeed, what responsibility does a local government have to protect the same individual rights and opportunities?

These are questions that are called into focus by the Rehnquist nomination, and although they are not the headline-making type of question, in the long history of this country they will have a far greater impact than some of the more sensational items which have been before the Senate in reference to other Supreme Court nominations.

The President has promised us strict constructionists and judicial conservatives on the Supreme Court of the United States. As I said in debating this matter with my friend from Nebraska yesterday, I do not quarrel with the President's picking a man of his own philosophy. It would be rare indeed, if that were not the case. Certainly this is not the first time. It is true that a number of Justices have been appointed because of their philosophical views. But I have searched history, and I have seen no other time when a President has conducted an election campaign on the basis of his upcoming Supreme Court nominations and what they would do. Nor have we ever been privileged to witness a TV extravaganza like that involving the two nominations that have been and are now before us.

So the President has caused us to focus on the philosophies of the nominees he presents to the Senate. Anyone who has studied Frankfurter, Brandeis, and Holmes would be hard put to find a reasonable comparison between them, the ideals of our distinguished President, and the present nominee. But that, of course, is the prerogative of the President, and he has decided in favor of Mr. Rehnquist.

But while talking in terms of strict constructionists and judicial conservatives, whatever those terms may mean, Mr. President, it seems to me that the President has sent us a man in the person of Mr. William Rehnquist, whose views on the Constitution are strangely elastic. I am not quite certain, Mr. President, what the terms "judicial conservative" or "strict constructionist" mean. In the case of the Carswell nomination, we were told that he was a strict constructionist, yet he did not follow the letter of the law, and did not follow stare decisis. Instead, he injected his own personal philosophy, without regard to the precedents and higher courts.

Although I do not think the Rehnquist nomination can be compared on all fours with the Carswell nomination, I do not believe that the record of Mr. William Rehnquist can lead one to any other conclusion than that his views of the Constitution are strangely elastic. He is a man who analyzes questions involving the Bill of Rights in a way which is very hostile to individual liberties. He is a man who has repeatedly demonstrated a marked preference for executive power over judicial or congressional power, and he is a man whose record reveals a persistent distaste for governmental efforts to correct the injustices that 200 years of racial discrimination have wrought.

One is hard put to understand how a man who is presented to the Senate as a judicial conservative, to fill the shoes of the great jurist Harlan, could have so little regard for the individual. It is in the finest tradition of the conservative tradition that the individual citizen be protected from the executive branch, that the Government dare not invade our boudoirs or our offices, or take from us the right to free speech.

Yet, if one examines the record of Mr. William Rehnquist, one has reason to pause. I defy anyone to dispute the evidence of his statements, his actions, his deeds, and his unquestioned support of this administration's efforts to permit the Government of the United States, particularly the executive branch, to have an alarmingly increasing power to inject itself and to impose its will on the individual citizen of this country.

The last 24 hours, Mr. President, have brought us fresh evidence of Mr. Rehnquist's record on civil rights, and I wish to spend just a little time incorporating into this record, for anyone who dares to read it, more detail about the matter that I mentioned a moment ago.

As I said earlier, under normal circumstances, if it were not the tail end of a session, if all of us were not so preoccupied with our own responsibilities, and if all of us were not so anxious to return to our constituents and our families, I would think that the Senate would be up in arms, with the facts disclosed in the newspapers of this country and the article initiated by Newsweek. That magazine has uncovered a memorandum of Mr. William Rehnquist written to then Justice Jackson.

I want to look at what this memorandum means and how it fortifies the feeling that the minority of the Judiciary Committee had when they wrote the rather extensive minority views. The great thrust of our argument in opposition to Mr. Rehnquist was not that he was intellectually incompetent, not that he was mediocre, not that he had ethical conflicts, not that he was a conservative, not that he was a strict constructionist. We were concerned instead that William Rehnquist did not really understand the importance of keeping this system open to minority citizens, of letting every American, regardless of where he lived or what he looked like or where he went to church or the ancestry of his parentage, have a chance to climb up the ladder.

We in Congress, and every State legislator and every councilman, have not only the right but also the responsibility to search out and to wipe away those instances in which arbitrary roadblocks are thrown in the way of those citizens who feel that America holds promise for them.

I think that the evidence that has been brought to light in the last 24 hours or so sustains in unequivocal terms the concerns that we expressed in the minority views. At that time we pointed out that Mr. Rehnquist's record is far from a record of affirmative commitment to equal rights for all citizens. Rather, as we said, it is a record of hostility to the use of law to eliminate racial injustice in the United States. We already knew of three separate occasions throughout his career when Mr. Rehnquist displayed this hostility.

Perhaps "hostility" is too harsh a word, as I read over our report. But I do not think so. I do not think this is hostility in a malicious sense of the word, but the impact and the results are the same. William Rehnquist has absolutely refused—and I fear that if he is placed on the Court, he will continue to refuse—to allow the law to be used as a tool for justice and opportunity for those who are now denied it.

As we look at the previous instances in which Mr. Rehnquist's record is found wanting in the area of human rights and sensitivity to opportunity for all our citizens, I think the pattern is rather clear. In 1964, he opposed a local ordinance prohibiting racial discrimination in public accommodations. Yesterday, when I tried to question the Senator from Nebraska on some of these areas—

and I hope we have a chance to continue that dialog, because it certainly was not completed—the answers were not forthcoming. The Senator tried to make light of this.

In 1964, this country was up in arms. People from all walks were gathering in Washington, peacefully, in the summer of 1964; and there was the greatest peaceful demonstration down Constitution Avenue that we have ever had. Why was this? This was because most American citizens, God-fearing and concerned citizens, had determined that the time had come to wipe away discrimination once and for all.

That was the environment of the day. Yet, in that environment, Mr. Rehnquist testified before the Phoenix City Council, saying that black people should not be permitted in the drugstores of Phoenix. Now he has said—let me hasten to add—that he has changed his mind. He said this in the record before the committee, and I do not want to lead my colleagues to believe otherwise. But I want them to look at the record of the hearings. He did not say he changed his mind because he thought it was wrong. He did not say he changed his mind because he thought it was right and proper for such ordinances to exist—ordinances very similar to the equal accommodations law that was passed in the Federal statute at the same time. No, Mr. Rehnquist said he changed his mind because, one, he previously had not felt that the ordinance could be implemented that easily as it was, and, two, that he really did not understand at the time that minority citizens were that concerned about recognition of these rights.

Therein, Mr. President, lies the main cause for the concern of the Senator from Indiana about the qualifications of Mr. Rehnquist.

If, in the mid-1960's, a leading attorney in Phoenix, Ariz., was not aware of what was going on in the hearts and minds of black and brown and yellow citizens of this country, is he going to be any more concerned about the problems which may confront us tomorrow or a year from now or 5 years from now, as a Supreme Court Justice?

Of course, the Senator from Nebraska relied upon the fact that in the model act which was passed while Mr. Rehnquist was a member of the National Conference of Commissioners on Uniform State Laws there was an equal accommodations provision. But the colloquy between us will show that Mr. Rehnquist only voted for that act after opposing several of its provisions and, indeed, helping to lead the opposition so it was not adopted, with only two dissenting votes, as a uniform act, but had been degraded to the stature of a model act. I am still waiting for the Senator from Nebraska to come forth with one positive word in the transcript of that meeting which shows that Mr. Rehnquist stood up one time and said, "I think we ought to have strong antidiscrimination features in our State laws."

Let me turn in more detail to the 1966 meeting of the Commissioners on Uniform State Laws which Mr. Rehnquist attended. At that time, the Commissioners were meeting to approve a model State antidiscrimination act which could be suggested and urged upon the State legislatures of this land so that they could follow the example that had been set 2 years earlier by Congress. Mr. Rehnquist, as the minority views show, opposed two important provisions of this antidiscrimination measure. First of all, he opposed implementing into the model act—what became a model act due to Mr. Rehnquist's and others opposition to it being a uniform act—a provision by which employers would be entitled to or given the opportunity to compensate voluntarily for past discriminatory hiring practices.

Let me give an example of what this would be. In other words, here is an employer who in the past has denied employment to blacks and browns and other minority groups. This provision would permit him to compensate in future employment so that he could ultimately have a balanced work force. This is the whole philosophy of the Philadelphia plan, Mr. President. I find it significant and inconsistent that Mr. Rehnquist's record for civil rights is sustained because he supposedly was one of the advisers within the administration recommending the Philadelphia plan, but in 1966 when he was a Commissioner on Uniform State Laws from Arizona, he did everything he could to root out this very provision of the uniform act before the Commissioners at that time.

The other item which was then before the Commissioners on Uniform State Laws which Mr. Rehnquist opposed was the antiblockbusting provision. I cannot understand how Members of the Senate who are sensitive about human rights and concerned about people who try to play on the passions and human frailties in order to make a fast buck, could not give great significance to Mr. Rehnquist's position on this particular provision.

Blockbusting is that insidious, inexcusable tactic which is followed by, unfortunately, only a few—and they are unscrupulous—realtors in which they go into a community that is primarily or totally a white community and buy one house, and then they will move in a large number of black citizens and they will degrade the looks of the premises by throwing garbage and junk around in such a way as to devalue the property. In fact, I think that perhaps the best way to describe the blockbusting technique is to read into the record the response of Robert Brancher, then chairman of the Special Committee on the Model Antidiscrimination Act, and a professor at Harvard Law School, who is now a justice of the Supreme Judicial Court of Massachusetts. When Mr. Rehnquist suggested that constitutional rights as well as policy decisions were involved, and therefore, this particular provision should be rooted out, Professor Brancher 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?
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> And the notion 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.

The vote was then taken and Mr. Rehnquist's effort to delete this provision was unsuccessful.

But this is the concern that the Senator from Indiana has about Mr. Rehnquist's approach to his responsibility as a Supreme Court Justice. As we look into some of the statements that Mr. Rehnquist has made, we see, I think, that he sometimes wants to restrict free speech and association but, apparently, where he wants to protect it is in a place where it has absolutely no purpose.

Do we say that realtors who want to go into a community to destroy it, to get one neighbor hating another, in order to feather their own nests, have a constitutionally protected right to free speech in order to accomplish the goal? Of course, we do not.

If the Senate and House of Representatives and State legislatures want to say that this is bad practice by realtors, it is not for the Supreme Court, it is not for William Rehnquist to say that there is a free speech question which prevents it from doing so.

The Senator from Indiana feels that this certainly is not an area where free speech should be protected. It is like former Justice Holmes, in defining the limits of free speech, who said that no one has the right falsely to yell "fire" in a crowded theater.

I suggest that anyone who has sensitivity enough to sit on the Supreme Court of the United States should be able to recognize that what was yelling "fire" in a crowded theater 30, 40, 50, 60 years ago is blockbusting today.

This is causing the inflammation, the hatred and the fears, and exacerbating them by letting the blockbusting tactic proceed.

I would be willing to wager that if we took a vote in the Senate as to whether there was any validity in the policy of blockbusting, let alone the constitutional question involved, 100 Members of this Senate would vote against blockbusting.

Yet Mr. Rehnquist suggests that it should not be banned both on constitutional and policy grounds, that to strike down blockbusting is bad policy and is also a constitutional violation.

I hope to have the opportunity, before this debate is over, to deal with these questions in greater detail; but, before proceeding to the main matter of concern, I want to touch on one other matter that was enumerated in the minority views and that had been previously brought to our attention before the alarming disclosures of yesterday. This is the evidence that in 1967 the nominee opposed what were moderate plans for combating de facto segregation in Phoenix with the comment that, "We are

no more dedicated to an integrated than to a segregated society."

When I asked the nominee about this opposition to the efforts of the school superintendent in Phoenix to provide some integration in the Phoenix school system, Mr. Rehnquist said that the reason was he was then opposed to long-distance busing and that he is still opposed.

I think there are grave questions that can be raised about long-distance busing but the fact is that long-distance busing was not even involved then. It was not the question. It was a very moderate integration plan. But no matter what sort of plan it was, it cannot justify the suggestion that we are no more dedicated to an integrated society than to a segregated society. Now Mr. Rehnquist also said that we are a free and open society in which every individual should be given a maximum amount of freedom in it, and I of course agree with that. But I do not think that a black boy or girl student has a maximum amount of freedom in a society that will not let them into a schoolroom because of their race.

Yesterday's Newsweek magazine disclosed a fourth and perhaps an even more shocking event.

That was Mr. Rehnquist's active opposition to the Supreme Court decision in Brown against Board of Education. In 1953 Mr. Rehnquist was at that time, I think, 28 years of age. He was a law clerk to Mr. Justice Jackson.

The school desegregation cases were pending. The appellants in those cases, black and white alike, argued that racial segregation in public schools violated the great promise of the 14th amendment that, "No State shall deny any person within its jurisdiction the equal protection of the laws."

The school boards and States argued that segregation was permitted under the separate but equal doctrine of Plessy against Ferguson.

Mr. Rehnquist, we now know, wrote a memorandum to Mr. Justice Jackson entitled, "A Random Thought on the Segregation Cases." In it he stated his personal opinion that Plessy against Ferguson was rightly decided and should be reaffirmed. Fortunately for the history of this Nation, Mr. Justice Jackson did not take the advice of his law clerk. Instead he joined with a unanimous Court in Brown against Board of Education in holding that separate educational facilities are inherently unequal.

Mr. Rehnquist's memorandum is a rather extraordinary document, for the arguments he used to oppose the Court's historic decision in Brown are distressing. He suggests that to overrule Plessy was to read into the Constitution the Justices' own sociological view of the Constitution; that personal rights are no more sacrosanct under the Constitution than property rights; and that the Supreme Court has little or no meaningful role to play in protecting the rights of minorities.

Mr. President, I think it is important for the Senate to know and for the country to know the significance of that memorandum. Brown against Board of Education is not just any little old case that happened to appear before the Supreme Court.

In the almost 200-year history of this Nation, few cases have been more significant than Brown against Board of Education. This is a space age Marbury against Madison. It was so apparent that the issue involved should be decided on the side of opening up our schoolrooms that nine Justices—a unanimous court—joined together in striking down discrimination in our public school system. But we now see that Mr. Rehnquist was so out of touch with the important issues of that day that he was urging one of the justices to vote on the other side of the issue.

I think this is of particular significance, Mr. President, because as a legislator I hold the legislative process to some degree jealously. And I do not like to see the Supreme Court become involved in lawmaking. *Brown* was not lawmaking; it was dedication in the face of public pressure to principles of equality. As a legislator and as a lawyer, I am well aware that one of the strengths of the Constitution of the United States is the fact that it has flexibility, it has within its provisions the opportunity for change. That must come as times change, as problems change, and as people change.

Since it is impossible to change the words of the document except by constitutional amendment, the principle, the relevance of the Supreme Court comes from the interpretation that is placed on the Constitution year after year in case after case by the Justices that sit on the Court. And unless those Judges have the sensitivity to look at the country, to come down from the ivory tower of the highest Court in the land and to look at how the laws and conditions affect human beings, then that great document, the Constitution of the United States, may just as well be locked in the Archives and never again seen.

It is Mr. Rehnquist's inability to realize and implement the great promises of this document and to permit them to have the broad scope they need that is a matter of deep concern to the Senator from Indiana. Apparently this same concern was expressed by the nine sitting Judges of the Supreme Court at that moment, because by a unanimous vote they rejected the position of then law clerk Rehnquist.

In looking at the memorandum, there are certain items of interest that indicate, I think rather dramatically, the philosophical bent or, indeed, the philosophical roadblock that appears in Mr. Rehnquist's reasoning as to how he feels the Constitution should be interpreted.

Let me just read from the memorandum significant factors or items. In referring to past Supreme Court cases, Mr. Rehnquist says of the Court:

> 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.

I do not think that any reasonable interpretation of those past cases can reach that same conclusion. Surely it is never the role of the Court to thwart public opinion; it is the role of the Court to interpret the Constitution notwithstanding public opinion.

He goes on further and says:

> For, regardless of the Justice's individual views of the Constitution on the merits of segregation, it quite clearly is not one of those extreme cases which commands intervention from one of any conviction.

I think it is rather evident—the fact that nine Judges ruled otherwise—that segregation of our schools, just as segregation of our lunch counters and public facilities, was one of those extreme cases. And fortunately the Court did intervene. And fortunately it was not just the so-called liberals of the Court, but quite contrary to Mr. Rehnquist's admonition, those of all political persuasions on the Court who said that this kind of desegregation should be struck down.

There is one other item in this memorandum that I want to read before proceeding. It reads as follows:

> 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.

Mr. President, I wonder if we really want a man on the Supreme Court of the United States who believes that after looking at all of the facts of a given case, the cold hard property rights should be weighed on the same scale as sensitive human rights.

Mr. Rehnquist proceeds further:

> 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 have never been a Jehovah's Witness, and I have never been a slaveholder, and I have never been a businessman—unless one can call owning a family farm a business, which perhaps it is, but not in the frame of reference of Mr. Rehnquist—but to suggest that these rights to protect individuals and groups and classes have been sloughed off by the Supreme Court is just to totally misread what has happened.

However, I must admit that there is a strange irony in the fact that William Rehnquist should write this brief back in 1952 to a Justice of the Supreme Court of the United States saying that—

> 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 the transient majority of nine men.

The fact that that transient majority may be diminished by the presence of William Rehnquist increases the chance that these individual rights will in fact be sloughed off, as Mr. Rehnquist himself predicts.

Finally, Mr. Rehnquist concludes in this infamous brief:

I realize that it is an unpopular and unhumanitarian position—

He admits he is espousing an 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*.

Before this debate is through I hope to try to bring into proper focus and into proper perspective just what the implications are of William Rehnquist's view that the Constitution enacted Myrdahl's American Dilemma.

Here is a Swedish social scientist who came to this country and looked at the tensions that existed, and the troubles that appeared over the horizon relative to the differences between the races, and as he describes the American dilemma in his book. This is not a wildly revolutionary extreme presentation of the facts, but a very moderate presentation of what we can expect and what we had better do about it. Yet Mr. Rehnquist, who is supposed to be moderate in his views, apparently feels that Myrdahl's American Dilemma is too liberal and too extreme.

Mr. Rehnquist's memorandum, as I have mentioned earlier, is indeed an extraordinary document. Let us look in detail at the matters of concern that I have previously mentioned. The arguments he uses to oppose the Court's historic decision in Brown are distressing. He suggested that to overrule Plessy was to "read [the Justice's] own sociological views into the Constitution"; that, as I said earlier, personal rights are no more "sacrosanct" under the Constitution than property rights; and that the Supreme Court has little or no meaningful role to play in protecting the rights of the minority.

It is amazing to me that someone who could have espoused that particular theory or that philosophy is not a matter of increased concern to the Members of this body, who personally themselves have shown great concern for the rights of minorities and have at all time been willing to place human rights above property rights.

The best answer to Mr. Rehnquist's first point—essentially a claim that to decide Brown as it was decided was unprincipled—comes from the unanimous Court itself. In the opinion by Mr. Chief Justice Warren, the Court first pointed out that the legislative history of the 14th amendment was "inconclusive" on the question of issue, then noted that first cases construing the 14th amendment "interpreted it as proscribing all State imposed discrimination against the Negro race." The Court concluded:

To separate [children in grade and high school] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

The Court continued in conclusion later in the decision by saying:

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

One should also point out that Mr. Justice Frankfurter, a man who was dedicated to the principles of judicial self-restraint and reason, instead of personal decisionmaking, joined the decision. Surely Mr. Justice Frankfurter did not think he was imposing his "own sociological views" onto the 14th amendment, as Mr. Rehnquist suggested the Court would do if they held it was unconstitutional for a State to say that black boys and girls should not be permitted to go to school with white boys and girls.

Mr. Rehnquist's second point was that property rights are as important as personal rights under the Constitution. He said:

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.

This is the same view which led Mr. Rehnquist to oppose a public accommodations ordinance in Phoenix in 1964. At that time, as the nominee himself admitted at the hearings, he "felt that personal property rights were more important than individual freedoms, the individual freedom of the black to go up to a lunch counter." And it is a view to which Mr. Rehnquist clings. In response to a question from Senator Tunney, Mr. Rehnquist said:

I am certainly not prepared to say, as a matter of personal philosophy, that property rights are necessarily at the bottom of the scale.

This view, of course, taken in reference to personal rights.

And if we are talking about the distinction between personal rights and property rights, and if the nominee says that property rights are not at the bottom of the scale, it seems to me that it is a foregone conclusion that personal rights are.

I wonder if the Senate wants to turn the clock of justice back so that cold, calculating property rights ascend and take a preferential position to the rights of each individual human being and his personal opportunity to explore and attain the values of full citizenship.

My belief is that our legal history shows that there are many interests which can override property rights—take zoning as a mundane example—but there are precious few which can override fundamental personal rights of free speech or association, or the equal protection of the laws. Personal rights and property rights simply do not hold an equal place in our jurisprudence. If Mr. Rehnquist thinks they do, then I submit he is outside the mainstream of modern American thought.

But perhaps the most significant point to be drawn out of the memorandum is Mr. Rehnquist's view of the role of the Supreme Court in our system of Government. He argued that the Court ought not take an active role in protecting the individual rights of minorities, and that if it did take such a role it was doomed to failure. He said:

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.

He concluded by saying:

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 Dilemna*.

Mr. President, this is a view of the role of the Court wholly at odds with its great traditions. It is, and was designed to be, the institution that protects individual rights. It is, and was designed to be, the institution to which minority groups can turn for vindication of their rights, regardless of the transient views of the majority. I cannot imagine the Senate confirming a man who thinks that the Court ought not play this role. And if the Senate does confirm such a man, we will all be the poorer.

I, like millions of Americans, cannot agree with Mr. Rehnquist that the Supreme Court's attempts to protect the constitutional rights of minority groups and their members have been failures. I, like millions of Americans, think that the Court has had great success. And I, like millions of Americans, think that Brown against Board of Education was a landmark case—a decision which reflects the fairness and justice that is at the heart of the Constitution. It is deeply distressing to me that Mr. Rehnquist thought that Brown was wrongly decided.

Perhaps it would be less distressing if Mr. Rehnquist had given some indication either at the hearings or since the Newsweek article appeared that he had changed his mind about Brown. At the hearings he recognized, as any lawyer would have to recognize, that Brown was the established constitutional law of the land. But he never said that he agreed with the principle of Brown, or the decision in that case. He would only say that the decision was justified because nine Justices became convinced that Plessy was wrongly decided. Thus for all we know, he may still be of the view that separate but equal satisfies the demands of the 14th amendment.

And, of course, that is a true test of a Justice—how he is going to interpret the Constitution in future cases.

I sincerely hope he has changed his mind, but there is no indication before the Senate that he has.

Mr. President, Mr. Rehnquist's opposition to Brown against Board of Educa-

tion fits into the pattern the other evidence before the Senate revealed. It is a pattern of a man who does not believe that the law should be used to erase the injustices that 200 years of racial discrimination have wrought. And there is nothing in Mr. Rehnquist's record which rebuts the inferences of this pattern of hostility to the use of law to promote racial justice. At a critical time of our history, we should not agree to place a man on the Supreme Court who has consistently been insensitive to the role that a law must play in achieving a fair and just society.

Mr. President, Brown against Board of Education is past. That particular issue will never again be decided by the Supreme Court. At least, I hope and pray it will not be. I hope it has been laid to rest. But the question that concerns the Senator from Indiana is, What about the future? What about the next Brown against Board of Education? What do I mean by that? Well, Brown was the Supreme Court of the United States coming to grips with a deep, divisive, devastating social problem which existed at that moment in history. It was a recognition that the past had been wrong, that steps had to be taken to put this country on a different path if the Court was to protect the rights guaranteed by the Constitution, the provisions of the 14th amendment, to all of our citizens. What concerns the Senator from Indiana is that if William Rehnquist was opposed to making that kind of a dramatic, necessary change in the mid-1950's, when the evidence was tumbling around us that it had to be done and that the Constitution required it, and nine Justices of the Supreme Court recognized it, where, pray tell, will Mr. Justice Rehnquist be on the next occasion when the Court and the country are confronted with a Brown against Board of Education decision?

It was little solace to my mind that Mr. Rehnquist told us that the Brown decision was justified because nine Justices had decided that Plessy had wrongly interpreted the intent of the framers of the amendment.

I would like to think—and I phrase the statement thus because I have never had the privilege of sitting on the Supreme Court of the United States—that the decisionmaking process in the Supreme Court is not totally unlike the decisionmaking process in the U.S. Senate: That the critical decisions, as in this body, are hammered out, not by unanimous consent, but because one or two Senators or a handful of Senators are willing to stand up for what they believe, after study, the law demands and risk the animosity of their constituency or of the country to argue the positions that they feel are morally right or legislatively right or legally right, although from the standpoint of politics and past practice they may be wrong.

This has been my experience in the legislative process both as a State legislator and as a Member of this distinguished body. The times when the U.S. Senate has been most revered and most respected have been those times when it has not just gone along, but when it has come to grips with unfinished business, when it has come to grips with critical problems that have not been solved, when it has dared to depart from the past and chart new policy—new policy based on old principles which had not been fully realized under the older policy.

I have seen this body move, in the 9 years it has been my good fortune to serve here. I have see it change its mind, so that what was once the view of a narrow minority is now the majority will of the Senate. I cannot help but recognize the coincidence that in some of the great issues, some of the general policy problems that have torn us asunder in this country, the distinguished present Presiding Officer, the junior Senator from Florida (Mr. CHILES) is a part of this vocal majority in the Senate today, though I can remember the time when it was an equally vocal minority.

It has been the willingness of a few Members of the Senate and the willingness of our colleagues to listen, and not to enter a debate with closed mind, that has made it possible for the Senate to be responsive to the problems of our country and the people we govern.

Is this totally dissimilar from the process that exists in the Supreme Court of the United States? I think any student of the Court must come to the conclusion that this is not the case, that the precedent cited by William Rehnquist in his memorandum to Justice Jackson has been properly destroyed, has been properly overturned, because those justices who have sat on the Supreme Court have been willing to listen and have been willing to change their minds. Indeed, the former occupants of the two seats which we now fill, Justice Black and Justice Harlan, were two persuasive voices in the movement to change the direction of the Court, and to make a Court majority on the same issues on which, in 1896, there was only a lone dissent.

I am concerned, Mr. President, that the Senate not place on the Court a man whose philosophy, as expressed by every word and deed, is so dedicated to outdated ideas that he is either unable or unwilling to recognize that that great document, the Constitution, has as one of its high purposes the elimination of injustice and inequality.

Mr. President, I want the record to be clear on this: When I say that it is the judgment of the Senator from Indiana that Mr. Rehnquist will remain intransigent, dedicated to outdated ideas and precedent, unwilling to change, and fulfill the great promises of the Constitution, I have no evil feelings in my heart toward Mr. Rehnquist. That may be hard for him to believe, or for some of his supporters to believe, but as I have talked with him personally, and as I have talked with some who know him well in Arizona whose judgment I respect, and as I have heard him testify, I have thought, here is a man who is basically honest. His academic record shows that he has great intellectual capacity; indeed, his appearance before the committee, both by what he said and by his great ability not to say anything in a number of areas, discloses a high degree of articulation.

I suppose I could go on to say that I feel deeply that it is terribly difficult for an individual Senator to be called upon to judge another human being. Each of us possesses his own frailties, and certainly the Senator from Indiana is painfully aware of his own. But the Constitution calls upon us to judge others, and if we are to fulfill our constitutional as well as our moral responsibility, we have to struggle with the problem as best we can.

I have to say that I think Mr. Rehnquist's motives, as he envisions them, are pure. Each of us is the product of his own background. We are all the sum and substance of our own past experiences. And rather than feel that Mr. Rehnquist will reach the wrong decisions for the wrong reasons, I think, because of his past experience, because of what he has said and what he has written philosophically, and his general interpretation of the Constitution, that he will reach the wrong decisions for what he conceives to be the right reasons.

He will use his intellect and his capacity, I fear, to write, speak, and articulate—to put the face of dignity upon and to add an acceptability to—those philosophies and those practices which the Warren Court had laid to rest, and he will in the process, I fear, do so feeling in his heart of hearts that he is right. And although I think each of us must be given credit for doing what we think is right, for that is about the best we can do; those of us who are called upon to judge others, particularly to judge others who would judge the country and the direction in which it is headed, must be concerned about more than the pureness of heart and the kindness of motives. We had better be concerned about results, because the results, not the motives, are going to determine the kind of life and the kind of opportunity our grandchildren are going to have in this democratic society. For these reasons, and others I will bring out in later debate, I urge the Senate to reject this nomination.

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. JAVITS. 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.

Mr. JAVITS. Mr. President, I ask unanimous consent to proceed as in legislative session.

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

(The remarks of Mr. JAVITS as in legislative session, when he introduced S. 2962 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER FOR YEAS AND NAYS ON S. 2676

Mr. BYRD of West Virginia. Mr. President, as in legislative session, I ask unanimous consent that it be in order, at this time, to order the yeas and nays on

Calendar No. 537, S. 2676, a bill to provide for the prevention of sickle cell anemia.

The PRESIDING OFFICER (Mr. CHILES). Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

Mr. BYRD of West Virginia. Mr. President, as in legislative session, at the request of Senator KENNEDY I ask for the yeas and nays.

The yeas and nays were ordered.

QUORUM CALL

Mr. JAVITS. 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.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into legislative session for the purpose of taking up a conference report.

There being no objection, the Senate proceeded to consider legislative business.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when action on the conference report is completed—I understand the yeas and nays will be requested—the Senator from California (Mr. TUNNEY) may be recognized in executive session.

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

CONTINUED OPERATION OF PUBLIC HEALTH SERVICE HOSPITALS AND OUTPATIENT CLINICS—CONFERENCE REPORT

Mr. KENNEDY. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments 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.

I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of December 2, 1971, at 44298.)

Mr. KENNEDY obtained the floor.

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

Mr. KENNEDY. I yield.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I am pleased to file this conference report on Senate Concurrent Resolution 6, and to move its acceptance by the Senate. The Senate conferees previously had reported in disagreement on this resolution, but developments in the Public Health Service Hospital System prompted the Senate and House conferees to return to conference and work out this compromise. The compromise maintains the original Senate resolution, adding amendments to extend the scope of the resolution to cover the Clinical Research Center at Lexington, Ky.

By enacting this resolution, the Senate will remove any possible idea that it is ready to see the Public Health Service hospitals closed, transferred, or otherwise changed without serious consideration of how these facilities can be better utilized within the Public Health Service, or without congressional review in detail of the proposed use of each facility.

Mr. President, in recent weeks we have seen examples of the proposals submitted to the Department of Health, Education, and Welfare for use of these hospitals, and have received a summary of all the proposals from Secretary Richardson. Few of these proposals involve keeping these hospitals in the Public Health Service to serve areas which are short of health services. In fact, the few proposals that do involve keeping the hospitals in the Public Health Service seem to have been given lowest priority by DHEW.

Indeed, all that we hear indicates the DHEW has had no intention of seriously considering keeping the hospitals in the Public Health Service. DHEW's contacts with local communities, in fact, have denied this is an option—they have indicated there are only two options, to close the facility or to transfer it out of the PHS to some community organization. DHEW has pursued this one-sided planning despite the fact that the committee report on Senate Concurrent Resolution 6 specifically states:

> The plan must reflect exploration of how the institution might be used to address the needs of the community—especially the critical needs of medically under-served areas in the community. Opportunities for expanded use of the institution under the Emergency Health Personnel Act should be fully explored and documented.

Mr. President, the Senate's action on this resolution, its action on the Emergency Health Personnel Act of 1970 and its long history of actions relative to the Public Health Service, make it clear that we believe that the Federal Government has a responsibility for providing direct health care services to specified groups of Americans who are in bad positions to obtain health care in any other way. Apparently, DHEW and the Office of Management and Budget disagree with the Congress on this. They have set out systematically to eliminate direct Federal health care services to the merchant seamen and others served by the Public Health Service hospitals, and they refuse to use these facilities to offer direct services to Americans who live in medically underserved areas as authorized by the Emergency Health Personnel Act. Indeed, they refuse to even explore the possibility of using the facilities in this manner.

In fact, while they pursue a seemingly objective review of the future of each facility, and have to date indicated no specific plans for any of the facilities, information has come to our attention that they have already picked two hospitals for closure or transfer to community control by the end of this fiscal year. I am confident their budget request for fiscal year 1973 will reflect the elimination of funds for these two facilities.

In other words, Mr. President, DHEW's plans are further along than they are admitting to Congress, and their planning does not speak to the alternatives of most interest to Congress. Obviously, DHEW intends to present Congress with a foregone conclusion late in the fiscal year when there is little time for Congress to respond.

We cannot and must not permit this defiance of congressional prerogatives—this flouting of the intent of the law. This conference report which I file today precludes changes in the Public Health Service hospitals prior to June 30, 1972. If we see no indications in the next few weeks that DHEW's planning will cover the Senate's concerns, and allow adequate time for congressional review of these plans, I will submit to this body and assure prompt committee action on a new resolution which extends the dates in Senate Concurrent Resolution 6. I urge acceptance of this report as a first step.

Mr. President, this report represents the results of the conference between the House and the Senate on a resolution that was originally submitted by a score of Senators, including the Senator from Maryland (Mr. MATHIAS) and myself on the question of Public Health Service hospitals.

What we tried to do in the resolution was give the Department of Health, Education, and Welfare our position on equitable ways to proceed in considering the future of these facilities. We passed the resolution in the Senate virtually unanimously. In the conference, we had one area of primary difference, the Fort Worth Hospital, and were unable originally to come to an agreement with the House of Representatives. In the reconsideration of the measure last week, however, we were able to get an agreement with the House of Representatives.

Senate Concurrent Resolution 6 gives Congress time to review HEW plans for hospitals, before the plans are implemented. It precludes changes to the facilities through June 30, 1972, and it makes it clear to HEW that Congress wants the hospitals used to meet the needs in medically underserved areas, if possible, under the Emergency Health Personnel Act. This latter act is a most important piece of legislation. Although it is funded at a very modest level, it nevertheless will be a useful instrument of service in underserved areas, and utilizes PHS facilities, such as these hospitals, as bases of operation.

Congress must act now because HEW is moving ahead with its plans. I do not believe that HEW is reviewing the various hospital facilities with the idea of implementing the Emergency Health Personnel Act. With this conference report, the Senate will go on record to make clear to the Department our deep

concerns about the importance of Public Health Service hospitals in the context of this act.

I hope we can get action on this measure. I feel it is an important area in which the Senate and the Congress as a whole must express its views, particularly since the country is confronted with a health crisis in so many areas of public health services. I think this effort is on the front line of providing extremely important services to many different elements of the community.

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

Mr. KENNEDY. I will be glad to yield.

Mr. MATHIAS. Mr. President, I agree with the view that has been taken by the Senator from Massachusetts. Public health hospitals have rendered such a valuable role that it is highly desirable that the Senate take a position which makes it clear that we evaluate the service that they have rendered as a very essential service. I believe that we need to utilize all of the health facilities we have, and utilize them well, and not to take any chance that any one of them will be discarded. There may be room for a legitimate and honest difference of opinion about the way that we finance the delivery of health services, but there is not any doubt in anybody's mind in the country that we need everything we have got, and an important element of what we have got is the public health hospitals. They have, I think, afforded an increasingly valuable service, because they have been putting a lot of emphasis on preventive medicine, which is, I think, the practice of the future.

I believe that the conference report, as the Senator from Massachusetts says, will be a signal that the Senate has a very deep interest in these hospitals.

I thank the Senator for yielding.

Mr. KENNEDY. I thank the Senator for his comments and certainly for the interest he has shown in this area.

I think what we are really doing is going on record today to indicate to the department that we want to be very much involved in how these facilities are utilized in the future, and that we are concerned with the continuing responsibilities under the Public Health Service Act, for example, of providing health services to Federal beneficiaries.

Mr. JAVITS. Mr. President, I strongly support the adoption of the conference report on Senate Concurrent Resolution 6, of which I am a cosponsor, which expresses the sense of Congress that Public Health Service hospitals and clinics remain open and continue to perform their multiple responsibilities through fiscal year 1972, during which time the Secretary of Health, Education, and Welfare and the Congress should explore how these facilities can best be used in the future to offer comprehensive health care to Federal beneficiaries and to best meet the needs for health services of the Nation at large—particularly the needs of medically underserved areas.

I have long believed the Public Health Service hospitals and clinics can play an important role in the restructuring of America's health care delivery system. When the Republican County Committee of Richmond County, N.Y., expressed to me its concern about recurrent rumors to the effect that the U.S. Public Health Service hospital at Staten Island, N.Y., and numerous other Public Health Service hospitals and clinics were to be closed, I immediately expressed my interest in the matter to Secretary Richardson.

At a time when the Nation is faced with a health care crisis about which the President, the Secretary of Health, Education, and Welfare, many Members of Congress, and I have expressed grave concern, I believe the Staten Island Public Health Service and other public health hospitals and clinics should be strengthened and modernized in order better to perform their traditional function and allow them to undertake new missions.

I therefore recommended to the Secretary that these professionally excellent facilities be given a new mission—in accord with present and future national health care needs—so that they might, for example, pioneer and develop model health care delivery systems and serve as demonstration centers for experimental programs utilizing corpsmen and other paramedical personnel to provide health services.

It is my understanding that the Department of Health, Education, and Welfare did undertake to go to the communities involved for indepth discussion of alternative utilization of the Public Health Service hospitals and clinics, including their potential for both improved care and more effective use of the existing facilities through conversion to local control and use and providing care for HEW beneficiaries through contracts with the converted Public Health Service facilities, or with public and private hospitals. From time to time HEW has kept the Congress informed as to the status of proposals under consideration and nothing definitive has occurred.

However, there are deep pervasive rumors that HEW plans to take action and make profound changes in the Public Health Service hospital system without allowing the Congress to review with HEW the detailed proposals for each of the Public Health Service facilities. Congress does not wish to restrain creative responses to the problem of whether the present system of Public Health Service hospitals is the best means of fulfilling our responsibilities to Public Health Service beneficiaries. However, the Public Health Service hospital system is one of the oldest and most respected health institutions in America, and was created by Congress, to respond to the special health problems of the merchant seamen. In addition, over the years the Public Health Service hospital system has established close associations with their respective communities.

Although I am concerned with the future of the entire Public Health Service hospital and clinic system, my primary concern is the U.S. Public Health Service hospital located at Staten Island, N.Y., which, incidentally, is the largest of all the Public Health Service hospitals throughout the United States. It has accommodations for 636 beds and has an annual payroll of approximately $13.6 million. Also, the Public Health Service hospital on Staten Island employs over 1,000 people and there is only one industrial concern on Staten Island that employs more. Thus, not only will the physical health of the residents of Staten Island be affected by the closing of the hospital, I would also indicate that the economic health of the community will be seriously affected if this facility is closed. We in the Congress of the United States cannot abandon our prerogatives regarding vital services provided by the Public Health Service hospital system, exemplified by the Public Health Service hospital on Staten Island, which:

Serves 420 patients per day;

Serves 140,000 outpatients annually;

Provides emergency medical services to the public;

Provides physical examinations and laboratory tests for a number of local agencies;

Provides desperately needed nurses' training in cooperation with local colleges;

Provides desperately needed laboratory technician training;

Provides desperately needed dental laboratory technician training; and

Provides unique medical assistance for our other hospitals and their staffs.

If this hospital is closed, who is going to fill the huge gap created by its absence? Certainly no other facility on our 60-square-mile island can provide the medical services, and other nearby New York City hospitals are already crowded.

Mr. KENNEDY. Mr. President, as I understand, the yeas and nays have been ordered, and I move the adoption of the conference report.

Mr. MAGNUSON. Mr. President, as one of the original sponsors of Senate Concurrent Resolution 6, I urge the Senate to give its full and explicit approval to this conference report. As chairman of the Senate Appropriations Subcommittee on Labor, Department of Health, Education, and Welfare, I have had ample opportunity to review the state of health care in this country. On the basis of that review I, like so many other Senators, am convinced that this Nation is in the midst of a national health care crisis. Consequently, I am convinced that the Congress would be seriously remiss if it were to leave the responsibility for determining the future of the PHS hospitals and outpatient clinics solely in the hands of the administration and its anonymous departmental personnel.

Final approval of this resolution by both Chambers will demonstrate once and for all that the Congress intends that the basic questions regarding the future of each of the PHS hospitals and clinics will be resolved jointly by the Congress and the administration—not by the administration alone.

Final approval of this resolution will put the President and the Secretary of HEW on notice that the Congress expects to work together with the administration to determine which of these facilities should continue under PHS direction, which—if any—should be converted to community use and which—if any—should be closed.

If, after Congress approves this conference report, the administration attempts to make these decisions without

the prior consultation and consent of the Congress, than it will be in clear violation of the expressed will of the Congress.

The PRESIDING OFFICER (Mr. CHILES). The question is on agreeing to the conference report. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Michigan (Mr. HART), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from Wyoming (Mr. MCGEE), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

I further announce that the Senator from Utah (Mr. Moss) is absent on official business.

I also announce that the Senator from Idaho (Mr. CHURCH) is absent because of illness.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PELL) would 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 Kentucky (Mr. COOK), the Senator from Colorado (Mr. DOMINICK), the Senator from Florida (Mr. GURNEY), the Senator from Iowa (Mr. MILLER), the Senator from Illinois (Mr. PERCY), and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

The Senator from Oregon (Mr. PACKWOOD) is detained on official business.

If present and voting, the Senator from Kentucky (Mr. COOK), the Senator from Florida (Mr. GURNEY), the Senator from Iowa (Mr. MILLER), and the Senator from Illinois (Mr. PERCY) would each vote "yea."

The result was announced—yeas 81, nays 0, as follows:

[No. 441 Leg.]

YEAS—81

Aiken	Ellender	Montoya
Allen	Ervin	Muskie
Allott	Fannin	Nelson
Anderson	Fong	Pastore
Baker	Fulbright	Pearson
Bayh	Goldwater	Proxmire
Beall	Gravel	Randolph
Bellmon	Griffin	Ribicoff
Bentsen	Hansen	Roth
Bible	Hartke	Saxbe
Boggs	Hatfield	Schweiker
Brock	Hruska	Scott
Brooke	Hughes	Smith
Buckley	Jackson	Sparkman
Burdick	Javits	Spong
Byrd, Va.	Jordan, N.C.	Stennis
Byrd, W. Va.	Jordan, Idaho	Stevens
Cannon	Kennedy	Stevenson
Case	Long	Symington
Chiles	Magnuson	Taft
Cooper	Mansfield	Talmadge
Cotton	Mathias	Thurmond
Cranston	McClellan	Tower
Curtis	McGovern	Tunney
Dole	McIntyre	Weicker
Eagleton	Metcalf	Williams
Eastland	Mondale	Young

NAYS—0

NOT VOTING—19

Bennett	Gambrell	Hollings
Church	Gurney	Humphrey
Cook	Harris	Inouye
Dominick	Hart	McGee
Miller	Packwood	Stafford
Moss	Pell	
Mundt	Percy	

So the report was agreed to.

INTEREST RATES ON INSURED MORTGAGES

Mr. SPARKMAN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on Senate Joint Resolution 176.

The PRESIDING OFFICER (Mr. CHILES) laid before the Senate the amendment of the House of Representatives to the joint resolution (S.J. Res. 176) to extend the authority of the Secretary of Housing and Urban Development with respect to interest rates on insured mortgages, to extend and modify certain provisions of the National Flood Insurance Act of 1968, and for other purposes, which was to strike out all after the enacting clause, and insert:

SECTION 1. (a) Section 3(a) of the Act entitled "An Act to amend chapter 37 of title 38 of the United States Code with respect to the veterans' home loan program, to amend the National Housing Act with respect to interest rates on insured mortgages, and for other purposes", approved May 7, 1968, is amended by striking out "January 1, 1972" and inserting in lieu thereof "June 30, 1972".

(b) With respect to any area where the Secretary of the Department of Housing and Urban Development shall determine that cost levels so require or that such action is necessary to avoid excessive discounts on federally insured and guaranteed mortgages, the Government National Mortgage Association may, for a period of six months after the enactment of this Act, issue commitments to purchase mortgages with original principal obligations not more than 50 per centum in excess of the limitations imposed by clause (3) of the proviso to the first sentence of section 302(b)(1) of the National Housing Act, and it may purchase the mortgages so committed to be purchased.

SEC. 2. (a) Section 404(g) of the National Housing Act is amended by striking out "1¾" and substituting in lieu thereof "1⅝".

(b) Section 702(c) of the Housing and Urban Development Act of 1965 (42 U.S.C. 3102(c)) is amended by striking out "October 1, 1971" and inserting in lieu thereof "June 30, 1972".

SEC. 3. (a)(1) Section 1305(c)(2) of the Housing and Urban Development Act of 1968 is amended by striking out "December 31, 1971" and inserting in lieu thereof "December 31, 1973".

(2) Section 1315 of such Act is amended by striking out "December 31, 1971" and inserting in lieu thereof "December 31, 1973."

(b) Section 1336(a) of the Housing and Urban Development Act of 1968 is amended by striking out "December 31, 1971" and inserting in lieu thereof "December 31, 1973".

(c) The provisions of section 1314(a)(2) of the Housing and Urban Development Act of 1968 shall not apply with respect to any loss, destruction, or damage of real or personal property that occurs on or before December 31, 1973.

(d)(1) Section 1305(a) of the Housing and Urban Development Act of 1968 is amended by striking out "and" after "families" and inserting in lieu thereof ", church properties, and".

(2) Section 1306(b)(1)(C) of such Act is amended by inserting "church properties, and" immediately before "any other properties which may become".

SEC. 4. Section 303(b) of the Small Business Investment Act of 1958 is amended—

(1) by inserting the following in lieu of the first sentence thereof: "To encourage the formation and growth of small business investment companies the Administration is authorized (but only to the extent that the necessary funds are not available to said company from private sources on reasonable terms) when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures issued by such companies. Such purchases or guarantees may be made by the Administration on such terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection.";

(2) by inserting "or guaranteed" following "purchased" each time it appears in paragraphs (1) and (2) thereof and in the second sentence thereof;

(3) by inserting "or guarantees" following "purchases" in the last sentence of paragraph (2) thereof; and

(4) by inserting "or guarantee" following "purchase" in paragraph (3) thereof.

Mr. SPARKMAN. Mr. President, I move that the Senate disagree to the amendment of the House on Senate Joint Resolution 176 and ask for a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. SPARKMAN, Mr. PROXMIRE, Mr. WILLIAMS, Mr. MCINTYRE, Mr. TOWER, Mr. BENNETT, and Mr. BROOKE conferees on the part of the Senate.

MESSAGES FROM THE PRESIDENT—APPROVAL OF A BILL

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that on December 7, 1971, the President had approved and signed the act (S. 1810) for the relief of Dorothy G. McCarty.

REPORT OF ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION—MESSAGE FROM THE PRESIDENT (H. DOC. 92–181)

The PRESIDING OFFICER (Mr. CHILES) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Public Works:

To the Congress of the United States:

I herewith transmit the 1970 Annual Report of the St. Lawrence Seaway Development Corporation. This report has been prepared in accordance with Section 10(a) of Public Law 83–358, as amended, and covers the period January 1, 1970 through December 31, 1970.

RICHARD NIXON.

THE WHITE HOUSE, *December 7, 1971*

EXECUTIVE MESSAGE REFERRED

The PRESIDING OFFICER (Mr. CHILES) laid before the Senate a message from the President of the United States submitting the nomination of Anthony D. Marshall, of New York, to be Ambassador Extraordinary and Plenipotentiary

to Trinidad and Tobago, which was referred to the Committee on Foreign Relations.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House insisted upon its amendments to the bill (S. 18) to amend the United States Information and Educational Exchange Act of 1948 to provide assistance to Radio Free Europe and Radio Liberty, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. MORGAN, Mr. ZABLOCKI, Mr. HAYS, Mr. FASCELL, Mr. MAILLIARD, Mr. FRELINGHUYSEN, and Mr. BROOMFIELD were appointed managers on the part of the House at the conference.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 11955) making supplemental appropriations 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. MAHON, Mr. WHITTEN, Mr. ROONEY of New York, Mr. BOLAND, Mr. NATCHER, Mr. FLOOD, Mr. STEED, Mr. SMITH of Iowa, Mrs. HANSEN of Washington, Mr. MCFALL, Mr. BOW, Mr. CEDERBERG, Mr. RHODES, Mr. MICHEL, Mr. SHRIVER, and Mr. MCDADE were appointed managers on the part of the House at the conference.

The message further announced that the House had passed the following bills and joint resolution of the Senate, severally with an amendment, in which it requested the concurrence of the Senate:

S. 602. An act to provide for the disposition of judgments, when appropriated, recovered by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, in paragraphs 7 and 10, docket numbered 50233, United States Court of Claims, and for other purposes;

S. 671. An act to provide for division and for the disposition of the funds appropriated to pay a judgment in favor of the Blackfeet Tribe of the Blackfeet Indian Reservation, Montana, and the Gros Ventre Tribe of the Fort Belknap Reservation, Montana, in Indian Claims Commission docket numbered 279–A, and for other purposes;

S. 1237. An act to provide Federal financial assistance for the reconstruction or repair of private nonprofit medical care facilities which are damaged or destroyed by a major disaster;

S. 2042. An act to provide for the apportionment of funds in payment of a judgment in favor of the Shoshone Tribe in consolidated dockets numbered 326–D, 326–E, 326–F, 326–G, 326–H, 366, and 367 before the Indian Claims Commission, and for other purposes;

S. 2887. An act authorizing additional appropriations for prosecution of projects in certain comprehensive river basin plans for flood control, navigation, and for other purposes; and

S.J. Res. 176. Joint resolution to extend the authority of the Secretary of Housing and Urban Development with respect to interest rates on insured mortgages, to extend and modify certain provisions of the National Flood Insurance Act of 1968, and for other purposes.

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

H.R. 8708. An act to extend the authority of agency heads to draw checks in favor of financial organizations to other classes of recurring payments, and for other purposes;

H.R. 8856. An act to authorize an additional Deputy Secretary of Defense, and for other purposes;

H.R. 9019. An act to provide for the disposition of funds appropriated to pay a judgment in favor of the Jicarilla Apache Tribe in Indian Claims Commission docket numbered 22–A, and for other purposes;

H.R. 9526. An act to authorize certain naval vessel loans, and for other purposes;

H.R. 9886. An act to amend the Act of July 24, 1956, to authorize the Secretary of the Army to contract with the city of Arlington, Texas, for the use of water supply storage in the Benbrook Reservoir;

H.R. 10384. An act to release certain restrictions on the acquisition of lands for recreational development and for the protection of natural resources at fish and wildlife areas administered by the Secretary of the Interior;

H.R. 10702. An act to declare that certain federally owned land is held by the United States in trust for the Fort Belknap Indian Community;

H.R. 11570. An act to amend the Manpower Development and Training Act of 1962 by postponing the expiration of title II thereof for one year;

H.R. 11738. An act to amend title 10, United States Code, to authorize the Secretary of Defense to lend certain equipment and to provide transportation and other services to the Boy Scouts of America in connection with Boy Scout Jamborees, and for other purposes; and

H.R. 11809. An act to provide that for purposes of Public Law 874, Eighty-first Congress, relating to assistance for schools in federally impacted areas, Federal property transferred to the United States Postal Service shall continue to be treated as Federal property for two years.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills and joint resolution:

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;

H.R. 5068. An act to authorize grants for the Navajo Community College, 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 enrolled bills and joint resolution were subsequently signed by the President pro tempore.

HOUSE BILLS REFERRED

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

H.R. 8708. An act to extend the authority of agency heads to draw checks in favor of financial organizations to other classes of recurring payments, and for other purposes; to the Committee on Government Operations.

H.R. 8856. An act to authorize an additional Deputy Secretary of Defense, and for other purposes;

H.R. 9526. An act to authorize certain naval vessel loans, and for other purposes; and

H.R. 11738. An act to amend title 10, United States Code, to authorize the Secretary of Defense to lend certain equipment and to provide transportation and other services to the Boy Scouts of America in connection with Boy Scout Jamborees, and for other purposes; to the Committee on Armed Services.

H.R. 9019. An act to provide for the disposition of funds appropriated to pay a judgment in favor of the Jicarilla Apache Tribe in Indian Claims Commission docket numbered 22–A, and for other purposes; and

H.R. 10702. An act to declare that certain federally owned land is held by the United States in trust for the Fort Belknap Indian Community; to the Committee on Interior and Insular Affairs.

H.R. 9886. An act to amend the act of July 24, 1956, to authorize the Secretary of the Army to contract with the city of Arlington, Tex., for the use of water supply storage in the Benbrook Reservoir; to the Committee on Public Works.

H.R. 10384. An act to release certain restrictions on the acquisition of lands for recreational development and for the protection of natural resources at fish and wildlife areas administered by the Secretary of the Interior; to the Committee on Commerce.

H.R. 11570. An act to amend the Manpower Development and Training Act of 1962 by postponing the expiration of title II thereof for one year; and

H.R. 11809. An act to provide that for purposes of Public Law 874, Eighty-first Congress, relating to assistance for schools in federally impacted areas, Federal property transferred to the United States Postal Service shall continue to be treated as Federal property for 2 years; to the Committee on Labor and Public Welfare.

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to executive session.

NOMINATION OF WILLIAM H. REHNQUIST

The Senate resumed 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 Senator from California is recognized.

Mr. TUNNEY. Mr. President, I am here today to exercise a responsibility which I consider to be the most important a Senator has before him—the advice and consent to a nomination to the Supreme Court.

In the 11 months since I became a Senator, I have already had this opportunity once. That was yesterday, when I joined 88 other Senators in approving the nomination of Lewis F. Powell.

The full burden of this constitutionally imposed responsibility did not fall upon me with respect to the nomination of Mr. Powell, because, after examining his record, I found him to be a man of outstanding caliber, worthy of the position to which he has been summoned. There was no question, on those facts, of withholding my consent to his nomination. Unfortunately, the nomination of Mr. Rehnquist is another matter entirely.

First, I believe it important to meet a number of general issues which have

been part of this controversy as they were of past confirmation debates. I do feel that great weight must be given to the initial choice of a President in evaluating a nominee to the Court, and I would vote against a nominee only reluctantly. Also, I quite agree that it is unhelpful to attempt to predict how a given nominee would vote on a particular case. Moreover, although the Senate has frequently engaged in the baldest inquiries into the political views of nominees, I believe this kind of review does not well serve the interest of keeping the Court insulated from the ordinary run of politics. Finally, because of the responsibility we must exercise in nominations, I believe it particularly important to act cautiously after full deliberation.

A STANDARD OF REVIEW

Having said all this, I believe equally strongly that there is a fundamental standard against which a Senator must measure a nominee. Mr. Justice Felix Frankfurter, himself a renowned judicial conservative, stated it most eloquently:

> In good truth, the Supreme Court is the Constitution. Therefore, the most relevant things about an appointee are his breadth of vision, his imagination, his capacity for disinterested judgment, his power to discover and suppress his prejudices.

I think that standard is particularly meaningful for our task today. It reaches far beyond any issue of judicial conservatism or liberalism. It is a standard which speaks of our deepest hopes for equal justice under law, for a government which might be one of laws and not of men. We have gone to great lengths to make that vision a reality: we share a written Constitution; we have sought to disperse economic and political power wherever possible; we are skeptical of uncontrolled administrative discretion. Rightfully, we love law and justice, and honor our judges. I believe we accept, whatever our hopes, that any government of laws must also be a government of men. We must therefore at our peril seek out, above all for our courts, fair-minded men and women of imagination and disinterested judgment. That is why the standard expressed by Mr. Justice Frankfurter expresses those values which I believe we must demand of any Justice on the highest court, regardless of region, political views, or judicial philosophy.

Mr. BAYH. Mr. President, will the Senator from California yield?

Mr. TUNNEY. I yield.

Mr. BAYH. I should like to ask the Senator if he would care to, in the words of one of our leading public officials, make one thing perfectly clear, and that is the last point the Senator from California mentioned relative to the judgment of the minority in the Judiciary Committee Report; namely, was it the judgment of the four minority members of the Judiciary Committee that we would oppose Mr. Rehnquist because he did not agree with us in all things or we had a broader objection.

The suggestion was made by our distinguished colleague from Nebraska yesterday that we were unwilling to endorse anyone unless the prospective nominee would approve of everything that this small group of liberals thought was important. I should like for the Senator from California, if he would, for those who read the RECORD, to give us the benefit of his thinking on whether that was the judgment we made, or whether our objection was for a more basic reason.

Mr. TUNNEY. Mr. President, it is quite clear that the minority views express the point that Mr. Rehnquist was not being evaluated on the basis of narrow political views but was being judged on the basis of his overall judicial philosophy—the breadth of his vision, of his imagination, the way he reacted to the most fundamental of our liberties—and that is the Bill of Rights—in his opinions as a member of the Department of Justice. We were evaluating also the way he felt about racial equality, the fact that Mr. Rehnquist has not demonstrated an understanding of the fundamental concepts so basic to a democratic society, that if a person does not have equality of opportunity he is in fact being denied the same democratic rights that the majority of citizens in our society enjoy.

I think that in the era in which we live, with changes taking place so quickly, with communications being so rapid, it is an absolute necessity that we have a man sitting on the Supreme Court who understands and reveres the most basic of our democratic tenets and principles. Among those basic principles is the equality of opportunity for every individual in our society and the extreme importance of the Bill of Rights for the defense of individual liberty against the interests of governmental control.

Quite clearly, from the discussions that took place in the Committee on the Judiciary, and from the dissenting views that were expressed by four members of the committee, we were not basing our decision on narrow partisan grounds, but on a broader vision of what the Court represents to all Americans; namely, an interpreter of the Constitution in the face of all of the conflicting values and interests which must be weighed.

Each man sitting on that Court, it seems to me, has got to have deep in his very being a true sense of the history of this country, where we have come from, whence we have sprung, and where we are going.

I do not feel that Mr. William Rehnquist, a man of great intelligence, a man of high personal ethics, has the sensitivity toward the needs of our society and its disparate elements which is required to enable him to sit in judgment on these broad constitutional principles.

Mr. BAYH. I appreciate the response of the Senator from California. What he says certainly reflects the feeling and opinion, and certainly the ideas, in the mind of the junior Senator from Indiana, as we discussed them in committee and afterward in the compilation of the minority views. Also, we certainly tried to explain the nominee's views which disturbed us. I think that the Senator from California has captured the feeling very well and I appreciate it.

Mr. TUNNEY. I thank the Senator from Indiana. As I progress in my remarks, I will be more specific as to why I feel that Mr. Rehnquist lacks the necessary qualifications to sit on the Supreme Court.

Mr. President, acting in its own coordinate role of reviewing nominees to the Supreme Court, the Senate, time and again, has exercised its responsibility to inquire both into a nominee's integrity and competence, and also into his attitude toward the fundamental values of our constitutional system.

Demonstrative are the remarks of former Senator Connally on the nomination of Charles Evans Hughes to be the Chief Justice of the United States:

> I have no quarrel with Judge Hughes as to personal character. I grant that he is a man of personal character. I grant that he is a man of personal integrity. I take no issue with the Senator from Illinois (Mr. Glenn) as to Justice Hughes' great ability as an advocate of the bar, but, Mr. President, a man who is personally honest, yet who has driven by an honest conviction to certain economic views, is a much more dangerous Judge and a much more dangerous man in this or any chamber than the weak or vacillating public servant.[1]

Former Senator Dill made a similar judgment:

> Mr. Hughes is a man of quality, a man of great ability. He honestly believes in the doctrine of property rights as superior to human rights under the law he has so ably advocated. That makes him all the more effective and from my viewpoint all the more objectionable.[2]

No one has ever doubted that a President as a matter of course takes into account a prospective nominee's attitude toward the issues of the day, including questions which have come or may come before the Supreme Court in deciding whether to lay his name before the Senate. Reason and logic, as well as the text of the Constitution, suggest no less breadth in passing on the nominee.

The relevance of a nominee's judicial philosophy becomes even more clearly spotlighted, however, when the President explicitly says that a nominee's philosophy is one of the factors in his having been chosen.

It is fair to say that no President has been more explicit than the present one in unfolding a plan for reshaping the Supreme Court by naming to that bench only men of a particular judicial philosophy. In announcing his two current nominations on October 21, the President recalled his campaign pledge:

> To nominate to the Supreme Court individuals who share my judicial philosophy, which is basically a conservative philosophy.

Hence the President singled out two criteria which guided his selections: excellence as a lawyer, and judicial philosophy.

The President has simply made plain what has been implicit all along in the process of making nominations to the Supreme Court—the consideration of a nominee's attitude toward the fundamental values of our constitutional system. Equally implicit is the Senate's duty. If the Senate is to "advise" as well as to "consent", then it is inconceivable that the Senators would deliberately bar themselves from considering the varied

[1] 72 Cong. Rec. 3574 (Feb. 12, 1930).
[2] *Ibid.*

kinds of factors which the President invariably considers in choosing the nominee in the first place.

It is in the nature of the judicial process that those who nominate, and those who confirm or reject, a Justice of the Supreme Court must be concerned about the attitudes and values which the nominee may bring to bear on the decision of cases. Constitutions are not written with the specificity which one finds in a will or a contract. In particular, the great clauses of the Constitution, those in which the rights and liberties of the citizen are most bound up, are commonly clauses of notable generality. Phrases like "due process of law" or "equal protection of the law" invite—even demand—value judgments on the part of a judge. There is no litmus paper test to tell when a man has been denied due process of law. A judge must draw on history, on precedent, on experience, on the sum total of his own insights into the relation between state and individual.

No one could trace the evolution of the great clauses of the Constitution without being struck by the extent to which the judges of any generation are likely to read into that clause their understanding of how society will be best served by the interpretation that they are making.

How else can one account for the many and shifting uses to which the due process clause has been put, for example, the rise and decline of "substantive due process" in reviewing state economic and social legislation, or the more recent use of 14th amendment due process to "incorporate" and apply to the State various guarantees of the Bill of Rights?

Or how can one otherwise account for the many uses of the equal protection clause, ranging from its traditional application to bar racial injustice, to its use to implement other, emerging concerns, such as the dilution of the vote in legislative apportionment or the disabilities which indigency may place upon the accused in a criminal case.

Not only the language of the Constitution, but also the functioning of the Supreme Court as an institution, underscores the extent to which judges must make value judgments. Justice Jackson described how the Court is obliged to reconcile competing forces in our society:

> The Constitution, in making the balance between different parts of our government, a legal rather than a political question, casts the Court as the most philosophical of our political departments. It keeps the most fundamental equilibriums of our society such as that between liberty and authority, and between stability and progress. These issues underline nearly every movement in organized society.[3]

Justice Frankfurter emphasized the extent to which, as he saw it, a judge in interpreting the Constitution is necessarily thrown back upon his own set of values. The words of the Constitution, he wrote, are

> So unrestricted by their intrinsic meaning or by their history or by tradition or by prior decisions that they leave the individual Justice free, if indeed they do not compel him, to gather meaning not from reading the Constitution but from reading life . . . . [M]embers of the Court are frequently admonished by their associates not to read their social and economic views into the neutral language of the Constitution. But the process of Constitutional interpretation compels the translation of policy into judgment.[4]

Strive as one will for the idealized notion that a judge should decide cases without reference to his own social or economic philosophy, it is hard to escape the implications of Jerome Frank's comment:

> When I woke up one morning a Federal Court Judge, I found myself about the same person who had gone to bed the night before an S.E.C. Commissioner.[5]

One of the great students of the judicial process, Benjamin Cardozo, himself later to sit on the Supreme Court, thought to puncture the myth that somehow when a man becomes a judge he is unaffected by the events which shape the thinking of other men:

> Deep below consciousness are other forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigate or judge. . . . [I]f there is anything of reality in my analysis of the judicial process, they [judges] do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do. The great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by.[6]

In short a man takes what he is and what he believes, to the Supreme Court. It is our duty to approve or disapprove him on that basis as I believe is made clear in the standard described by Mr. Justice Frankfurter.

B. MR. WILLIAM REHNQUIST

Mr. President, I come then to the present context—the nomination of William Rehnquist. Both of us are relatively young men. Both of us may live to see the end of this century and the beginning of the next millennium. As pointed out by the Senator from Indiana in another Supreme Court confirmation debate, Mr. Rehnquist may be serving on the Supreme Court in the year 2000.

Between now and then, there will be many profound political, social, and economic changes in this country. As a Justice of the Supreme Court, Mr. Rehnquist will be required to pass judgment on the constitutionality of much of that change as it relates to maintaining an equilibrium between freedom and order, equality and efficiency, justice and security.

And for that reason, in his testimony, in his speeches, in his writings, and in personal conversations with him, I have sought to measure, as Justice Frankfurter suggested, his breadth of vision, his imagination, and his capacity to put aside his prejudices.

William Rehnquist's record presents no threshold problem of personal integrity or intellectual ability. It is clear he is a man of superior intellect and great personal integrity. But it raises serious questions about all of those factors I have just listed.

Much of the basis for those questions can be found in the memorandum which three of my fellow members of the Judiciary Committee and I filed with our individual views. Contained in it is the substance of many of my objections to Mr. Rehnquist.

They can be summed up in this way: I believe that William Rehnquist places a very low value upon fundamental principles of equality and individual liberties, a value far lower than that which they are accorded by the Constitution and the Bill of Rights. I am particularly concerned with his willingness to discount or disregard the fundamental nature of basic human rights.

Mr. Rehnquist testified to the Judiciary Committee that he would put aside personal value judgments. Yet the comments of Justices Frankfurter, Jackson, and Cardozo, cited earlier, make clear that the very essence of a justice is his ability to make exceedingly difficult value judgments. And the record before us indicates that Mr. Rehnquist brings an exceedingly limited breadth of vision to those value judgments.

1. CIVIL LIBERTIES

In each instance when he has confronted a judgment involving competing interests of governmental power and individual liberty, he has demonstrated an uncritical willingness to place an overriding value on governmental control. On governmental surveillance, wiretapping, inherent executive power, rights of the accused, dissent by public employees, and many other instances which involve a balancing of governmental and private interests—the record is equally disturbing.

His justification of a vast expansion of the Subversive Activities Control Board, his defense of unrestricted governmental surveillance, his rationale for preventive detention—all demonstrate to me that he is quite the reverse of a "strict constructionist." Instead he is willing to read into the powers of the executive branch an unrestricted latitude which threatens the very basis of individual freedoms.

He reads the Bill of Rights, and decisions upholding them against competing interests, as narrowly as possible, with only a passing reference to their underlying concerns. At the same time, he reads provisions and precedents conferring executive power expansively to justify the most intrusive kinds of official interference with those rights.

An example is his analysis of the conflicting interests regarding Government surveillance. On the one hand, he rejects the notion of judicial control over surveillance on the ground that the very process of litigation will impede the investigative activities of the Executive and will—in Learned Hand's borrowed phrase "dampen the ardor of all but the most resolute" public officials. He does not explore the extent of the impediment, or consider available devices—such as ex parte or in camera judicial proceedings—which would minimize it.

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[3] Robert H. Jackson, *The Struggle for Judicial Supremacy* (New York, 1941), pp. 312–13.

[4] "The Supreme Court," 3 *Parliamentary Affairs* (1949), p. 68.

[5] Quoted in Alpheus T. Mason, *The Supreme Court from Taft to Warren* (New York 1964), p. 192.

[6] *The Nature of the Judicial Process* (New Haven, 1921), pp. 167–68.

On the other hand, he denies that surveillance raises first amendment questions, rejecting the argument that it may "dampen the ardor" of political dissenters. In sum, the acknowledged possibility of abuse of surveillance does not call for judicial controls; but the possibility of abuse of judicial process calls for executive immunity from judicial controls. The Government's investigative interests must be protected from the "chilling effect" of litigation; but the first amendment interests of political dissenters need no protection from the "chilling effect" of the investigation.

Obviously, such conceptions as "possibility of abuse" and "chilling effect" have differing application to the facts and values on the two sides of the surveillance controversy; and, carefully analyzed, they may cut more heavily on one side than the other. But anyone who seeks fairly to resolve the controversy must fairly examine the applicability of these conceptions to the contentions on both sides, not just one. To be concerned with degrees of impairment of investigation that result incidentally from judicial supervision, but unconcerned with degrees of impairment of political expression that result incidentally from surveillance, bespeaks sensitivity to law enforcement values but none to the values of free speech.

2. CIVIL RIGHTS

In the area of civil rights, Mr. Rehnquist's record is especially disturbing, because of the substantial role played by the judicial branch in assuring equality of opportunity to all our citizens.

In recent days with public attention on his arguments as a Supreme Court clerk, against overturning the now infamous "separate but equal" decision, *Plessy* v. *Ferguson* (163 U.S. 537 (1896)), that record has become even more disturbing.

Of the three branches of the Federal Government, it was the judiciary which took the initiative in recognizing the moral and constitutional imperative of the civil rights movement in America. Nearly a century of inactivity followed the freeing of the slaves and the passage of the Reconstruction amendments to the Constitution. The high water marks of Reconstruction efforts to broaden civil rights and racial equality were Supreme Court decisions: The decision in the civil rights cases, overturning a public accommodations discrimination law was confirmed by the "separate but equal" decision of the Supreme Court in Plessy against Ferguson. Both these Supreme Court decisions stand at the beginning of decades of inactivity which ended only with another Supreme Court decision—*Brown* v. *Board of Education* in 1954 (347 U.S. 483). Only after Brown did the flood of civil rights legislation and other reforms begin.

Especially in the field of civil rights, therefore, the rule of law has depended on the actions of judges. The black man in America has pinned his hopes on that rule of law, and black leadership has repeatedly looked to the courts to redress grievances. As Mr. Justice Black put it so well in a 1940 opinion:

> Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement.[7]

It is pointedly unfair, and in the long run futile, to ask a member of a minority group to have respect for law unless in return he has some reasonable assurance that he will share fully in the protections and promises that the Constitution holds out to him. If he loses faith in the constitutional system, the result is frustration, alienation, and eventually civil disorder or worse.

The powerless, the disadvantaged, the unpopular must not be without hope of redress. Even if the winds of political fortune from time to time foreclose legislative and executive channels, such people must be able to look to the courts. Recognizing the intimate relation between litigation and progress of civil rights in a 1963 opinion, the Supreme Court said that while litigation is not always a technique to resolve private differences; it can be—

> A means for achieving the lawful objectives of equality of treatment by all government, federal, state, and local, for members of the Negro community in this country. It is thus a form of political expression. Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts. Just as it was true of the opponents of the New Deal legislation during the 1930's, for example, no less is it true of the Negro minority today. And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.[8]

It is one thing for a court to take a "hands off" attitude when all that is at stake is a statute regulating the economy. Those who have money, power, or influence rarely find the courts to be their only hope. It is quite another thing to adopt a laissez-faire attitude to the rights of racial or other minorities.

Insuring that the American system is able to respond to the legitimate expectations of its diverse minorities is one of the compelling imperatives of our time. It is an imperative which will go unfulfilled if those on the Supreme Court are hostile, insensitive, or indifferent to the needs and aspirations of blacks and Chicanos and others who have so far not shared completely in the fruits of American democracy.

The legitimate aspirations of a minority group depend for their ultimate vindication on an open society: an unfettered franchise, freedom to express opinions no matter how obnoxious to the majority, a wide scope for State and Federal reform legislation—for example, congressional power under section 5 of the 14th amendment—and accessible justice in the courts. It is in just such areas as these that rulings of the Supreme Court in the past two decades have had the most impact. It is imperative that the Court continue to share with the Congress this trusteeship.

[7] *Chambers* v. *Florida*, 309 U.S. 227, 241 (1940).

[8] *NAACP* v. *Button*, 371 U.S. 415, 429–30 (1963).

I have measured the record of William Rehnquist on civil rights against this imperative and find it inadequate.

In accepting the Republican nomination for President in 1968, President Nixon said the following:

> Let those who have the responsibility for enforcing our laws and our judges who have the responsibility to interpret them be dedicated to the great principles of civil rights.

Yet Mr. Rehnquist displays, instead, a consistent hostility toward efforts to bring to all our citizens the full measure of their rights regardless of race or color or creed. His record is one of opposition to even modest efforts toward racial equality. The 1964 Phoenix public accommodations ordinance, the 1966 Model State Antidiscrimination Act, the 1967 letter to the editor of the Arizona Republic, and more fundamentally, his memorandum to Justice Jackson against the now infamous overturning Plessy against Ferguson, "separate but equal" decision of the Supreme Court—all demonstrate that he is a man who shrinks from dedication to those "great principles of civil rights" of which the President spoke.

All of these points are considered in great detail in our joint memorandum contained in the Judiciary Committee report with the exception of his memorandum to Justice Jackson, and I commend it to the Senate.

I believe, however, that the memorandum to Justice Jackson is highly significant, because it provides a strong indication of the manner in which Mr. Rehnquist approaches the proposition that all men are entitled to equality of opportunity regardless of race or color. And combined with his letter to the editor of the Washington Post regarding Judge Carswell in 1970, it demonstrates quite clearly that then and now, William Rehnquist believes that "constitutional conservatism" dictates resistance to "further expansion of constitutional recognition of civil rights."

In 1952, as the Supreme Court approached its unanimous decision in Brown against Board of Education in 1954 holding that racially segregated public facilities were inherently unequal, William Rehnquist said the following in his memorandum to Justice Jackson:

> Regardless of the Justice's individual views on the merits of segregation, it quite clearly is not one of these extreme cases which commands intervention from one of any conviction.

In 1970, in the face of demonstrated hostility to racial justice on the part of Judge Carswell, William Rehnquist wrote to the Washington Post as follows:

> Thus the extent to which his judicial decisions in civil rights cases fail to measure up to the standards of The Post are traceable to an over-all constitutional conservatism, rather than to any animus directed only at civil rights cases or civil rights litigants.

To my mind there is no clearer evidence that William Rehnquist at every point in time continues to regard affirmative commitment to principles of racial justice and judicial conservatism as mutually exclusive. He did so in 1952,

he did so in 1970, and I believe he does so now.

I believe that one point ought to be made very clear, and that is that it is possible to oppose such things as violent and disorderly demonstrations and still believe very deeply in the Bill or Rights, in the rights of assembly and free speech. I happen to oppose disorderly demonstrations and violence and the individual who decides to take the law into his own hands. Yet I believe equally passionately that the Bill of Rights must be protected in a mechanistic age in which men sense that their Government has no relevance to them.

What we are demanding of this nominee, as we did of Mr. Powell and other nominees before him, is that he give full consideration to all of the conflicting values and interests of society before making a judgment. One need not be a knee-jerk liberal to be concerned with a record such as that before us today. Concern for an ordered society, for the security of our governmental system, for protection against crime and lawlessness does not and cannot exclude an equal concern for the protection of individual liberties.

If there ever does come a time when concern for individual rights and concern for law and order with justice become mutually exclusive, I fear for our society.

Thus, I reject utterly and completely the notion that opposition to this nomination is based upon any kind of political litmus test between the parties, Republican and Democratic, in this country. I think that it is very clear that Mr. Powell has demonstrated in his record that he has the sensitivity to the Bill of Rights, that he has an understanding of the individual's value in an ordered society. I also believe it is clear that Mr. Rehnquist has not demonstrated such an understanding.

I, for one, reject wholly the thought that because in the Constitution life, liberty, and property are mentioned together, and that because the Federal Government, in recent years, has exercised ever-greater control over property rights, correspondingly the Government should have the right to control ever more completely the freedom of the individual. I believe that one of the things most dangerous about the present age and most dangerous to our democratic way of life is the fact that our political institutions are becoming free-floating aggregates of power, not anchored into the conscience of the individual citizen. I believe that the average citizen feels increasingly that his life has no universal moral significance.

It is ironic that a person such as myself, who has what could be called by some a liberal voting record, should be arguing what has traditionally been in this country a conservative viewpoint; namely, that the right of the individual is superior to the right of a government to exercise more than necessary control.

I do not feel that the Government has the right to exercise casual control over the individual. I feel that the Government obviously has the right to maintain order, and obviously the Government has the right to incarcerate those who break the law, and to punish those who show such contempt of their fellow citizens that they are willing to violate their rights. But everything is a balance. I, for one, am not predisposed to favor justices on the Supreme Court of the United States who feel that the Federal Government has an unlimited right to maintain order in the society, even where the most basic rights of the individual are held in jeopardy.

I never want to see the United States of America become a political community such as exists in the Soviet Union. I do not want to see truth based upon an opinion of the leader of the society as to what truth should be. I disagree with the basic philosophy of Jean-Jacques Rousseau that the general will as interpreted by the leader of the society is determinative of what the individual has the right to think and do.

In that kind of a political community, what really counts is who is the leader, and what are his personal political predilections. The rights of the minority are meaningless, because in the total political community, the general will as expressed by the leader is morally right, and those who disagree are apostates, under conditions such as those that prevailed during the Inquisition, and can be disposed of, and those who do the disposing are morally justified in so doing.

I do not want to see that type of society develop in the United States. But I think we have to recognize that in recent years we have moved far down the line. I think that when we see, as we did in recent history, men called figurative traitors, because they disagreed with a President's foreign policy in Southeast Asia, or when we move a little bit farther back in history and recall the era of Joe McCarthy, we begin to realize that increasingly we are moving toward a political community where the individual's worth to the society is determined by the political philosophy of those in power.

I feel, in that sense, that Mr. Rehnquist's philosophy as it relates to the exercise of government power is quite radical, and it seems to me that my own predisposition is conservative, if conservative means recognizing the importance and the value of individual rights and judgments.

It is my very sincere hope that the nomination of Mr. Rehnquist will not be confirmed by the Senate. He certainly is not a bad man. He certainly is not a man who is going to espouse principles which would incite revolution. But to my mind, he believes and articulates a sense of values which, if it were realized in this country, would mean a sharp departure from what we have known in the past. Considering the judicial system that we have in this country and considering the long tradition in Anglo-Saxon common law of innocence until proved guilty, I cannot imagine why a man as knowledgeable of the law as William Rehnquist would advocate, and be an architect of preventive detention. If you think about it for a moment, preventive detention turns the burden of proof upside down, it forces the defendant to prove his innocence, because he is jailed until trial. The only factual question that has to be determined by a judge before jailing is whether the defendant has had a certain number of convictions in the past. I would agree that if one were going to use the odds of a gambler, a long criminal record may make it more likely that a person arrested for another similar crime may be guilty of that crime—more likely at least than a person who has never been arrested before. But still it represents a very significant departure from the fundamental concept that a man is innocent until proven guilty, and that when a man is arrested and jailed prior to trial, he will have the right of bail.

Mr. Rehnquist apparently feels that preventive detention is a satisfactory means of keeping a man off the streets until trial. I wish that in analyzing the competing interests on that issue, Mr. Rehnquist had shown a corresponding willingness to analyze the effect of other, less restrictive alternatives—alternatives such as swifter trials, more judges and streamlined procedures, so that justice could be expedited—expedited in a way that is consistent with the Constitution which every American citizen treasures. That, I believe, is the essence of the value judgments which a Justice must make, and it illustrates the narrowness of his vision and imagination. I recognize that he is a man who is a consummate technician, but I feel that where he fails is that he does not have that breadth of spirit which encompasses the very essence of our democratic way of life. Although I feel that Mr. Rehnquist is perfectly entitled to have his point of view—and I would defend his right to express that viewpoint—that does not mean that I feel that he should be sitting on the Supreme Court of the United States, one of nine Justices, making decisions which are dramatically going to affect the rights of 200 million other citizens.

Mr. President, I should like to read into the RECORD at this time the memorandum that Mr. Rehnquist drafted for Justice Jackson in 1952 in which he analyzed the conflicting values which confronted the Court as it approached a decision on a half century of racial segregation.

I believe it illustrates and confirms the fact that, in the mind of William Rehnquist, judicial conservatism operates in opposition to the dedication to civil rights of which President Nixon spoke in his nominating speech.

A RANDOM THOUGHT ON THE SEGREGATION CASES

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 inter-departmental disputes within the federal government, this doctrine of judicial review has worked well. Where theoretically co-ordinate 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 government 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 Peckman 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.

I should like to interpose here: If segregation is not one of those extreme cases which commands intervention by the Supreme Court, what in the world would be one of those extreme cases?

To go on with the memorandum:

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 interpolate again, apparently, if we follow this logic to its ultimate conclusion, we could have debtors prisons in this country. If property rights are always the equal of human rights, the Government could constitutionally establish such debtor prisons.

The Bill of Rights and the 14th amendment, if they stand for anything at all, stand for the proposition that there are occasions when rights fundamental to personal dignity do outweigh rights to property.

To go on with the memorandum:

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*.

Mr. President, I submit that the memo speaks for itself. It reveals a man who believes that judicial conservation can and should prevent a justice from undoing a half century of racial injustice and indignity. And taken together with Mr. Rehnquist's 1970 letter to the Washington Post in support of Judge Carswell it demonstrates that William Rehnquist believes that judicial conservation does, indeed, compel opposition to affirmative action against racial injustice.

When we couple his insensitivity in civil rights with his insensitivity to civil liberties, I believe his record shows that he is prepared to discount and disregard fundamental values which we as a Nation cannot discount and disregard.

Democracy is a very delicate balance between order on the one hand and liberty on the other. We can and we must demand that our judges be concerned to the utmost with the maintenance of that delicate balance. And thus I must oppose the nomination of William Rehnquist.

Mr. President, I yield to the Senator from Massachusetts.

Mr. MANSFIELD. Mr. President, will the Senator yield to me for a unanimous consent request?

Mr. BROOKE. I yield.

UNANIMOUS-CONSENT AGREEMENT ON S. 2676

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of any special orders for any Senators tomorrow, there be a period of not to exceed one-half hour set aside for the consideration of calendar No. 537, S. 2676, a bill to provide for the prevention of sickle cell anemia; and that the time be equally divided between the majority and the minority leaders or whomever they may designate.

The PRESIDING OFFICER (Mr. HANSEN). Does the Senator wish to waive rule XII?

Mr. MANSFIELD. Yes, indeed. I thank the Chair for reminding me.

Mr. FANNIN. Mr. President, what is the time limitation?

Mr. MANSFIELD. The time limitation is not to exceed one-half hour, the time to be equally divided between the two leaders or whoever they may designate. It is my further understanding that the yeas and nays have been ordered on the measure.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 29) to establish the Capitol Reef National Park in the State of Utah.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2007) to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, and for other purposes.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, December 7, 1971, he presented to the President of the United States 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; and

S. 2248. An act to authorize the Secretary of the Interior to engage in certain feasibility investigations.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

NOMINATION OF WILLIAM H. REHNQUIST

The Senate continued with the consideration of the nomination of William H. Rehnquist to be Associate Justice of the Supreme Court of the United States.

Mr. BROOKE. Mr. President, inscribed on the portico of the Supreme Court are four words: "Equal Justice Under Law." In all likelihood, few Americans have ever noticed this inscription. But through the centuries, millions of Americans have relied on the Court to follow this dictum. And in the past two decades, a disillusioned minority of Americans have become increasingly reliant on this, the Nation's highest tribunal, to accord them the rights they have for so long been denied. The Court has responded to their aspirations for justice and sustained their faith that our Nation remains intent on realizing the noble and necessary goal of equality for all its citizens.

The confidence of the people in the Supreme Court must ever be renewed and never be diminished. This confidence is derived from the actions, opinions and bearings of nine individuals. We in the Senate are charged with sustaining this confidence by properly advising and consenting on the President's judicial nominations. We must insure that only the best men and women serve on the Supreme Court of the United States. And there must be no doubt in any American's mind that the U.S. Senate will accept anything less than the best on the Court.

Our quest for the best justices must be considered with a special set of circumstances in mind: The time limits which apply to most other Presidential appointments do not pertain to Supreme

Court Justices. A justice once nominated and confirmed in the last third of the 20th century could well serve into the 21st century and shape the destiny not only of our children but of our children's children and, indeed, their children.

In this context, I am reminded of Justice Felix Frankfurter's observation after many years of service on the Court:

> The meaning of "due process" and the content of terms like "liberty" are not revealed by the Constitution. It is the Justices who make the meaning. They read into the neutral language of the Constitution their own economic and social views. Let us face the fact that five justices of the Supreme Court are the molders of policy rather than the impersonal vehicle of revealed truth.

Five Justices, a majority of the Court, are indeed the "molders of policy." The law is not eternal, immutable; it changes as it is perceived by men. And it is our duty, the Senate's duty, no less than the President's, to insure for the people of the United States that the law is perceived by wise and fair men and women. In carrying out our duty we must measure the men and women nominated by the President against the highest possible standards. I have done so to the fullest extent possible.

During the 35 months of his incumbency, President Nixon has had an opportunity with few precedents. He has had the opportunity to fill four vacancies on the Supreme Court. In so doing, he has nominated six men—one to be Chief Justice and five to be Associate Justices of the Court. I supported the nominations of Warren E. Burger to be Chief Justice and Harry A. Blackmun to be an Associate Justice. At the time of their confirmations I believed each would sustain the people's confidence in the Court. Their records to date have substantiated my belief.

At the same time, I felt compelled to vote against two Presidential nominees to the Supreme Court: Justices Clement Haynsworth and G. Harrold Carswell.

Both of these men should be spared as far as possible a review of the circumstances that led to the rejection of their nominations.

I intend to discuss their confirmation proceedings only to the extent that it is necessary to delineate my criteria for supporting the confirmation of a nominee to the Supreme Court.

In 1948, Mr. Carswell had advocated a doctrine of racial superiority. As repugnant as this concept is to me, I would not have voted to reject him on the basis of the 1948 speech if anywhere in the 22 years which followed there was convincing evidence that he had changed his views. In my search for such evidence, I was mindful of the presence on the Court of Justice Hugo Black, who had taken the oath of a Klansman early in his political career, but who before and during his service on the Court became one of the greatest defenders of personal liberties in American history. Judge Carswell's personal and professional record gave no evidence of a similar ability to grow and change.

In fact there was clear evidence that his views of 1948 were his views in 1970. My search was for more than evidence. I searched for a measure of the man and found he did not measure up to the standard the Senate must set if public confidence in the Court is to be sustained.

I asked: "What kind of man is he?" That is a difficult question. The answers are not readily found. But the question is valid and the answers essential as a Senator weighs his decision and votes on a Supreme Court nomination. It is imperative that we measure the total man.

In this regard, I repeat today what I said on March 19, 1970, during the debate on the Carswell nomination:

> In short I say our responsibility goes far deeper. We are concerned not only with the integrity and honesty of the nominee, but also with the competence, ability and qualifications above and beyond the man's moral fitness to sit on the highest bench of the land.

These qualifications can be discerned in the human qualities of a nominee which are pertinent to confirmation because, in Frankfurter's words, a Justice is more than "the impersonal vehicle of revealed truth."

Judge Learned Hand once discussed the appropriate qualifications of great jurists. He said in part:

> They must be aware that there are before them more than verbal problems; more than final solutions cast in generalizations of universal applicability. They must be aware of the changing social tensions in every society which make it an organism; which demand new schemata of adaption; which will disrupt it if rigidly confined.

In assessing past nominees to the Supreme Court, I have sought in measuring the "total man" to judge the candidate's awareness of and sensitivity to "changing social tensions."

In this regard, it is, and must be, appropriate that we consider a nominee's actions and attitudes with respect to civil rights. I believe that a nominee's affirmation of the progress we have made in assuring equal treatment and opportunities for all Americans is a prerequisite for confirmation, I have applied this yardstick in the past; I have used it in respect to the nomination now before us and I shall hold true to it as long as I am a Member of the U.S. Senate.

For I believe that the Nation's highest tribunal has renewed the promise of liberty and equality, and that it can never renege on this sacred promise.

Mr. President, during the proceedings on past Supreme Court nominees, I have said I could vote to confirm a conservative, a southerner, and a strict constructionist. I voted with confidence to confirm the nominatin of Lewis F. Powell, Jr., to be Associate Justice of the Supreme Court.

But I regret that on the basis of his record I do not have that confidence in William H. Rehnquist and I am compelled to vote against his confirmation.

Since I announced my decision last Thursday to oppose Mr. Rehnquist's nomination, additional information as to Mr. Rehnquist's disposition to human rights has surfaced.

In its December 13 issue, Newsweek reported that while a clerk to Justice Robert Jackson in 1952, the nominee wrote a memorandum declaring that the "separate but equal" doctrine laid down by the Court in Plessy against Ferguson in 1896, in Mr. Rehnquist's words, "was right and should be reaffirmed."

This memo further stated:

> Regardless of the Justices' 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. . . . To those who argue that "personal" rights are more sacrosanct than "property" rights the short answer is that the Constitution makes no such distinction. To the arguments made by Marshall—Thurgood, not John—that a majority may not deprive a minority of its constitutional rights, 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.

Heaven help us, Mr. President, if this is the answer.

Mr. Rehnquist was 28 years old when he wrote that memo and when he predicted that the Court's efforts to protect minorities would "fade in time, too, as embodying only the sentiments of a transient minority of nine men." Two years later Justice Jackson joined in the unanimous decision in Brown against Board of Education, which declared segregated schools to be inherently equal. The Court's efforts to protect minority rights did not "fade in time." Neither did William Rehnquist's resistance to efforts to protect these rights.

As I did in the case of Judge Carswell, I searched for evidence which might indicate a change and growth in Mr. Rehnquist's attitudes. I looked for indications that the nominee had grown away from the position he stated in his 1952 memo. But I did not, I could not, find such evidence.

On the contrary, my thorough analysis of Mr. Rehnquist's record reveals a continued and disturbing pattern of insensitivity to human rights. The record is devoid of any assurance that, if confirmed, he would not seek to undo the slow, steady progress we have made. Rather, the evidence suggests that, if confirmed, he might actively press to move the Court away from its commitment to equal protection and opportunity.

Since his 1952 memo, I find, time and again, a consistent pattern in Mr. Rehnquist's personal activities, writings, and opinions throughout the 1960's when he practiced law in Phoenix. What is clear from a review of available information is that, while our Nation forged ahead into new dimensions of equal opportunity and treatment for its people, Mr. Rehnquist clung tenaciously to a narrow view of the rights of man.

The years of 1964, 1966, and 1967 were years of hope for the long-disillusioned minorities. Congress began to move, as the Supreme Court had earlier, to insure that human rights were upheld. Yet, in each of these years, Mr. Rehnquist vigorously opposed progress in human rights.

On June 15, 1964, as a "lawyer without a client," William Rehnquist appeared before the city council of the city of Phoenix to argue against adoption of an ordinance guaranteeing equal rights of access to public accommodations.

There was nothing ambiguous about his speech. It was an eloquent, but, in my judgment, totally misguided, defense of the proposition that property rights rank higher than human rights. Let me repeat his words:

> Here you are talking about a man's private property and you are saying, in effect, that people shall have access to the man's property whether he wants it or not.

Fortunately, his testimony did not convince the city council which unanimously passed the ordinance the following day. Undeterred, Mr. Rehnquist reiterated his views in a letter to the editor, published in the Arizona Republic, June 24, 1964. Within weeks the Congress of the United States passed the historic Civil Rights Act of 1964 with its broad public accommodations provisions.

Mr. Rehnquist now claims a change of mind on this issue. In his testimony before the Judiciary Committee last month, he said:

> I think the ordinance really worked very well in Phoenix. It was readily accepted, and I think I have come to realize since, more than I did at the time, the strong concern that minorities have for the recognition of these rights. I would not feel that same way today about it as I did then.

Mr. President, it is incredible to me that any man did not know how strongly minorities felt about their rights. Minorities feel just as strongly about their rights, if not more strongly about their rights, than majorities feel about their rights. That is what is happening all over the world today. People are claiming and crying and fighting for their rights. Minorities who have been oppressed for centuries are fighting for their rights. How can an intelligent man—and Mr. Rehnquist is an intelligent man—not have known in the 1960's that minorities felt so strongly about their rights? Then in 1971, when he came before the Senate Committee on the Judiciary to be confirmed for the Supreme Court of the United States, our highest tribunal, he said that now he understands how strongly minorities feel about their rights.

Mr. BAYH. Will the Senator yield?

Mr. BROOKE. He does not say that he was wrong in 1967. He does not say that at all. He just says the Phoenix, Ariz., ordinance worked well—as though he were surprised that it would work well—and that, therefore, since it did work well, and because he now understands in 1971 how strongly minorities feel about their rights, he has changed his mind and perhaps today he would not say what he said in 1967.

Yes, I shall be very pleased to yield

Mr. BAYH. I just want to reemphasize—and the Senator has done so on his own volition—the fact that although the proponents of Mr. Rehnquist said, well, now, he really does not believe that; it may have been bad to write that memorandum back in 1952 in reference to the case of Brown against Board of Education; it may have been bad not to have wanted black people in the drugstores of Phoenix in 1964—at a time when this city was alive, when hundreds of thousands of people became aware of that great 1964 Civil Rights Act—it may have been bad in 1967 for him to have taken issue with the superintendent of schools in his efforts to desegregate the school system of Phoenix, but this is a new Mr. Rehnquist in 1971. They say he really does not believe in this any more.

As the Senator from Massachusetts has pointed out, he has not said that he was wrong in 1964; he has not said that the philosophy presented in Brown against Board of Education is a good philosophy; he has fallen back on the argument that we did not get quite as many bloody noses out of the public accomodations ordinance as he had anticipated.

I wonder if the Senator from Massachusetts shares concern, as does the Senator from Indiana, that it is too late to remake Brown against Board of Education. That is the law of the land, and to try to look with hindsight at what a man who has now made certain statements relative to Brown against Board of Education some feel now is not important. But we have to look at his philosophy, and the thought processes that he used, and the assessment of various values of the Constitution that he used, to determine how he would judge should another Brown against Board of Education—a similarly dramatic landmark case—come before the Court.

Does the Senator from Massachusetts have concern about the sensitivity and the humanitarian nature of a nominee who looked so coldly and callously at blacks with regard to personal rights as that expressed by the nominee, given another case like this, as there are bound to be several?

Mr. BROOKE. Mr. President, I certainly am very much concerned about Mr. Rehnquist's insensitivity in this area. I am very much concerned at the thought of confirming the nomination of a man for the Supreme Court of the United States who, after making the statement he did in 1967, comes before the Senate Judiciary Committee in 1971 and asks the members to vote favorably upon his nomination and report his nomination to the full Senate, yet even then does not feel strongly enough about basic human rights to say categorically, without any equivocation whatsoever, that he now thinks differently. I searched the record. I read it thoroughly. I find no such language contained herein. I cannot interpret what I have read in the record to mean that he has changed his view, no matter how much I may stretch that record or that language. I cannot find it anywhere in the record. Let me just read the words again:

> I think the ordinance really worked very well in Phoenix. It was readily accepted, and I think I have come to realize since, more than I did at the time, the strong concern that minorities have for the recognition of these rights. I would not feel that same way today about it as I did then.

Nowhere there in those words I have just read do I find a rejection of the philosophy of his statement in 1967—nowhere.

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

Mr. BROOKE. I yield.

Mr. BAYH. The Senator from Indiana sat through every word of that testimony, and it is not there. The interpretation for which the Senator from Massachusetts searched, I also searched for. I asked questions trying to get this type of disavowal. It is not there. I think we have an alarming consistency between the language and the rhetoric throughout his career and the reasoning in his Brown against Board of Education memorandum to Justice Jackson.

Mr. Rehnquist then said the Constitution—I will paraphrase it very badly, because he stated it very articulately, but in essence he said—the Constitution does not give preference to personal rights over property rights. There is great consistency between that language in 1952 and the language in the letter to the editor about the Phoenix public accommodations ordinance, and, indeed, the integrated versus segregated society language in the 1967 letter. So it at least shows the same belief that he had in 1964, 1966, and 1967 as he had in 1952.

I thank my colleague for yielding.

Mr. BROOKE. To go on, Mr. President, Mr. Rehnquist's "change of mind"—in quotes—came slowly, even though it was welcome. It came slowly.

In 1966 he opposed two important provisions of a model State Antidiscrimination Act. One would have permitted an employer with the approval of a State agency, to voluntarily hire new employees to fill vacancies in such a way as to reduce or eliminate racial, religious, or sex imbalance in its work force. The other provision also opposed by Mr. Rehnquist was designed to prohibit "blockbusting" tactics by which some realtors profited from racial fears.

Mr. Rehnquist moved to delete this provision because of what he considered to be "constitutional and policy" questions. Once again his opposition was overruled.

One year later, and only 4 years ago, Mr. Rehnquist voluntarily entered the debate on de facto segregation within the Phoenix Public School System with a letter to the editor published in the Arizona Republic of September 9, 1967. Mr. Rehnquist's letter responded to a series of articles in the Republic outlining the "integration program" for Phoenix High Schools proposed by the Superintendent of Schools, Dr. Howard Seymour. Mr. Rehnquist was as vehement on this issue as he had been before: he opposed any mechanism which would compromise the traditional neighborhood school concept. He wrote:

> Mr. Seymour declares that we "are and must be concerned with achieving an integrated society." Once more, it would seem more appropriate for any such broad declarations to come from policy-making bodies, who are directly responsible to the electorate, rather than from an appointed administrator. 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 man is accorded the maximum amount of freedom of choice in his individual activities. The neighborhood school concept, which has served us well for countless years, is quite consistent with this principle.

In that letter, Mr. Rehnquist upholds the point of view expressed in his 1952 memorandum. In 15 years, and notwithstanding the Supreme Court's unanimous decision in Brown against Board of Education, it is apparent that William Rehnquist has remained unmoved and unchanged.

Particularly, I reject Mr. Rehnquist's assertion that—

> We are no more dedicated to an "integrated" society than we are to a "segregated" society.

I am convinced that we are a free society seeking full freedom of opportunity, which shall lead us to integration. Thus, I believe we are dedicated to an integrated society.

The United States of which I dream can only be achieved in unity. In my opinion, we cannot have a division of the races. I have always opposed black separatists and white separatists. I have also opposed those who advocate a laissez-faire course and treat as equal the consequences of integration and segregation. Segregation is a lingering evil of the past; integration is an abiding goal of the future. They cannot be equally weighed. Yet only 4 years ago, Mr. Rehnquist so weighed them.

In hearings before the Judiciary Committee, Mr. Rehnquist still had not recanted his view though he has had ample opportunity to do so. Rather he has sought to explain away his statement in the narrow context of busing, though nowhere in his letter is there any mention of busing. His original statement was broadly, not narrowly, based. It dealt with far more than the Phoenix School System; it was Mr. Rehnquist's statement of his strong belief that this was the proper course for the Nation.

Mr. President, to summarize there is a persistently disturbing pattern in Mr. Rehnquist's record in the 1960's. The Nation was moving forward; Mr. Rehnquist was looking back. In 1964, the nominee opposed a Phoenix public accommodations ordinance while Congress was in the process of passing the Civil Rights Act of 1964. In 1966, the nominee sought to delete equal employment and anti-"blockbusting" provisions from a Model State Civil Rights Act, as President Johnson began to enforce title VI of the Civil Rights Act of 1964 to eliminate de jure segregation in Southern school districts. In 1967, Mr. Rehnquist wrote that "we are no more committed to an 'integregated' society than we are to a 'segregated' society," as Justice Thurgood Marshall was appointed to the Supreme Court.

From this pattern, I reluctantly conclude that there is little evidence to support the contention that William Rehnquist has had an appreciation for and a sensitivity to the needs and rights of individuals. On the contrary, his record gives every indication that he remains unappreciative of and insensitive to changing social tensions. His own words, presumably written after careful thought and study reveal a persistent unwillingness to permit the law to be used for the purpose of promoting equal justice under the law for all Americans.

Mr. President, disturbing as Mr. Rehnquist's record was during the 1960's, I wanted to find evidence of growth or change.

In pursuit of evidence to this effect, I encountered an obstacle to complete inquiry—the nominee's position as Assistant Attorney General, Office of Legal Counsel. From the day he assumed this position, it is almost impossible to separate William Rehnquist, the man, from William Rehnquist, the President's advocate. Whatever the merits of the nominee's invoking the lawyer-client privilege on a number of issues, the result was to make sparse his public record and to preclude full assessment of his growth and change since 1967.

In the interval between his 1967 letter to the editor and his nomination on October 21, 1971, I find only one statement by Mr. Rehnquist concerning civil rights that could be construed as personal and not made on behalf of the Justice Department. In a letter to the editor of the Washington Post rebutting an editorial critical of Judge Harrold Carswell, Mr. Rehnquist wrote:

> My criticism of your editorial, however, goes beyond these misimpressions. The *Post* is apparently dedicated to the notion that a Supreme Court nominee's subscription to a rather detailed catechism of civil rights decisions is the equivalent of subscription to the Nicene Creed for the early Christians—adherence to every word is a prerequisite to confirmation in the one case, just as it was to salvation in the other.

The contemptuous tone of Mr. Rehnquist's letter is almost as disturbing as its content. He abruptly dismisses those who have championed civil rights and two decades of judicial progress. The letter offers additional evidence that Mr. Rehnquist had not moved away from the apparent insensitivity to human needs and human rights he expressed in 1952 and evidenced throughout the 1960's.

Mr. Rehnquist apparently has never been reconciled to the failure of his prophecy that the Court's efforts to protect the rights of minorities would "fade in time." Eighteen years passed and the Court's efforts did not fade, but instead grew brighter and a Nation moved ahead. "Personal" rights were held sacrosanct by nine men who embodied a permanent sense of equal justice for all Americans.

We cannot, or should not, now undo the progress this country has made. Those who look to the Supreme Court for fairness, for justice, for equality, must not be disappointed. The American people must continue to be confident that the Naton's Highest Court will fulfill its promise. I believe that the confirmation of William Rehnquist would strain this confidence.

Mr. President, as I said at the time I announced my opposition to two previous nominees to the Supreme Court, it is a painful experience for me to seek to deny any man the opportunity to achieve the highest honor his profession has to offer. Nor do I lightly seek to deny the President of the United States, and the leader of my party, the opportunity to name a man of his choice to our Highest Court.

But, Mr. President, I feel it is my responsibility as it is the responsibility of every one of us in the U.S. Senate, to insure that our Nation must go forward and never backward. One of the most important questions before us is: Will William Rehnquist, on the basis of his record as a member of the Court insure equal justice under law? I ask each of my colleagues to carefully consider the total man whose nomination is before us. I ask that they consider his attitude and actions in the context of the mid and late 1960's. I ask that they consider if on this record, they can support William Rehnquist with the confidence that, under the law, every American will be treated fairly, justly, and impartially and have an equal opportunity to live, learn, and earn.

Mr. President, I speak in the belief that all the people of the United States must have confidence in their system of government. We are charged with sustaining that confidence. Thus we must also ask: Will the confirmation of William H. Rehnquist serve to bolster the confidence of the people in our system of laws?

Mindful of the four words inscribed on the Court, I have concluded that Mr. Rehnquist is not the right man at this crucial period in our history to reassure the people that the Court will hold true to its sacred dictum of "equal justice under law."

I respectfully ask my colleagues to review my reasons.

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

Mr. BROOKE. I yield.

Mr. BAYH. Having sat through the bulk of the Senator's remarks and having discussed the merits and the responsibilities that each of us has as an individual, I must say that I am deeply impressed by the Senator from Massachusetts. I think both of us waged a common struggle in our own mind as to what we should do with respect to this nomination. Both of us have reached the same conclusion. I must say that I have not heard that conclusion and the reasons for substantiating such a conclusion more eloquently expressed on this floor than has been done by the distinguished Senator from Massachusetts, and I am deeply moved.

Mr. BROOKE. I thank the distinguished Senator from Indiana for his very generous comments relative to my remarks on the Rehnquist nomination. I know how deeply the Senator feels about the need to have only the best men and women serve on the Supreme Court of the United States. I know how zealously he has guarded the rights of the people of the United States in the selection of Supreme Court nominees.

I feel, as does he, that the Senate has a grave responsibility in the authority vested in it to advise and consent as to Supreme Court nominees. I know the job he has done on the Judiciary Committee in trying, in all fairness to the nominee and in keeping with the high responsibility of the Senate, to investigate, to inquire, to ask and to search for all evidence he could find, favorable as well as unfavorable—because, certainly, my colleague wants to find favorable evidence, as we all do.

I know how painful it has been for him. I certainly would have hoped that in filing the vacancies on the Court, our President—because he is the President of the Senators from Indiana as well as my President—could have sent us two names that we could have proudly endorsed and whose nominations we could have confirmed. One of his nominees, obviously, was a man that at least 89 out of 90 of those who had the opportunity to vote for confirmation believed was an outstanding appointment to the Court. Now we have the second name, which gives us very serious concern.

So, Mr. President, I am very gratified that the Senator from Indiana has been able to hear some of the remarks I have made concerning this nomination. I am sure that much will be said on the floor of the Senate before the time for actual vote on this confirmation. I have never been able to predict—nor have I ever attempted to predict—what the Senate would do on any vote. I do not know now, and I do not now predict. But I do believe that we perform no greater service than the one we perform in giving full and careful consideration to appointees for the Supreme Court of the United States.

Mr. Rehnquist is a relatively young man. I believe he is some 47 years of age. If God is kind to him, based upon life expectancies, Mr. Rehnquist could live for many years to come. I hope and pray that he does. If my colleagues should see fit to confirm his nomination and he should sit on the Supreme Court of the United States, he could be on that Court during our lifetimes, during the lifetimes of our children, and into the lifetimes of our children's children. Mr. Rehnquist has already demonstrated not only that he is an intelligent man but that he is an aggressive and an active man. I think it would be fair to conclude that Mr. Rehnquist could be classified as an activist. An activist, in my opinion, is one who does things, gets things done, who leads and has people follow him.

I am sure that, rather than sitting on the Court and writing opinions, Mr. Rehnquist would be an influence on any court on which he sat. I believe I am being fair in this assessment of Mr. Rehnquist, based upon the evidence. That evidence is that when he went before the council in Phoenix, Ariz., he was not a member of, to our knowledge, or an officer of, to our knowledge, any particular group, but he was acting on his own initiative. The evidence as to his aggressiveness is the fact that even after he failed to convince the council, he continued moving in that general direction because he had such strong views.

There is nothing wrong with that, of course. It is good to have men with strong views, men who are activists. The Nation would be stifled and stymied without them. I merely point this out because I believe that if Mr. Rehnquist were to be confirmed and sit on the Supreme Court, and if his views have not changed from the 1950's and the 1960's, as I have discussed in specifics this afternoon, then he could be an influence, in my opinion, for wrong on the Supreme Court of the United States, which could conceivably take the Nation back rather than continuing its forward progress.

Thus, Mr. President, I will conclude by saying that I have great faith in the intelligence, the integrity, and the insight of my colleagues in the Senate.

Mr. HART. Mr. President, will the distinguished Senator from Massachusetts yield briefly?

Mr. BROOKE. I am very much pleased to yield to my distinguished colleague from Michigan.

Mr. HART. Mr. President, unfortunately for me I was not able to be in the Chamber to hear all the remarks of the distinguished Senator from Massachusetts but I did have the opportunity to hear several of the point that he made.

One in particular which I believe will be helpful for us, and may add to the wisdom which will be reflected in the rollcall on this nomination, is the suggestion that we attempt to understand as fully as we can the sensitivity of minority groups in America when we are talking about a man for the Supreme Court.

As we look around at ourselves in the Senate, it is evident that this is a body of men elected by the people. We are pretty white. We are pretty male, and we are pretty old. That, I take it, is a reflection of the popular will. We also do not have to worry personally about reducing qualifications for food stamps around here—and neither does the Chief Executive. He can be described in the same way. He is popularly elected.

I believe that describes, with the oversimplification of a shorthand label, and with fair accuracy, two of the three coequal branches of Government.

It helps us understand why those who are poor, those whose educational opportunities have been limited, those who are in minorities of one or another category, correctly understand that it is the third branch of Government, the Supreme Court—which is not the reflection of a momentary majority—to which they must look for help and understanding.

Better than any Member of the Senate, the distinguished Senator from Massachusetts (Mr. BROOKE) can remind us of that.

Sometimes it is suggested that those of us who raise the question about this nominee—and have raised it about others—that he has not demonstrated a devotion to the great principles of civil rights, are flyspecking or looking for an alibi to vote against them. But that is the exact description that President Nixon used when he accepted his party's nomination in Miami: that the kind of judge we should look for is someone who has demonstrated devotion to those great principles of civil rights.

What we are hoping our colleagues will agree, when the record is on the desk of each Senator, and in the views filed by the four of us is first, that there is no such demonstration of devotion at any period in the life of this nominee and, second—which I think is the more important point for us to attempt to develop—that there are significant actions in the career of the nominee which do reflect a lack of sensitivity and a lack of appreciation of those values which the minorities in this country hope we will identify before we put a man on the Supreme Court.

The remarks of the distinguished Senator from Massachusetts are helpful in many ways; I rise only to thank him for making this particular point.

I hope that I have not given offense in suggesting that it may be completely understandable, but nonetheless unfortunate, that unless one has to scratch for food, unless he has to ask to be excused for being different from the majority, he is not going to get the point that some of us are trying to make around here; namely, that the Supreme Court is the one branch of Government where we hope the will of the moment, the cry of the pack, the popularity or the unpopularity of a person or program, will not be the dominant influence but rather that the Court will be influenced solely by the constitutional safeguards which the Founding Fathers built, in order to protect against the whim of the moment, no matter how overwhelming the majority may be at a given time. That is why the President was right, absolutely right, when he said that in the men and women who interpret our laws we should look for qualities that demonstrate a devotion to the great principles of civil rights. He said that, and I echo him; however, I find nothing in the record of the nominee that would support the conclusion that there is in his career any demonstration of such devotion.

I thank the Senator from Massachusetts.

Mr. BROOKE. Mr. President, the distinguished Senator from Michigan has, as always, made a fine, rich contribution to the colloquy. He speaks of his own personal dedication and devotion to the principles which he has enunciated. I know that he has given very serious thought to all of the Supreme Court nominees whose names have been presented to the Senate for confirmation in the many years he has served in the Senate.

Like the Senator from Michigan, I have been somewhat annoyed when people or the press would indicate that we are looking for ways to deny confirmation. I can very truthfully say that in the 5 years I have been serving in the Senate, I have never known any Member of the Senate to look for ways to vote against confirmation. It has been quite the reverse. All the Members of the Senate have looked always for ways to support confirmation.

I would go so far as to say—and I think I am correct—that there is a presumption in favor of confirmation, a presumption of innocence, if you will, and that the burden has always been the other way, that one had to get evidence to prove that a man was not Supreme Court quality or material.

That does not do away with our responsibility to look at the record in depth—the total record—before we cast a vote.

Here we are creating a third coequal branch of the Government. The President appoints and we confirm. It is quite different from Cabinet appointees.

I may have differed with Mr. Butz' qualifications and some of the things he said or stood for in voting for his nomination as a member of the President's Cabinet. But he is the President's man. He serves at the will of the President. The President named him and the President can discharge him. However, the Supreme Court, the judiciary, does not and should not serve at the will of the President. The members of the Supreme Court will be there long after the President has served his term. It is a very serious responsibility and one that cannot be taken lightly.

In the main we have to go to the Justice Department, the investigative branch of the executive department, to get information pertaining to potential appointees to the Court.

We depend upon the Justice Department very heavily for information concerning Presidential nominees to the Court. We have limited staff facilities for independent investigations and inquiries into the background, qualifications, and qualities of nominees. We can also look to an enlightened press, and look to citizens of the United States who might have independent knowledge of a nominee.

Sometimes it takes time. In most instances it takes time before we can get all of the information pertaining to a particular nominee for the Supreme Court. And thus it is rather disturbing when some think that by looking into the record, by really doing our job, we are either delaying or searching for adverse information about any particular nominee for the Court. I think we should take all the time we need.

I am opposed to filibustering. I have never participated in filibusters and I never shall. I have signed cloture motions. I have always voted for cloture when in my own mind I have made a determination that ample time had been given for debate on a particular issue. In the Rehnquist case I will do the same. When ample time has been given and the matter has been debated fully and the qualifications of this particular nominee have been discussed, I will then personally sign a cloture motion and will vote for cloture.

That does not mean by any means that I believe we should not have full debate and full discussion on his qualifications for perhaps the highest position in our National Government.

Mr. President, I know that we had all hoped that our session would have been concluded by now. It has been a long session. Many debates, many bills, many issues and many decisions have been made. The leadership is attempting to bring this session to a conclusion. And it is unfortunate that in the waning days of the session we are confronted with a nomination that gives many of us concern and perhaps even alarm. However, that is a fact.

So we are compelled to stay in session and debate the nomination and continue our other work until such time as the Senate works its own will on the nomination. As I said previously, I do not know when that will be.

I have heard many liken Mr. Rehnquist's case to that of other distinguished jurists in the past who had belonged to organizations or made statements, and have said that if we who are now opposing the nomination of William Rehnquist had been in the Senate, we would have been most disturbed and perhaps would have voted against them.

I am reminded of Mr. Justice Hugo Black of the great State of Alabama, who perhaps was cited more often than any other for this proposition. But if one were to examine the record of Hugo Black one would find, contrary to the beliefs of many, that Mr. Justice Black had shown evidence of change, great evidence of change, prior to his appointment and confirmation to the Supreme Court of the United States.

Oh, that I could have found such change in the record of William Rehnquist. As I said, I searched for that change. Instead of change, I found more evidence that there was no change, and this disheartened me. It disheartened me because I would have liked to have voted for his confirmation. It disheartened me because President Nixon had nominated him. It disheartened me because when I met him, he was very candid and very honest and very forthright. He told me of things in his record which had not come out in the press, certainly not in the hearings, because our meeting was prior to the hearings.

Some weeks before these facts were public information, he gave me names of people to whom I could talk in Phoenix, Ariz. I called those people. I asked him about some people to whom I could talk here in Washington, D.C., and in the Justice Department. He gave me those names, and I called those people. As I said, his candor, his forthrightness were qualities that I admire in him, as in any man. Candor is a prerequisite, in my opinion, for service on the Supreme Court, and it was taken in serious consideration last Thursday when I finally arrived at my own personal decision as to this nomination.

When I called Mr. Rehnquist on Thursday afternoon, I said to him, in essence:

> Mr. Rehnquist, I have tried very hard to find evidence which would warrant voting affirmatively for your nomination.

I went on to tell him exactly what my procedure had been and the course that I had followed, and why I could not vote affirmatively for him.

I do not think I am much different, Mr. President, in this respect from my colleagues. I think each of them in his own way goes through certain procedures before arriving at such a crucial decision. I think, Mr. President, that the Nation should be pleased that 100 Members of this body charged with this responsibility—a rather awesome responsibility, I might add—take that responsibility so seriously and give these nominations every consideration. This is the only way—yes, the only way—that we can be assured that we will have the best possible Supreme Court.

Perhaps, Mr. President, with some very few exceptions, I think one will find that this system has worked magnificently. Every American citizen should be proud; every American citizen should be secure and confident in the knowledge that we have a Supreme Court with the powers that are vested in it, and with the procedure that we have for selecting that Court.

Mr. President, I come to the conclusion of my remarks this afternoon with regret that I had to make them, but with confidence that I have done everything possible that I could have done in arriving at this conclusion. As I said, I hope that my colleagues will listen to my reasons, as I have listened to and read theirs.

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.

The Senator from Michigan is recognized.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield, without losing his right to the floor?

Mr. HART. I yield.

ORDER FOR RECOGNITION OF SENATOR MONTOYA TOMORROW

Mr. BYRD of West Virginia. Mr. President, as in legislative session, I ask unanimous consent that following the remarks of the two leaders under the standing order tomorrow, the Senator from New Mexico (Mr. MONTOYA) be recognized for not to exceed 15 minutes.

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

Mr. BYRD of West Virginia. I thank the Senator for yielding.

NOMINATION OF WILLIAM H. REHNQUIST

The Senate continued with the consideration of the nomination of William H. Rehnquist to be Associate Justice of the Supreme Court of the United States.

Mr. HART. Mr. President, in the individual views of the Judiciary Committee report, I have expressed my opposition to the nomination of William H. Rehnquist. Today, if I may, I wish to highlight four aspects which I think should be kept in sharp focus as each of us deliberates and resolves how we shall exercise our constitutional responsibility of advising and consenting to or withholding our consent to the nomination.

First, there is the question of a nominee's philosophy. Just what does that elusive phrase mean? Second, there is the problem of the nominee's effort to obscure his own personal views from the Senate, perhaps to a degree unprecedented. Third, there is the nominee's record in the area of civil rights—and on this point, a few moments ago, in reaction by way of responding to a speech by the Senator from Massachusetts (Mr. BROOKE) I touched upon that issue. Fourth and finally, there is his approach to the balancing of individual liberties against the pressure of government re-

straint, or, in short his record on civil liberties.

From reading some news stories and listening to speeches, one might casually conclude that the nominee is being pilloried merely because he is not in lockstep with the political philosophy of those who oppose him. But I think observers would be compelled to agree that many of those opposed to Mr. Rehnquist did not oppose Mr. Powell, did not oppose Mr. Burger, and did not oppose Mr. Blackmun, even though we disagreed with their specific views on some of the issues which will undoubtedly come before the Court.

It has been suggested that, upon analyzing the record, each Senator can come to only one of two conclusions.

This is the theme that underlies many of the newspaper and media commentaries: either that Mr. Rehnquist's views and actions identify him as a right-wing extremist or that they show him only to be a zealous advocate for reasonable positions on controversial issues. I think that is a crude distortion of the position expressed in the individual views that we filed in the report from the Committee on the Judiciary. But there is a third conclusion which each Senator may draw from this record. It is the conclusion to which I have come. It is the conclusion that Mr. Rehnquist has indicated indifference, perhaps a precise enough word, to racial discrimination, and shown an unwillingness to seek its legal redress.

Whatever the reasonableness of any one position he has endorsed in the area of restricting individual liberties, his record is consistently on the side of enhanced governmental power, and gives short shrift to the values underlying the Bill of Rights.

I think that is what this debate should be all about, and I express the hope that my colleagues will study the record with that frame of reference in mind, as the measure to be applied to the nominee.

I make no charge of extremism, but I have concluded that he neither appreciates fully nor approaches openmindedly the fundamental values of human equality and individual liberty promised all Americans by our Constitution.

It is 1971, and I submit that no person with that background—of whatever political philosophy or judicial philosophy—ought to be confirmed by the Senate to sit on the Supreme Court.

In the recent debate about the propriety of inquiring into a nominee's philosophy, a great many different elements have been discussed under that term. The term "judicial philosophy" traditionally refers to a Justice's view of his role on the Court, particularly in constitutional adjudication—"judicial self-restraint," for example, or the so-called "strict construction" of constitutional provisions. These kinds of considerations are not necessarily identified with a Justice's disposition in the balancing of particular constitutional interests.

We have all been aware of how slippery these labels are at best, and how it is impossible actually, with a label or a brand, to encapsulate a great judicial mind. Take, for example, Mr. Justice Black: Here was a man who was the most insistent of his brethren on the Court upon following very literally the plain text of the first amendment and the Bill of Rights in general. Yet he was prepared at other times to effectuate their purpose in contexts where a literal reading alone would clearly not suffice to do so.

One looks at the records compiled by three eminent Justices, Holmes, Brandeis, and Frankfurter. They are three men often cited as in the tradition of so-called "judicial self-restraint," and yet they approached the traditional interpretation of the Bill of Rights with great vigor in landmark opinions which applied those safeguards more broadly than the Court had previously done.

Beyond "judicial philosophy," there is the nominee's attitudes toward the substantive provisions of the Constitution as they apply to the issues of the day, "The great issues of our day," as it is always put by the contemporaries. The history of the Senate's role makes clear the propriety of such considerations, and the nominee before us now, in his earlier writing, urged us to do precisely this, stating that it is our responsibility to identify the philosophy of anyone who is proposed for the Court.

We have been told more than once that Mr. Rehnquist will not let his personal views affect his approach to the Constitution—or as one of his supporters very recently put it, that he will "ignore his own philosophy in interpreting the Constitution." I think there has been some rhetorical fencing on this one, but we kid ourselves if we pretend that one can sort out Justices into those who do and those who do not interject their personal views into constitutional interpretation. The hard truth is that everybody does, and everybody must. It is inevitable. It is in the nature of man. Mr. Rehnquist repeatedly acknowledged at the hearing that all judges bring to the Constitution their own attitudes, biases, and values, the accidents of geography and history, and all the things that make us what we are at a given moment—not intentionally but inevitably, and particularly when the general phrases of the Bill of Rights or the 14th amendment must be applied to new problems. As Mr. Rehnquist wrote in the Harvard Law Review:

> If . . . a different interpretation of the phrases "due process of law" or "equal protection of the laws" (is desired) then men sympathetic to such desires must sit on the high court.

Then our responsibility would be to see where Mr. Rehnquist's sympathies lie.

II. COOPERATION WITH THE COMMITTEE

The Senate's deliberation has been marked by confusion about the Senate's duty to ascertain a nominee's views as best it can and the nominee's right to withhold that information from the Senate. Several very distinct elements have been lumped under the general notion of "privilege," particularly in efforts by Mr. Rehnquist's supporters to suggest that his evasion stands squarely on the precedent of recent nominations. I suggest that this is not correct.

First, in the case of several recent nominees who have been sitting judges or justices, the Senate has generally respected the demands of the principle of separation of powers. Clearly, a judge's opinions are a matter of public record. In those instances, the nominees made clear that they were not disavowing their prior opinions for whatever use a particular Senator wished to make of the fact that that was their opinion. There it stood. At the same time, they resisted—rightly, in my opinion—the efforts of Senators to cross-examine them as to a particular opinion they had written. For any Senator to call a sitting judge to task and force him to justify a past decision surely breaches the basic principle of separation of power and the independence of the judiciary. But that element, that consideration, is obviously inapplicable in the case of this nominee.

Second, every nominee is accorded reasonable latitude to decline giving his view of the proper result in a specific factual situation or the application of a specific principle to a particular set of facts. This avoids the danger that a nominee may be pinned down on particular cases likely to come before the Court to the point that he would be estopped from an openminded review should his nomination be confirmed.

I think that Mr. Rehnquist has invoked the second doctrine as much—perhaps more—than previous nominees, refusing on this ground to answer even general questions about his views on specific constitutional provisions. But he has gone way beyond this and also claimed "the attorney-client privilege" in what he concedes is an unprecedented fashion. It is in this third area that his refusal to cooperate is unprecedented and—I believe and suggest—unjustified. Leaving aside the serious question of whether a Government officer in his position can properly invoke the attorney-client privilege in this situation, Mr. Rehnquist, himself, has revealed that he does not take this excuse seriously, even in instances which arguably do fall within the traditional bounds of the attorney-client privilege. For example, in regard to the Justice Department's pending brief in the Supreme Court on domestic "security" wiretapping, he first suggested that since his role had involved confidential advice to the Attorney General under the attorney-client privilege, it would be inappropriate for him to share the nature of that advice with the Judiciary Committee. Then, on the following day, he readily divulged his criticism of the Department's approach in the lower courts and described his role in revising the brief to stress other legal grounds. Similarly, in regard to the "Pentagon papers," he indicated freely the character and nature of his confidential legal advice to the Justice Department.

His rationale for breaching this attorney-client confidentiality in these instances was that the Department had taken a public position. But that does not change the fact that he has been willing to detail his confidential advice. Certainly, the attorney-client privilege remains even though the client's ultimate position, once decided upon, is presented to the court.

Moreover, Mr. Rehnquist has gone beyond the attorney-client privilege not to

divulge confidential legal advice. He has declined to indicate whether his past public statements represent his own views or somebody else's—even without indicating whether they represent the confidential legal advice he at one time or another gave the Attorney General. It has been suggested that where he has spoken as an advocate, he cannot be asked to give his real position.

Surely, his defenders cannot have it both ways. They cannot suggest that it is unfair to take as his position the alarming statements he has made while in his present capacity—to tell us, in effect, "If you only knew his own views, you would not be concerned"—and at the same time suggest that we cannot get his real views because he has acted as an advocate. Where does this leave the Senate in its efforts to carry out its constitutional obligation? I suggest that we must take the record as we find it, and if the nominee unreasonably refuses either to explain or to disavow the disturbing positions he has taken, he does so at his peril. On the basis of the best evidence offered to the Senate, we must determine what views, values, and attitudes he will take to the Court when he interprets and applies the great provisions of our Constitution; or, to return to his Harvard Law Review comment, what sympathies will he take to the Court? What sympathies, what attitudes, does he take with respect to civil rights?

III. CIVIL RIGHTS

Reviewing that record, those of us who opposed the nomination in the committee reached the following conclusion:

Unrelieved by actions showing an affirmative commitment to racial justice, Mr. Rehnquist's record is one of persistent indifference to the evils of discrimination and an almost hostile unwillingness to accept the use of law to overcome racial injustice in America. President Nixon himself has called for judges to interpret our laws who are men "dedicated to the great principles of civil rights." The nominee's subsequent record, both in Arizona and Washington, is devoid of any significant reflection of such dedication.

Mr. President, I am sure that we are past the point of having to explain at great length why this is no longer a time when a man or woman can be placed on our Supreme Court whose unrebutted record is one of indifference to discrimination, of insensitivity to the consequences of discrimination, and resistance to removing its stains.

The memorandum accompanying the individual views on this nomination details the objection to Mr. Rehnquist on this count. In reading it, however, I urge that one point should be kept firmly in mind. The problem with Mr. Rehnquist's record is not—as some would suggest—a matter of requiring every nominee to have been an activist on behalf of civil rights. We do not ask a nominee, "How many times were you arrested on the picket line? How many times did you join freedom riders? How many times did you expose yourself to physical danger by insisting that somebody be able to exercise his right to vote?" I do not even ask him how many speeches he made in attempting to reach the conscience of America.

Depending upon the circumstances of one's prior activities, it may not always be easy to demonstrate tangible fidelity to the basic principles of human equality.

Despite the President's promise of judges dedicated to civil rights, close scrutiny of a nominee's record for a demonstrated commitment might seem unfair to one whose past gave no cause for concern. But that is hardly the case before us. Here we have a man who repeatedly has been a self-propelled opponent of advances in civil rights—and not because he was pleading a client's case but on his own, gratuitously, if you will, Mr. President.

I respectfully urge my colleagues to read the record and the memorandum; consider the nature and tone of this opposition, written in the mid-1960's by a man not holding office or subject to political pressures, but a man speaking quietly and freely his own thoughts. What does it tell us about his sensitivity to racial injustice and his appreciation of the effort to achieve human equality? It is only against this record that we have understandably sought some evidence offsetting these incidents.

Now let me turn to the specifics involved. Some suggest that Mr. Rehnquist was merely opposed to forced busing when he criticized the modest integration efforts sought for the Phoenix schools in 1967.

I ask unanimous consent that the excerpt of the memorandum dealing with civil rights be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. CHILES). Without objection, it is so ordered.

(See exhibit 1.)

Mr. HART. Mr. President, essentially, the argument put forth to explain Mr. Rehnquist's action is threefold:

First, that the open enrollment approach, the heart of the proposals, was already in effect in Phoenix and, therefore, not in controversy when he voiced his opposition;

Second, that the proposals for voluntary exchanges and community relations were completely unobjectionable to Mr. Rehnquist; and

Third, that the only thing which so "disturbed" Mr. Rehnquist was the superintendent's suggestion that he "did not dismiss the possibility of busing."

In fact, the open enrollment in Phoenix at that time was limited to only a few schools. One of the superintendent's main proposals was to make it citywide. In part, it was in connection with this proposal that the superintendent was considering "busing" in the sense of providing subsidized transportation for those students who elected voluntarily to transfer out of their normal attendance zones. The news articles at the time make clear that Phoenix had been subsidizing transportation for students who remained within their normal attendance zones, but that students who chose to enroll outside them received no help; the superintendent had concluded that this was a financial deterrent to a successful "freedom of choice" plan.

In addition, the superintendent has proposed promoting voluntary exchanges of students among schools in various ways, including the location of special enrichment programs or vocational courses at particular schools. Obviously, this might involve transportation of students who had elected to avail themselves of such programs. But the evidence is overwhelming—and was at the time—that Superintendent Seymour was not proposing, and indeed was opposed to, mandatory busing of students through their assignment to nonneighborhood schools. Mr. Rehnquist's strong letter makes no mention of busing or forced transportation of students. Rather, one need only reread it to be struck by his hostility to the whole range of modest voluntary effort to promote integration in the Phoenix schools. And this, only 4 years ago, because of his firm conviction that:

We are no more dedicated to an "integrated" society than we are to a "segregated" one.

Mr. BAYH. Mr. President, will the Senator from Michigan yield?

Mr. HART. I yield.

Mr. BAYH. In listening to the compelling logic of the Senator from Michigan, the Senator from Indiana's mind flashed back to the hearings in which Mr. Rehnquist was before us articulately expressing his views. The thought that flashed through my mind was, as I think was generally agreed, that this was a man who was more than adequately endowed, with great capacity to articulate his beliefs skillfully, even to the point of not articulating his beliefs, and one whose forthrightness impressed us.

As I recall it, the Senator from Indiana asked a question about the 1967 letter and then asked the question about his opposition to the program of the superintendent of schools. Now the Senator from Michigan has brought up this same topic. So let me read the testimony in order to stimulate the memory of the Senator from Michigan, although I think from what he has said in his speech just now, he is already able to remember it quite well.

Senator BAYH. May I ask you just to explain in a little further detail a specific quotation from a letter that might be more pertinent to the general question?

The superintendent of schools apparently had said that we are and must be concerned with achieving an integrated society. And you responded and said:

"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 that each man is accorded a maximum amount of freedom of choice in his individual activities."

Is that still your view now?

Mr. REHNQUIST. In the context of busing to achieve integration in a situation where it is not a dual school system; I think it is.

Earlier, I said:

Senator BAYH. What is your feeling about transporting people either long or short distances to maintain an all-white or an all-black school?

Mr. REHNQUIST. Well, I think that transporting long distances is undesirable for whatever purpose.

At every instance, it seems that when asked about this opposition to integration of the educational system, Mr. Rehnquist falls back on the generally

accepted feeling and the general emotional feeling today that long-distance busing is undesirable.

I wonder, now that the Senator from Michigan has brought up the matter of the forthrightness of the nominee, whether we have reason to be concerned about this if, when he is asked about the opposition to the school superintendent, he says it was based on his opposition to long-distance busing. Now, long-distance busing was an issue that he did not write about in his letter and which, from all of the accounts we have, was not at issue. I know that is a serious charge to make, but the issue of forced long-distance busing was not present. There is no mention of forced long-distance busing in the letter to the editor, written by the nominee. To suggest now that the only reason he took that position was that he was opposed to forced long-distance busing just seems not to be right, not to be fully candid, and not to be fully accurate.

I do not know whether the nominee realizes that, but that is the way it appears to the Senator from Indiana.

Mr. HART. Mr. President, the impression or the wonder voiced by the Senator from Indiana might even be more strongly couched if he remembered that later in those same hearings the nominee said that—

> With respect to the 1967 letter which I wrote in the context of the Phoenix school system as it then existed, I think I still am of the view that busing or the transportation of students over long distances for the purposes of achieving a racial balance where you do not have an educational school system is not desirable.

That is how he phrased it.

Of course, it is not desirable. That was not the point.

Mr. BAYH. The Senator from Indiana is reminded that forced long-distance busing was not enough of an issue in Phoenix that it was even a subject addressed by Mr. Rehnquist in his letter. Is that not accurate?

Mr. HART. I think that is accurate. Let us put it this way. I think what we might wonder is whether the nominee is describing now, in 1971, his 1967 letter, as if it pertained to the current controversy over mandatory busing of students. And we ask whether a fair reading of the letter itself and the articles which describe the circumstances in Phoenix does not indicate that in 1967 Mr. Rehnquist actually was opposed to much more; that he was opposed to a very modest effort on a voluntary basis to reduce the division that threatens to destroy us as a people—the division between black and white.

Mr. BAYH. The Senator from Indiana has cause to wonder why, if that was the thrust of the integration program—which rather obviously it was, and there is no question about it—and if, indeed, the nominee took issue with that modest voluntary program, why, when asked to explain further his opposition, he resorted to being against what has become generally accepted as a flag word and an emotional phrase, "long distance busing."

That hardly is the type of candor that prior to this moment I had associated with the nominee.

I appreciate the Senator's yielding.

Mr. HART. I think it might be well—and I am grateful for the comments of the Senator from Indiana—to remember, too, that a newspaper in Phoenix on August 31 of that year 1967, reported the comments of the superintendent, Dr. Seymour, and makes the position of the superintendent very clear. The newspaper said:

> But he [Dr. Seymour] said he opposes gerrymandering district boundaries or "busing" pupils from one part of town to another as means toward "true integration."
>
> "There is nothing more artificial in my judgment that to load a group of pupils from one district and disgorge them at another without making it possible for full, active participation in learning, socializing, sports and activities, and without integrating the adults along with busing pupils."

That was the statement in the paper.

Mr. BAYH. I am glad the Senator brought this into the RECORD at this time, because I recall the discussion in hearings, in which it was rather obvious that the school superintendent, too, was against forced long-distance busing—the sort of artificial busing intended just to guarantee hypothetically 8.55 percent of black or brown children in every classroom. The superintendent apparently believed that there are some times or instances in which busing might be utilitarian in nature under certain circumstances. This might particularly have been true in Phoenix. As I understand it, the program there was strictly a voluntary, freedom-of-choice program, the least offensive type of busing. But the superintendent publicly said he was against the kind of thing that Mr. Rehnquist now says was the reason which precipitated the letter. This again causes me to wonder whether his real reasons had to be more basic, had to be more all-encompassing, had to suggest that there was something innately wrong at that moment in moving toward full, complete quality integrated education.

I appreciate the Senator from Michigan's tolerance in permitting me to interrupt.

Mr. HART. It was a welcome comment, and I do not regard it as an interruption. I think that viewed in the light of these circumstances it is fair to suggest, as I suggest now, that just 4 years ago the nominee, to use his words, found distressing some rather modest efforts by, I think, responsible school officials to promote equality of educational opportunity. That is what I think it suggests. Without any comment on the accuracy of the nominee's responses to the question, what the letter reflects against the circumstances of the plan proposed is an unwillingness to accept even the modest effort to reverse the trend toward what the Kerner Commission warned us we were becoming: a nation of two people, the black and white.

Then there as the second insistence which makes mandatory, I suggest, Mr. President, that we find some affirmative demonstration of concern, of awareness, and of sensitivity before we consent to this nomination. This one occurred in 1964. That is not quite as recent as 1967, but it is not ancient history, and it is not a period when the nominee was in grammar school. In 1964 the nominee opposed a public accommodation ordinance. Let us get that one into perspective.

Mr. BAYH. Will the Senator yield briefly? My arithmetic may not be perfect, but, as I recall, quite to the contrary to being in grammar school. In 1964 the nominee was 40 years of age or over. So at that stage one's judgment, hopefully, would be relatively mature.

Mr. HART. It is a chronological age at which society compels responsibility for one's conduct. Let us put it that way. It is a mature age chronologically.

The majority report of this nomination, on the theory that the best defense may be as strong an offense as one can mount, refers to the nominee's acknowledgment that the Federal Government's constitutional power to pass a nationwide accommodations law is now settled. The inference of that remark and comment is that there was uncertainty about this constitutional question, which was debated at great length in this Chamber that same year, 1964, which was the basis of the concern for Mr. Rehnquist and his opposition to the Phoenix ordinance. But he was addressing himself to a local ordinance, one to which the Federal power did not go at all.

Mr. Rehnquist's 1964 opposition to a public accommodations ordinance also must be kept in perspective. The majority report refers to his acknowledgment that the Federal Government's constitutional power to pass a nationwide accommodations law is now settled. The inference is that it was uncertainty about this question, debated at great length in the Chamber in 1964, which then underlay Mr. Rehnquist's concern. But he was addressing a local ordinance, one to which the question of Federal power did not apply. There has been little doubt seriously raised about the constitutionality of a town forbidding discrimination in public accommodations under its police power to promote the public welfare.

In any event, when he appeared in opposition to the ordinance he did not raise that argument. His opposition was a matter of personal preference—and I think this is a fair shorthand description of it—of preferring property rights over human dignity.

To be sure, he told us during the hearings on the nomination that in 1971 he no longer begrudges such a law.

As I recall it, he also suggested why he thought as he did in 1964. He said:

> The law has worked pretty well. The law has worked well enough. I think I have come to realize since, more than I did at the time, the strong concern that minorities have for the recognition of these rights.

What rights is he talking about? What rights were sought to be protected by the Phoenix ordinance? The right to be treated decently at the hands of someone who invites the public in to sell something. It was not Mrs. Murphy's four-bedroom roominghouse, or less; it was a drugstore. He tells us:

> I did not realize the strong concern minorities have for the recognition of these rights.

I remember in the hearings some witnesses reminded us what June 1964 was like in this country.

Mr. President, I had really thought that in June 1964, everyone—certainly everyone who had reached a majority—was aware that the whole Nation had focused its attention on the denial of the right to be treated as an individual, when a person went into get coffee or aspirin tablets, and not to be judged while 50 feet away, based on the color of his skin. I thought everyone was aware of that and was aware why Dr. Martin Luther King had become a national figure in June 1964. But clearly I was wrong. Some understood less clearly than others, and apparently the nominee was such a person.

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

Mr. HART. I yield.

Mr. BAYH. The Senator from Indiana had the opportunity earlier in the day to be in the Chamber, and I think the Senator from Michigan was also here during parts of the speech of our distinguished colleague from Massachusetts (Mr. BROOKE). The Senator from Michigan has been one of those Members of this body who has exhibited the greatest degree of compassion and understanding for the problems of those who may be of a different color, of a different background than the majority of our citizens, and has been one of the real leaders to bring equality into law, a real activist in this body. The Senator from Indiana has been happy to follow his leadership in this area since coming to the Senate. I must say I was impressed by our colleague for I am a young man with a white face who has never been placed in the position of being on the other side, of being denied or being discriminated against. I could not help but be impressed with the expression of our colleague from Massachusetts because he had been there.

I wonder what kind of signal it is that goes out from this body, or, indeed, that goes out from the White House when the man who is now just one short step away from the highest Court of the land is one who in the mid-1960's, by his own admission, did not realize how important it was to the black people and the brown people of this country—American citizens—to have access to drugstores and other places of public accommodation. Is that not the kind of thinking that we have to give significant credence to? Is that not the kind of symbolic gesture that says to those who are "different" that we talk about equality and opportunity but really we are not dedicated to it because we put on the highest Court of the land a man who, by his own admission, has not evidenced the degree of sensitivity that would give us to believe that he understood.

Is that a matter of legitimate concern to this body? Should we not consider in addition to what the nominee said, what this nomination symbolizes to others who are looking at the system to see whether there is anything in it, any place, for them?

Mr. HART. It is a legitimate concern and perhaps it is even more serious when we think of what the nominee did not say. He does not say even now, in 1971, that he himself is deeply concerned about the offense that is involved in the denial of access to public accommodations. He has yet to say he understands this is an injustice. He has yet to speak out.

He does say, in effect, "Now I understand some are outraged;" but he continues to be silent with regard to whether he himself feels that way.

This, too, I think, is relevant and appropriate for our evaluation of the nominee's measure of devotion to the great principles of civil rights, to use the words of the President who submitted his name.

Mr. BAYH. Mr. President, will the Senator yield further?

Mr. HART. I yield.

Mr. BAYH. As he points out, we have a real void here. The nominee was given the opportunity to come forth and tell the Senate and the entire country something reassuring now that he is about to assume the mantle of Supreme Court Justice. But instead he talks about having a better understanding of the importance of recognition of these rights to minorities. And he talks about the surprising, in his view, ease of implementing this legislation. This would lead one to believe, as I said earlier, that his conviction about the protection of individual rights depends on the amount of opposition.

Mr. HART. Before the Senator goes on with respect to that point, I think in fairness to the nominee we should make clear that subsequent to the answer that the Senator from Indiana and I have been analyzing before the committee, he did say that even if the ordinance had been less readily accepted, he would no longer oppose it. He suggests that the pragmatic argument that he was about to belabor was perhaps a weaker one than should be advanced in his defense. But it still leaves the conclusion inescapable for the record that the real reason for the change in heart of the nominee, according to him, is the realization sometime within the last 7 years of the strong concern the minorities have for recognition of those rights. But as I say, that still does not go to the point, not of his feeeling that such discrimination is an injustice, but only that he now realizes that others may regard it as an injustice. In my book, that is not enough.

Mr. BAYH. And a rather belated realization at that.

Mr. HART. Yes; and I suggest that that marks one as not qualified. That stamps one as a person to whose nomination we ought not to consent.

Now, perhaps responding to the President's job description of a Supreme Court nominee as someone who should be devoted to the great principles of civil rights, the proponents of the nominee have strained to find that kind of evidence. They pointed to a speech. That was a speech he made in his present position as Assistant Attorney General. It was a speech in which the nominee criticized militants because progress, as the nominee put it, has been made in civil rights.

Further, one of the proponents of the nominee now suggests that the vote cast by the nominee as a Commissioner on Uniform Laws in favor of a model antidiscrimination law revealed his changed view on public accommodations. The action of the Commissioners occurred in 1966, and his proponents suggest that this shows that just 2 years after his opposition in Phoenix to the public accommodations law, he was then in favor of free access to public accommodations.

Let us get that one a little more in perspective. First, this argument was never raised until we had the committee report out of the Judiciary Committee. Several times during the hearings in the Judiciary Committee the nominee was asked for any evidence of his support of civil rights which might offset the incident in 1964 that I have just described. We followed it by including a set of written questions which, through the chairman of the Committee on the Judiciary, we directed to the nominee. We included in those written questions this inquiry:

> What can you see, to what can you refer us, that might offset your opposition in 1964, or, put another way, would serve to demonstrate your devotion to civil rights, as the President phrased it?

At no time, either in the hearings of the committee or in response to our written questions, did Mr. Rehnquist refer to his actions as a Commissioner on Uniform Laws. I think if Mr. Rehnquist thought that was evidence of a change of heart in 1966, rather than in 1971, he would have mentioned it.

In fact, there was no serious controversy over this provision in the proposed law when the Commissioners were debating it. It was approved as a part of the final bill, but only after Mr. Rehnquist and others had succeeded in downgrading the proposed Uniform Act into a Model Act. As the memorandum filed as a part of the Individual Views in the Judiciary Committee report points out, that had the effect of releasing the Commissioners of any obligation to work for the passage of the act in their own States.

That brings us to the real significance of Mr. Rehnquist's participation in the model antidiscrimination act.

His supporters have, if I can phrase it this way, been forced to fall back upon his legal opinion provided the Attorney General upholding the Philadelphia plan as an indication of his support for civil rights. Let us look at that one a minute. The Philadelphia plan requires covered employers to redress racial inequities in employment. Yet Mr. Rehnquist, as a Commissioner on Uniform Laws, vigorously opposed the provision of the Uniform Act which merely permitted employers on their own initiative to take voluntary steps to redress the effects of past discrimination. It is difficult to believe that he and others personally endorsed the mandatory provision of the Philadelphia plan with much conviction if he was so strongly opposed to the much weaker provisions in the proposed Uniform Act.

Mr. BAYH. Mr. President, as soon as the Senator is through with that particular thought, I would like to explore it a bit further with him.

Mr. HART. I conclude this point only by suggesting that his opposition to the

provision in the model law against racial blockbusting that was proposed as a feature of the model bill when the Commission on Uniform Laws was in session speaks for itself. Anyone remotely familiar with the viciousness of this practice knows of why—it is a practice I have never heard anyone suggest had a single redeeming value—but the nominee opposed its inclusion as a Commissioner on Uniform Laws in their proposal.

Mr. BAYH. This trend of thought and this part of the Senator's speech, I must say, is a matter of more than passing concern to the Senator from Indiana, because I think this gives us a better understanding of the degree to which the nominee feels there is a legitimate reason for legislative intervention to promote racial justice. If indeed the nominee does not believe there is legitimate reason to legislate to outlaw this blockbusting business, which, as I have said repeatedly, is a most insidious tactic, responsible for more tensions, more animosity, and more hatred between black and white in the same community than anything else I know of, then I wonder, just in what area does the nominee believe there is legitimate reason for legislative activity? I am forced to ask this question because as shown by the transcript of the proceedings of the Commissioners, as the Senator from Michigan will recall, the nominee said that he felt there was both a constitutional question and a serious policy question which caused him to oppose the antiblockbusting provision of the Uniform Antidiscrimination Act.

It is the judgment of the Senator from Indiana that no one has a first-amendment right that guarantees him the business opportunity of going out and playing on the fears and frustrations that result from blockbusting.

Also, the distinguished Senator from Michigan pointed out the degree to which Mr. Rehnquist is alleged to have had a dominant role to play in the Philadelphia plan. When he was asked what evidence he had of a commitment to civil rights, he pointed out that he did participate in drafting the opinion of the Attorney General upholding the plan.

I think it is important for the record to be clear here. We were told by the Senator from Nebraska, with whom I sought to explore the question further yesterday but he did not want me to pursue the line of questioning at that time, that the nominee played a major role in developing the Nixon administration's Philadelphia plan to end racial discrimination in the building trades unions. But when we look at the facts of the situation, we were told earlier, during the hearings, as I recall, that he participated in drafting the opinion of the Attorney General which upheld the plan.

I think we have to look at the situation which confronted him and which confronted the Attorney General. The Secretary of Labor and the Labor Department had come down with a proposal to deal with the discriminatory practices that had existed theretofore in the building trades, and as the plan had been ruled that that plan was unlawful by, I believe, the Comptroller General.

Mr. HART. Yes, by the Comptroller General.

Mr. BAYH. The Comptroller General had said that this was unlawful. So then, of course, the President and the Department of Labor turned to their lawyer, the Attorney General, and said, "Help bail us out of this situation." And thereupon enters Mr. Rehnquist as the Chief Legal Counsel of the Department of Justice, to try to help the Attorney General bail the Department of Labor out of a very difficult situation.

To use this as evidence of a major commitment to human rights is stretching the point significantly, and I appreciate the fact that the Senator brought this up. I would also point out that Mr. Albert Jenner, whose letter has been read into the RECORD several times as evidence of Mr. Rehnquist's contribution to that model act, also is the one who points out that Mr. Rehnquist was the leader of the movement to lessen the effectiveness of that act. Instead of this antidiscrimination measure being a uniform act, which would impose on each Commissioner the obligation to work for its enactment in his home State, it was made a model act, which is a lesser degree of a proposal, and did not bind each delegate to any concerted effort to get it made the law of his State.

Mr. HART. Mr. President, I agree with the thought developed by the Senator from Indiana, and welcome his comments. As far as the nominee's opinion on the Philadelphia plan and its legality is concerned, it would have been noteworthy if the Justice Department, after the President had already authorized the Labor Department's order for the Philadelphia plan, had then said that the order was illegal.

I think it would be well, Mr. President, to note his supporters' emphases on the fact that the nominee did vote favorably on the final passage of the model antidiscrimination act following the Commission's consideration. Those of us in this Chamber know that such a vote is, shall we say, not the best evidence of a man's position if he first has strongly tried to knock out a section in the act, and has failed in that effort. I think fairness requires that that additional explanation be made.

It may be suggested in some of these instances, the nominee's position on a civil rights issue did not involve constitutional questions. That is perfectly correct. But even to the extent this is true, the important point, as noted earlier, is that his underlying attitude toward the injustice of discrimination—its significance or insignificance in his personal scale of values—inevitably will have a strong impact on his reading, if you will, and on his ability to apply the broad promises of the 14th amendment to civil rights problems which are of constitutional magnitude.

In summary, Mr. Rehnquist's repeated initiatives to oppose protection of minority rights is really unrebutted by any substantial expression of concern or sensitivity—let alone affirmative action on his part.

In my book, Mr. President, that alone persuades me that I should not advise or consent to the nomination.

I am reminded that it has been suggested that all the nominee has subscribed to is the unexceptional view that the Constitution is color blind. The short answer to that is this: at least since 1954, we have accepted the proposition that when the elimination of racial discrimination is the issue, the Constitution is not color blind. It requires us to take note of such discrimination and to fix it, to eliminate it.

IV. CIVIL LIBERTIES

In addition to his record on civil rights, and equally disturbing, is the nominee's consistent tendency to discount the Bill of Rights and the interests it preserves, whenever those interests are tested against the pressures for efficient government, order, and authority.

In the protection of individual liberty—as in the promotion of human equality—the Supreme Court has played a unique role throughout our history. Prof. Alan Dershowitz of Harvard Law School put it well in a recent analysis.

(A) compelling case can be made for a Senator voting against an otherwise qualified nominee with a record demonstrating callousness about—or opposition to—civil rights or civil liberties.

The Executive and Legislative branches are adequate protectors of order, security and efficiency. But there must be a coequal branch which is committed to the far more subtle—and far less popular—values of justice, liberty and equality.

It is not surprising that our popularly elected branches have not always been the most vigilant guardians of individual freedom in the face of the ever present pressures to accomplish the goals of the moment.

I made comment about this in an exchange earlier today with the able Senator from Massachusetts (Mr. BROOKE). To anyone who understands the nature of our process in this country, it is indeed the Court which is the one of the three coequal branches of Government to which the poor and the weak must count for the protection of their sometimes less popular, but nonetheless constitutionally guaranteed rights.

The expressions of concern about the nominee's approach to the Bill of Rights involve far more than his views on swinging the pendulum away from the rights of the accused in criminal procedure. I hope any Senator who thinks the record merely involves disagreement about protecting society from criminal violence will take another look at this record.

It is clear that many today are impatient with the provision of full legal rights to the accused criminal offender. I think they are shortsighted; they forget that the peril to each of us lies in the precedent of eroding the rights of any of us. Unfortunately, they can be persuaded by leaders whose responsibility I question that the great guarantees of liberty imbedded in our Constitution are just technicalities, technical "legalisms," which should be brushed aside if they hinder the prosecution.

A more realistic appraisal of the Bill of Rights was stated by President Nixon in another context when he wrote to the House of Representatives the following reminder:

A basic principle of constitutional law is that there are no trivial or less important provisions of the Constitution. There are no constitutional corners that may safely be cut in the service of a good cause. The Constitution is indivisible. It must be read as a whole. No provision of it, none of the great guarantees of the Bill of Rights is secure if we are willing to say that any provision can be dealt with lightly in order to achieve one or another immediate end.

The President's statement is excellent. But Mr. Rehnquist's record on the Bill of Rights is precisely one of dealing lightly with those provisions in the service of another end—a willingness to "shortcut" the basic purposes of the Bill of Rights, when they might hamper efficient government.

It is not so much Mr. Rehnquist's support of any particular proposal in the area of criminal justice which is as disturbing as his general approach to analyzing the interests that are in competition in the case of the right to bail, preventive detention, arrest without probably cause, and so forth.

But beyond the field of criminal procedure, the nominee's expansive approach to executive power and his restrictive reading of the Bill of Rights affect his approach to other kinds of issues—issues whose direct impact on all citizens should be more readily apparent to them than is the case in the field of criminal procedure.

Every American knows that he has an immediate stake in preservation of their own privacy, in his right to dissent vigorously from his government's policies, and his right to have free access to opinions and information about those policies. Yet these interests, too, are endangered by the appointment of a Justice who has displayed either indifference or willingness to compromise away some of these liberties.

The danger is presented by the inclinations of an Executive to stifle dissent, to undermine organized opposition to official policy, to free itself of congressional oversight or judicial "interference."

Often the effort is made in the name of orderly government or efficient administration. The able senior Senator from North Carolina, on earlier occasions, has used the words that I intend now to use to remind us of a very basic truth. It is language which the Senator from North Carolina attributes to Daniel Webster:

Good intentions will always be pleaded for every assumption of authority. It is hardly too strong to say that the Constitution was made to guard against the dangers of good intentions. There are men in all ages who mean to govern well, but they mean to govern. They promise to be good masters, but they mean to be masters.

Mr. Rehnquist's speeches pay ample lipservice to these rights. That is exactly what one would expect of someone with his intellectual capabilities and experience. But the occasional phrases which can be lifted out of those speeches to show his "balanced approach" are belied by his analysis of the private interests involved.

The two best examples of this approach to balancing individual rights and governmental interests are wiretapping of domestic "subversives" and government surveillance of political activities. We are talking about today's news, not something that may develop in the future.

WIRETAPPING

Repeatedly the nominee's defenders have pointed to his acceptance of the 1968 Safe Streets Act provision for controlled wiretapping. But that is no more a defense of his record than is the fact that a majority of the Senate approved wiretapping under the 1968 bill. That is simply not the issue here precisely because that 1968 statute did not deal with the present administration's assertion of broad power to wiretap, without prior court approval, in the case of domestic dissidents whom the Attorney General regards as a "subversive" threat to national security. Let us also be clear about the position Mr. Rehnquist successfully advised the Justice Department to adopt on wiretapping in "domestic" national security cases. He tells us that he convinced the Attorney General not to argue solely on the basis of inherent executive power outside the restrictions of the fourth amendment, but rather to argue that the fourth amendment does apply and must be satisfied. That is hardly the end of the matter. The Government's position is that prior judicial authorization is still not necessary under the fourth amendment if the wiretapping is an otherwise reasonable search. And the nominee's speeches claim that there should be no prior judicial approval because the Attorney General can adequately determine whether a search is reasonable and justified. To argue that the Attorney General, frequently a close political adviser to the President, is the kind of neutral buffer between the citizen and his Government envisaged by the framers of the fourth amendment, is to suggest a very superficial appreciation of that historical safeguard. Indeed, the provisions of the 1968 act only underline this concern, because Congress clearly thought that prior court approval was critical and specified its implementation in detail.

Moreover, the memorandum notes that Mr. Rehnquist's cavalier approach to the fourth amendment does not stop here:

Mr. Rehnquist for his part seems to be willing to go even further than merely supporting wire taps without prior court order in this easily abused area. He took the position at Brown University, as reported in the Providence Journal of March 11, 1971, that the Justice Department 'must protect against . . . subversive domestic elements, yet often does not have the evidence of imminent criminal activity necessary for wire tap authorization. In other words, Mr. Rehnquist argued that *because* the Executive does not have enough evidence to get a warrant against 'elements' it deems in its sole discretion 'subversive,' it should not have to get one. This 'analysis' turns the Fourth Amendment precisely on its head. If it were ever accepted, it would reverse the whole course of Fourth Amendment law in this country.

SURVEILLANCE

Mr. Rehnquist's now famous statement that we should rely on the self-restraint of the executive branch, and occasional oversight hearings by Congress, to protect the individual from intrusive surveillance is discussed in detail in the memorandum. Two points stand out from the rebuttal offered by his supporters in the majority report.

First, they point to Mr. Rehnquist's testimony at the confirmation hearing. He said then that his earlier reference to self-restraint assumed the existence of the present safeguards in the 1968 Wiretap Act and in the first and fourth amendments. In that context, the nominee suggested, he was merely indicating opposition to additional machinery for judicial control of potential abuses, because such judicial scrutiny might hamper the investigators.

But the provisions governing wiretapping in the 1968 act are not applicable to other kinds of surveillance. Mr. Rehnquist knows that. In any event, much of the political surveillance which has alarmed Americans in recent years is precisely in the area which the administration and Mr. Rehnquist claim is exempt from the provisions in the 1968 act—the alleged threat of domestic "subversion."

He also knows that the safeguards in the first and fourth amendments are not self-executing. If the judiciary is not permitted to implement them by restraining executive action, then we are indeed thrust back upon the executive's own self-restraint.

Second, Mr. Rehnquist's lengthy testimony before the Senate Subcommittee on Constitutional Rights gave short shrift to the possibility that such surveillance might have a chilling effect on the exercise of first amendment freedoms. The majority report quotes Mr. Rehnquists's expression of distaste for some of the obvious excesses of surveillance revealed at the Senate hearings. It fails to mention the all-important distinction which Mr. Rehnquist himself drew between policies he personally thought unwise or unjustified, and those which he felt raised a question of constitutional dimensions. He made clear that the potential abuse of surveillance was not, in his view, a serious constitutional problem.

Under pointed questioning at the confirmation hearing, he did acknowledge that many persons may be deterred from vigorously exercising their first amendment rights, even if others are willing to risk their future careers or other dangers of a "Government file." But his consideration of this central purpose behind the first amendment hardly reflected a deep appreciation of the fundamental interests involved.

CONCLUSION

It is not necessary to argue that the nominee's position on any one issue in the area of criminal procedure or privacy is "extremist" or beyond the pale. That is not the point. In each of these areas, Mr. President, there is an unbroken pattern of undervaluing the constitutionally protected interests of personal liberty in marked contrast to the wide scope he would afford executive power.

For this reason, my colleagues and I have joined in our separate views in expressing very grave doubts about Mr. Rehnquist's likely approach to these urgent issues of protecting the individual

which will come before the Court in the next several decades.

For this reason, too, in addition to his record on civil rights, I have concluded that I should withhold my consent from this nomination.

Mr. President, I express hope once again in the confidence that my colleagues will read our memorandum and will read it within the framework of the points I have discussed today in this discussion.

I am one of 100 Senators who hopes that our judgment on this nomination is correct.

I would be the first to acknowledge that there are no crystal balls which permit us to know the answer to the question of how anyone will perform once he goes on the Court. I acknowledge, as all of us must, that some men have gone on the Court with predictions that their decisions would reflect a constant, consistent and particularly philosophy and, in many cases, their performance has been consistent with those predictions; but in some cases they have moved ever gradually in a different direction.

But our responsibility, Mr. President, as I understand it, is to attempt, to the extent that the record of a nominee permits a judgment to be made, to determine whether a particular nominee will take to the Court a sensitivity and an awareness of the really great values of the Bill of Rights and the 14th amendment.

If we find in the record of the nominee, nothing that reflects this appreciation, but instead a steady pattern inconsistent with such awareness—indeed, on occasions, an affirmative opposition to those values—we ought not to consent to the nomination.

Mr. President, I yield the floor.

EXHIBIT 1

CIVIL RIGHTS

The Supreme Court has played a crucial and proper role in the last 20 years in securing the rights guaranteed in the Constitution for all citizens, particularly our racial minorities. For many of those to whom America has made unfulfilled promises, the Supreme Court has often been the one responsive institution which can be counted on to dispense equal justice under law. President Nixon himself, in accepting his party's nomination in 1968 recognized this when he said:

"Let those who have the responsibility for enforcing our laws and our judges who have the responsibility to interpret them be dedicated to the general principles of civil rights."

Mr. Rehnquist's record, far from demonstrating such a commitment to civil rights, displays a consistent hostility toward efforts to secure rights for the victims of discrimination.

There are three specific episodes in the last seven years which show that Mr. Rehnquist is unwilling to allow law to be used to promote racial equality in America. There are his volunteered opposition in 1964 to a Phoenix public accommodations ordinance; his opposition in 1966 to two key provisions of a Model State Anti-Discrimination Act; and his public statement in 1967, offered in opposition to modest proposals toward integration, that "we are no more dedicated to an integrated society than to a segregated society." And these incidents are not offset in any way by an affirmative demonstration of commitment to equal rights.

A. THE 1964 PUBLIC ACCOMMODATIONS ORDINANCE

In June of 1964 the Phoenix City Council was considering a public accommodations ordinance which declared that—

"It is . . . contrary to the policy of the City and unlawful to discriminate in places of public accommodation against any person because of race, color, creed, national origin, or ancestry."

The ordinance applied only to "public places" offering entertainment, food or lodging, and specifically excluded "any place which is in its nature distinctly private." In testimony before the City Council, Mr. Rehnquist called this ordinance so "far reaching" that it should be submitted to the people for a vote rather than being passed by the Council. He also said:

"I am a lawyer without a client tonight. I am speaking only for myself. I would like to speak in opposition to the proposed ordinance because I believe that the values that it sacrifices are greater than the values which it gives. . . . There have been zoning ordinances and that sort of thing but I venture to say that there has never been this sort of an assault on the institution where you are told, not what you can build on your property, but who can come on your property. This, to me, is a matter for the most serious consideration and, to me, would lead to the conclusion that the ordinance ought to be rejected."

The ordinance was passed unanimously by the City Council the next day. Mr. Rehnquist, still without a client save himself, then wrote a letter to the editor of the *Arizona Republic* calling passage of the ordinance "a mistake." Incredibly, the letter first equated the indignity suffered by a victim of discrimination barred from a lunch counter with the "indignity" suffered by the segregationist forced to serve a meal, and then concluded:

"It is, I believe, impossible to justify the sacrifice of even a portion of our historic individual freedom for a purpose such as this."

The freedom to which he referred was the freedom of the property owner to do with his property as he wished. As Mr. Rehnquist recognized in the letter, this freedom has been impinged upon by a great many laws, such as zoning laws, and health and safety regulations. While Mr. Rehnquist thought that imposition on property rights was acceptable for purposes of zoning, he thought an impingement on property rights designed to assure equal access regardless of race to places which hold themselves out to the public was unjustified. In other words, in 1964 the nominee, as he agreed at the hearings, "felt that personal property rights were more important than individual freedoms, the individual freedom of the black to go up to a lunch counter."

It is important to understand the time at which this ordinance was being considered. The fight to end discrimination in public accommodations was in full swing across the nation. The encounters at Selma and Birmingham were recent history. The Congress was in the midst of considering the broadest and most significant piece of civil rights legislation it had ever passed, and that legislation included a meaningful public accommodations section. By the time Mr. Rehnquist spoke in Phoenix, the House had passed the bill, and the Senate had invoked cloture on it. Even more important, the most substantial objections to the federal act came from those who doubted the federal government's constitutional power to enact public accommodations legislation. This was not an argument the nominee used. He fought the measure solely on its merits.

When questioned at the hearings about his opposition to the ordinance, Mr. Rehnquist said he has changed his mind. Asked why, he replied:

"I think the ordinance really worked very well in Phoenix. It was readily accepted, and I think I have come to realize since it, more than I did at the time, the strong concern that minorities have for the recognition of these rights."

Subsequently, Mr. Rehnquist, perhaps recognizing that a pragmatic argument is weak where principle in involved, stated that even if the ordinance had been less readily accepted he would no longer oppose it. Thus the real reason for Mr. Rehnquist's change of heart is, according to him, his realization within the past 7 years of the "strong concern that minorities have for the recognition of these rights." Significantly, it is still not a matter of the nominee's feeling that such discrimination is an injustice, but only that he now realizes that *others* may so view it.

While it is encouraging in some ways that Mr. Rehnquist says that he has come to realize the depth of concern among members of minority groups to be treated as individual human beings by all persons, it is very distressing to imagine a person on the Supreme Court who just seven years ago, when he was 40 years old, was as unaware of the depth of this feeling as Mr. Rehnquist was by his own admission. The insensitivity which Mr. Rehnquist's own statement reveals is hardly offset by an announcement at confirmation hearings that he would no longer oppose public accommodations measures—particularly when other actions by the nominee after 1964 are taken into account.

THE 1966 MODEL STATE ANTIDISCRIMINATION ACT

The second example of Mr. Rehnquist's opposition to the use of law in the promotion of racial equality came in 1966, when as an Arizona representative to the National Conference of Commissioners on Uniform State Laws he participated in deliberations on a proposed Model State Anti-Discrimination Act. The Act forbade discrimination in certain aspects of employment, public accommodations, education, and real property transactions, and it created a State Commission on Human Rights to enforce its provisions. The Act was finally approved by the States 37–2 (Alabama and Mississippi dissenting), with Arizona and Mr. Rehnquist voting in favor of it. But this came only after the Act was relegated to the status of a "Model" instead of a "Uniform" act, thereby relieving the Commissioners of the personal duty to seek passage of the Act in their home states. See Handbook of the National Conference of Commissioners on Uniform State Laws 406 (1966). And it came after Mr. Rehnquist attempted unsuccessfully to delete two key provisions of the Act.

The first was a proposal which was, in the words of the Commissioners' Comments, "designed to permit the adoption [by an employer] of voluntary plans to reduce or eliminate" racial, religious, or sex imbalance in its workforce. No compulsory hiring to achieve racial balance was involved; the Act merely permitted voluntary efforts. These plans were to be subject to the approval of the Commission on Human Rights, and they could apply only to the hiring of new employees or the filling of vacancies. According to the debates, four states already had enacted similar laws: Indiana, Massachusetts, Illinois, and California. Mr. Rehnquist opposed this provision, and, in effect, moved to delete it. Another Commissioner called this motion "a direct attack upon the power granted in the statute to eliminate racial imbalance." The issue then came to a vote and Mr. Rehnquist's motion was defeated. The provision now appears as Section 310 of the Model Act, which reads as follows:

"SECTION 310. [Imbalance Plans.] It is not a discriminatory practice for a person subject to this chapter to adopt and carry out a plan to fill vacancies or hire new employees so as to eliminate or reduce imbalance with respect to race, color, religion, sex, or na-

tional origin if the plan has been filed with the Commission under regulations of the Commission and the Commission has not disapproved the plan."

This opposition in 1966 reveals Mr. Rehnquist's unwillingness to allow law to be used in constructive ways to undo 200 years of discrimination in America. Audit also reveals that the nominee's much heralded responsibility for the Opinion of the Attorney General upholding the lawfulness of the "Philadelphia Plan"—which required that specified numbers of minority employees be hired to redress the effects of earlier discrimination—cannot be given much weight, for the nominee's personal philosophy and policy preference are to the contrary. Indeed, the inconsistency is shown even more clearly by the fact that the Philadelphia Plan is mandatory on all those covered, while the provisions Mr. Rehnquist sought to delete from the Model Act were merely permissive.

The second proposal that Mr. Rehnquist opposed was one designed to prohibit vicious "blockbusting" tactics by which realtors sometimes play on racial fears for their own profit. As the Reporter-Draftsman of the Act, Professor Norman Dorsen of New York University, said during the deliberations, a number of cities and at least one state (Ohio) had anti-blockbusting provisions by 1966. Mr. Rehnquist moved to delete this section. He said:

"It seems to me we have a constitutional question and a serious policy question, and in view of the combination of these two factors, plus the fact that it doesn't strike me this is a vital part of your bill at all, I think this would be a good thing to leave out."

Mr. Robert Braucher, then Chairman of the Special Committee on the Model Anti-Discrimination Act and a Professor at Harvard Law School, and now a Justice on the Supreme Judicial Court of Massachusetts, replied with an eloquent defense of the anti-blocking provision:

"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 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."

A vote was then taken on Mr. Rehnquist's motion to delete the section, and the motion failed. The section now appears as Section 606 of the Model Act, which reads as follows:

"SECTION 606. [Blockbusting.] It is a discriminatory practice for a person, for the purpose of inducing a real estate transaction from which he may benefit financially

"(1) to represent that a change has occurred or will or may occur in the composition with respect to race, color, religion, or national origin of the owners or occupants in the block, neighborhood, or area in which the real property is located, or

"(2) to represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located."

Some have argued that Mr. Rehnquist's vote in favor of the final Model Act which contained public accommodations provisions shows the nominee's change of heart from his 1946 position opposing a Phoenix public accommodations ordinance. But that is a vastly oversimplified view. In the first place, the Commissioners were dealing with model legislation, not a law about to be put into effect, so the situations are not comparable. And even more important, the nominee himself was twice asked to explain his change of heart, which was first announced at the confirmation hearings. Neither time did he mention his vote as a Commissioner in 1966. This means either that in the nominee's mind the vote approving the final draft was not significant in showing a change of heart or that he chose not to bring it up because of his opposition to the imbalance and anti-blockbusting provisions. Giving the nominee the benefit of the doubt, one concludes that in his own mind the 1966 vote was not important. There is then no reason it should be important to the Senate. In any event, the final vote is far less significant than Mr. Rehnquist's earlier opposition to the two sections of the act discussed above.

THE 1967 LETTER

The third incident was a letter to the editor Mr. Rehnquist wrote in September 1967 in response to a series of articles and a school official's proposals to deal with de facto segregation in Phoenix. The letter can be understood only in the context in which it was written.

Mr. Harold R. Cousland wrote a series of six articles for the *Arizona Republic* in late August 1967 concerning de facto segregation in Phoenix and what might be done to combat it. Mr. Cousland discussed the problem of racial segregation in the Phoenix schools, the reasons that segregation is self-perpetuating, the contention that minority group children are better off in integrated schools, compensatory education plans, and alternative proposals for integration: open enrollment, voluntary busing, school pairing, educational parks. Forced busing of students was not one of the proposals.

Just as Mr. Cousland's series was completed, the Superintendent of the Phoenix Union High School District, Dr. Howard Seymour, proposed a number of steps designed to combat de facto segregation in Phoenix. As reported in the Arizona Republic of September 1, 1967, at p. 19, these steps were:

Appointment of a policy adviser skilled in interpersonal relations and urban problems;

Organization of a citywide advisory committee representing minority groups;

Formation of a Human Relations Council at each high school;

Promotion of voluntary exchanges of pupils among racially imbalanced schools in various ways, including the location of special enrichment programs and extra-curricular activities;

In the long run, a series of seminars on the nature of prejudice;

Curriculum changes designed to accent the contributions of various ethnic groups and individuals;

Without setting a ratio of minority teachers at each school, the assignment of staff in a way which redressed the existing imbalance.

Mr. Rehnquist found the combination of Mr. Cousland's articles and Dr. Seymour's program "distressing" enough to write the following letter to the Arizona Republic:

"'DE FACTO' SCHOOLS SEEN SERVING WELL

"[Editor, The Arizona Republic:] The combined effect of Harold Cousland's series of articles decrying "de facto segregation" in Phoenix schools, and The Republic's account of Superintendent Seymour's 'integration program' for Phoenix high schools, is distressing to me.

"As Mr. Cousland states in his concluding article, 'whether school board members take these steps is up to them, and the people who elect them.' My own guess is that the great majority of our citizens are well satisfied with the traditional neighborhood school system, and would not care to see it tinkered with at the behest of the authors of a report made to the federal Civil Rights Commission.

"My further guess is that a similar majority would prefer to see Superintendent Seymour confine his activities to the carrying out of policy made by the Phoenix Union High School board, rather than taking the bit in his own teeth.

"Mr. Seymour declares that we 'are and must be concerned with achieving an integrated society.' Once more, it would seem more appropriate for any such broad declarations to come from policymaking bodies who are directly responsible to the electorate, rather than from an appointed administrator. 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.

"The neighborhood school concept, which has served us well for countless years, is quite consistent with this principle. Those who would abandon it concern themselves not with the great majority, for whom it has worked very well, but with a small minority for whom they claim it has not worked well. They assert a claim for special privileges for this minority, the members of which in many cases may not even want the privileges which the social theorists urge be extended to them.

"The schools' job is to educate children. They should not be saddled with a task of fostering social change which may well lessen their ability to perform their primary job. The voters of Phoenix will do well to take a long second look at the sort of proposals urged by Messrs. Cousland and Seymour."

Mr. Rehnquist was given several opportunities at the hearings to explain this letter. His reply always took the same line:

"I would still have the same reservations I expressed in 1967 to the accomplishment of this same result by transporting people long distances, from points where they live, in order to achieve this sort of racial balance, and what I would regard as rather an artificial way."

And later in the hearings:

"With respect to the 1967 letter which I wrote in the context of the Phoenix School system as it then existed, I think I still am of the view that busing or transportation over long distances of students for the purpose of achieving a racial balance where you do not have a dual school system is not desirable."

And again in answers to supplemental questions, Mr. Rehnquist explained that a statement by Dr. Seymour that he would "not dismiss busing of students as a partial solution" lay at the heart of this letter.

Thus, Mr. Rehnquist has tried to cloak his 1967 letter in the current controversy over mandatory busing of students. But a fair reading of the letter itself and the articles on which it is based demonstrates that Mr. Rehnquist was opposed to much more. The letter itself does not even mention busing, or, indeed, transportation of students in any form. And it is apparent from the most cursory glance at the proposals Dr. Seymour made that—as Mr. Rehnquist admitted in answers to supplemental questions—virtually all of the proposals are "entirely consistent" with the neighborhood school concept Mr. Rehnquist wrote about. Yet the letter specifically suggested that "the voters of Phoenix will do well to take a long second look at the *sort of proposals* urged by Messrs. Cousland and Seymour." (emphasis added)

Moreover, the newspaper story from the *Arizona Republic* of September 1, 1967, out

of which Mr. Rehnquist takes Dr. Seymour's statement that he would "not dismiss busing of students" when read in full shows that Dr. Seymour had an extremely moderate view of the problem:

"He [Dr. Seymour] said he would not dismiss busing of students as a partial solution, but he discounted busing or the altering of district lines as complete approaches to the problem.

"'It is much more preferable for us to demonstrate a willingness to broaden the spectrum of school populations through such actions as voluntary transfers, a local peace corps of students and teachers, . . . and other devices intended to life the aspirations of those who live and learn without them.

"'The research evidence tentatively supports the premise that minority pupils achieve more in an atmosphere of high motivation,' he said."

And the *Phoenix Gazette* of August 31, 1967, reporting the same speech by Dr. Seymour makes the Superintendent's position equally clear:

"But he [Dr. Seymour] said he opposes gerrymandering district boundaries or 'busing' pupils from one part of town to another as means toward 'true integration.'

"'There is nothing more artificial in my judgment than to load a group of pupils from one district and disgorge them at another without making it possible for full, active participation in learning, socializing, sports and activities, and without integrating the adults along with busing pupils,' he continued."

Thus, far from being an advocate of forced busing, Dr. Seymour favored other ways of integrating the schools, such as encouraging voluntary transfers under a program already in effect. Viewed in this light, one sees rather clearly that just four years ago Mr. Rehnquist found "distressing" some rather minimal efforts of school officials to promote equality of educational opportunity. One also sees that his answers to the Committee's questions on this matter were more glib than candid.

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.

The statement is especially disturbing when put into context. The newspaper story which contains the quote by Dr. Seymour with which Mr. Rehnquist took issue reads:

"Commenting on teaching minority members, [Dr. Seymour] said the district should make no attempt to establish ratios of one type of teacher to the pupils they serve.

"'Since we are and must be concerned with achieving an integrated society," he said, "the Phoenix Union High School system recognizes an obligation to staff schools with personnel to help relieve cultural imbalance within the community. Pupils need to be exposed to the fine talents representative of all races.'"

Thus there is yet another part of a consistent pattern, complementing Mr. Rehnquist's opposition to the employment "imbalance" section of the Model State Anti-Discrimination Act, and to the public accommodations ordinance, of the nominee's hostility to programs which recognize 200 years of discrimination in America and take steps to rectify the tremendous burdens which that discrimination has imposed.

THE ABSENCE OF AFFIRMATIVE COMMITMENT TO EQUAL RIGHTS

Significantly, the disturbing inferences which flow from the incidents just described are not rebutted in any way by other, affirmative actions Mr. Rehnquist has taken to promote racial justice. Indeed, the absence of a demonstrated commitment to equal rights in the nominee's record is alone strong grounds for questioning his nomination.

Mr. Rehnquist was twice asked at the hearings to describe what in his record demonstrated a commitment to equal rights for all. His entire answer was as follows:

"It is difficult to answer that question, Senator. I have participated in the political process in Arizona. I have represented indigent defendants in the Federal and State courts in Arizona. I have been a member of the County Legal Aid Society Board at a time when it was very difficult to get this sort of funding that they are getting today. I have represented indigents in civil rights actions. I realize that that is not, perhaps, a very impressive list. It is all that comes to mind now.

* * * * *

"I think that there are some paragraphs in my Houston Law Day speech which recognize the great importance of recognition of minority rights, that the progress is not as fast as we would like and that more remains to be done. I am trying to think of some other public statement that may contain similar—well, you know, I am just coming back, not back to isolated passages in public statements."

This was subsequently expanded and clarified by Mr. Rehnquist in response to additional questions by certain members of the Committee. Mr. Rehnquist added that he had been an Associate Member of the American Bar Association Special Committee on the Defense of Indigent Persons Accused of Crime in 1963; that he had testified on behalf of the Administration in favor of ratification of the Genocide Treaty and in support of the Equal Rights Amendment; and that he had participated in the preparation of the Opinion of the Attorney General upholding the legality of the "Philadelphia Plan." Mr. Rehnquist also explained in somewhat greater detail the sorts of civil rights actions in which he represented indigents.

This record, compiled over the course of an 18 year career, reveals little more than the routine activities which may be expected of any private lawyer who becomes a high-ranking government official. It cannot be called a demonstrated commitment to fundamental human rights.

Representation of indigents, for example, is considered one of the duties of every member of the bar, and in criminal cases is usually done at the request of the court. The civil rights actions Mr. Rehnquist described in his response to written questions could more accurately be called civil cases than civil rights cases in the usual meaning of that term. And in response to additional questions, Mr. Rehnquist admitted that his membership on the Maricopa County Legal Aid Society Board had been *ex officio*, by virtue of his position as an officer of the County Bar Association.

Nor is any particular commitment shown by his record in the Department of Justice since 1969. His testimony in support of the Equal Rights Amendment was less than wholehearted. And any reliance which might otherwise be placed on his authorship of the Opinion of the Attorney General upholding the lawfulness of the Philadelphia Plan is undermined by his opposition to a far less reaching proposal in the Model State Anti-Discrimination Act in 1966, discussed above. Further, once put in chronological sequence, the significance of that Opinion is somewhat suspect. In June of 1969 the Labor Department, with Administration approval, promulgated the orders for minority hiring commonly referred to as the Philadelphia Plan. In August the Comptroller General held the Plan illegal. In September, Mr. Rehnquist's office prepared the Opinion of the Attorney General which, unsurprisingly, upheld the Labor Department's—and the Administration's—well publicized proposal.

In sum, 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.

ALLEGED HARASSMENT OF VOTERS

There have been a number of charges and denials concerning Mr. Rehnquist's role in voter challenges by Republicans during various elections in the early 1960's in Phoenix. One serious charge was that made in sworn affidavits by Mr. Jordan Harris and Mr. Robert Tate alleging that Mr. Rehnquist harassed and intimidated a voter and engaged in a scuffle with Mr. Harris at the Bethune precinct in 1964. Messrs. Tate and Harris charge that Mr. Rehnquist made an improper attempt to administer personally a literacy test to a would-be voter. Mr. Harris says he approached Mr. Rehnquist, to whom he had been introduced, and "argued with him about the harassment of voters." A struggle ensued, in which Mr. Tate came to Mr. Harris' aid. A policeman, it is said, entered and took Mr. Rehnquist into an office, from which he soon left. Mr. Tate identified Mr. Rehnquist "from pictures I have seen lately in the papers . . . he did not, at that time, however, wear glasses."

These affidavits are corroborated by two additional ones sworn within the past few days. These came from the Rev. and Mrs. Snelson McGriff, who say that Mr. Rehnquist—or "his twin brother"—was at Bethune precinct in 1964. Rev. McGriff says that the challenger, Mr. Rehnquist, wore glasses while inside the voting place, but took them off when he came outside, before the scuffle took place. *See* the *National Observer*, Nov. 28, 1971, p. 4, col. 1.

Mr. Rehnquist has submitted a sworn affidavit which says that the affidavits of Messrs. Tate and Harris "insofar as they pertain to me . . . are false." He has denied having been at the Bethune precinct in 1964, and he denied that he ever personally "harassed or intimidated voters."

The conflict in the evidence before the Committee is not resolved simply by reference to Judge Charles Hardy's letter, as the Majority would have us believe. Judge Hardy only confirms what was already documented by contemporaneous news accounts and by an FBI report: that there was voter harassment and a fight at Bethune in 1962, and that Mr. Rehnquist was not involved in it. But Judge Hardy's letter does not by any stretch of the imagination stand for the proposition that no scuffle occurred at Bethune in 1964. Thus Mr. Rehnquist's statements and Judge Hardy's letter do not "completely refute the charges" made by Messrs. Tate and Harris. Indeed, Judge Hardy's letter which states that the "events in question" occurred in 1962, could not have been intended as a refutation of their charges since it is dated before their affidavits were made and released.

Nor does the fact that the Federal Civil Rights Act of 1964, in effect at the time, prohibited oral literacy challenges "undercut the credibility of these allegations" as the Majority Report claims. That fact means only that the challenges, if there were any, violated federal law. And at least in some parts of Arizona, a Justice Department investigation has revealed that "challenges . . . based on . . . ability to read the Constitution in English" were made in 1964. *See Apache*

County v. *United States*, 256 F. Supp. 903, 909 (D.D.C. 1966) (3-judge court).

Instead, it appears that the Committee lacks either the motivation or machinery to conduct the type of fact-finding which is needed to uncover which side of this dispute is mistaken. Therefore, each Senator will have to decide for himself what weight—if any—to give either the charges or the blanket denial.

Whatever the actual facts are about the 1964 incident at Bethune, that dispute should not be permitted to obscure the larger question of the extent of Mr. Rehnquist's responsibility for the Republican efforts to intimidate and harass minority voters in Maricopa County from 1958 to 1964. Judge Hardy, whose letter is so heavily relied upon by the Majority, described those tactics as follows:

"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."

In response to a written question from several members of the Committee, Mr. Rehnquist stated that he felt "that there was no connection between my role [in 1962] and the circumstances related by Judge Hardy." He also stated that the practices Judge Hardy described "did not come to my attention until quite late in the day of the election in 1962" and that is why he took no steps to curb practices such as indiscriminate use of literacy challenges, which he believes improper. But this disavowal of involvement in the 1962 practices must be placed alongside the facts, established by Mr. Rehnquist's own answers, that in 1960, 1962 and 1964 the nominee played an important role for the Republican Party in Phoenix in voter challenges.

In 1960, Mr. Rehnquist was designated by the County Republican Chairman as co-chairman of the Ballot Security Program; he supervised and assisted in the preparation of envelopes mailed to Democrats—largely in black and Mexican-American districts—which were the foundation of residency challenges; he recruited lawyers to serve on a Lawyers' Committee; he advised challengers on the law; and he supervised in assembling returns of the mailings for challenging purposes.

In 1962, Mr. Rehnquist was designated Chairman of the Lawyers' Committee of the County Republican Party, and he again taught challengers the procedures they were to use. And, as in 1960, he served as a trouble-shooter—going to precincts at which disputes had arisen, in order to help resolve them.

Finally, in 1964 Mr. Rehnquist was Chairman of the Ballot Security Program, selected by the County Republican Chairman. As such, he had overall responsibility for mailing out envelopes, recruiting challengers and recruiting members of the Lawyers' Committee, and for speaking, or seeing that someone spoke, at a training session of challengers. In 1964, as well, Mr. Rehnquist was general counsel to the County Republican Committee.

Thus while Mr. Rehnquist has sought to disassociate himself from the tactics employed by the Republicans in 1962 and other years, it cannot be overlooked that he held a high and responsible position in the Republican party's election day apparatus from at least 1960 to 1964, a period that saw very substantial harassment and intimidation of voters in minority group precincts.

CONCLUSION

A review of the nominee's entire record on civil rights reveals a persistent unwillingness on his part to allow law to be used to overcome racial injustice. There are two significant implications of this which argue strongly against confirmation. First, Mr. Rehnquist's views are such that one must fear the interpretation he may give to the great promise of the Fourteenth Amendment: equal protection of the laws. Indeed, one must also fear the limits he would impose on a legislature's efforts to redress 200 years of racial injustice. Second, there is the question of the very appearance of fairness and impartiality. At a time when many Americans, young and old alike, doubt the responsiveness of our system of government, we cannot afford to put on the Supreme Court a man consistently insensitive to the role that law must play in achieving a fair and just society.

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum. I hope this will be the final quorum call of the day.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

LEGISLATIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate return to legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered, and the Senate will resume consideration of legislative business.

ORDER FOR ADJOURNMENT TO 9 A.M.

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 PROXMIRE AND VACATING ORDER FOR RECOGNITION OF SENATOR MONTOYA TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, following the remarks of the two leaders on tomorrow, the distinguished Senator from Wisconsin (Mr. PROXMIRE) be recognized for not to exceed 15 minutes and that the previous order recognizing the Senator from New Mexico (Mr. MONTOYA) be vacated.

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

ORDER FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the remarks of the distinguished Senator from Wisconsin (Mr. PROXMIRE) on tomorrow, there be a period for the transaction of routine morning business for not to exceed 15 minutes with statements therein limited to 3 minutes, at the conclusion of which the Senate will proceed to the consideration of Calendar No. 537, S. 2676, a bill to provide for the prevention of sickle cell anemia.

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

ORDER FOR RESUMPTION OF CONSIDERATION OF THE NOMINATION OF WILLIAM H. REHNQUIST ON TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that upon the disposition of S. 2676 on tomorrow, the Senate return to executive session and the resumption of the consideration of the nomination of William H. Rehnquist to be an Associate Justice of the Supreme Court of the United States.

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 a.m. After the two leaders have been recognized under the standing order, the senior Senator from Wisconsin (Mr. PROXMIRE) will be recognized for not to exceed 15 minutes, following which there will be a period for the transaction of routine morning business, with statements therein limited to 3 minutes. At the conclusion of routine morning business, the Senate will take up S. 2676, a bill to provide for the prevention of sickle cell anemia. The bill will be debated under a time limitation of not to exceed 30 minutes, and there will be a rollcall vote on final passage. The rollcall vote should occur at about 10 o'clock a.m.

Following the rollcall vote on S. 2676, the Senate will return to executive session to resume consideration of the nomination of William H. Rehnquist for the office of Associate Justice of the Supreme Court of the United States.

ADJOURNMENT TO 9 A.M.

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move that the Senate, in accordance with the previous order, stand in adjournment until 9 o'clock tomorrow morning.

The motion was agreed to; and (at 6 o'clock and 14 minutes p.m.) the Senate adjourned until tomorrow, Wednesday, December 8, 1971, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate December 7, 1971:

COMMISSION ON CIVIL RIGHTS

John A. Buggs, of Maryland, to be Staff Director for the Commission on Civil Rights, vice Howard A. Glickstein, resigned.

IN THE NAVY

Robert R. Groom (civilian college graduate) to be a permanent lieutenant and a temporary lieutenant commander in the Dental Corps of the Navy, subject to the qualification therefor as provided by law.

The following named (Naval Reserve officers) to be permanent lieutenants (junior grade) and temporary lieutenants in the Dental Corps of the Navy subject to the qualification therefor as provided by law:

William T. Bell
Donald J. Clausen
Daniel M. Harrigan
Frederick L. Hecht
Robert M. Rohen
John F. Suber
Jerry D. Thomley
William T. Wilson

Glenn C. Parrish (Naval Reserve officer) to be a permanent lieutenant and a temporary lieutenant commander in the Medical Corps of the Navy, subject to the qualification therefor as provided by law.

The following named (Naval Reserve Officers' Training Corps candidates) to be permanent ensigns in the line or staff corps of the Navy, subject to the qualification therefor as provided by law:

Steven M. Abelman
Kris T. Ackerbauer
Charles N. Adams III
James V. Ahearn, Jr.
Robert R. Ainslie
David E. Albin
John L. Alexander
James M. Allen
Kristin L. Allen
John S. Allison, Jr.
Lorin E. Andersen
John H. Anderson, Jr.
John N. Anderson
Larry E. Anderson
Stephen F. Anderson III
Kenton G. Andrews
Gary T. Archibald
Robert E. Ansley, Jr.
Richard L. Arfman
Brian S. Armstrong
Charles B. Askey
Jeromye L. Avery
Jack N. Bailey
Robert K. Baird
Neil D. Baker
Wilfred Baltazar, Jr.
David H. Barber
Timothy J. Barnes
Ralph C. Bartlett
Garrick W. R. Bauer
Anthony J. Bechem
Paul R. Becker
Kenneth R. Beeunas
Raymond B. Beimel
Vincent J. Beirne
John B. Bell
Frederick C. Bensch
James E. Benson
Paul R. Bernander
Michael S. Bertin
Robert E. Besal
Daryl L. Bever
Norman S. Biehler
Edward S. Bishop
David F. Blake
James M. Blakely
Jonathan H. Blanding
Edward H. Blohm, Jr.
Mark A. Bloom
Anthony K. Bollen
Robert M. Bond
William D. Bondy
William T. Boone
William G. Borden
Joseph E. Bottomley
Jon T. Boyd
Pelham G. Boyer
Joseph B. Brady
Philip E. Bray
Jonathan J. Bridge
Edward T. Brill
Michael A. Brogan
David A. Brown
Frank H. Brown
Franz K. Brown
Jesse H. Brown
Kelley A. Brown
Richard M. Bruns
Gary E. Buker
Thomas A. Bunker
Richard J. Burdge, Jr.
Michael E. Burke
Larry W. Burkhart
Timothy D. Caldwell
James R. Cambre
Christopher S. Canetti
Katsumi O. Cannell
Leonard W. Capello
Donald L. Capron
Dale R. Carlson
Orin O. Carman
William A. Caroli
Christopher E. Case
Anthony J. Cassano, Jr.
Douglas W. Charlton
Benjamin L. Chastain
Richard A. Chiasson
Peter C. Chisholm
Paul E. Cincotta
Irving B. Clayton III
Kevin R. Collins
Kevin E. Condon
Thomas P. Connair
Paul M. Connolly
Thomas I. Converse
Howard D. Coogler
Wilbur O. Cooke, Jr.
Michael R. Cooper
Kenneth E. Corkum
Mark E. Costello
Stephen T. Cox
John T. Crawford
Dennis P. Crimmins II
Douglas L. Crinklaw, Jr.
Raymond S. Cross
James R. Crossen
Indy C. Crowley
Terry S. Crozier
John F. Cullinan
James P. Cunningham
Samuel R. Curcio, Jr.
Bruce J. Currivan
John F. Dalby
Joseph T. Daly III
David M. Dankert
Wayne C. Darnell
Mark C. Davis
Robert E. Davis
Terry L. Daugherty
Rocklun A. Deal
Thomas C. Deas, Jr.
William D. Degolian
Michael J. Deibler
Christopher P. Depoix
John P. Deregt
Norman E. Derouin, Jr.
William M. Desgalier
Ted E. Dewalt
Craig R. Dolan
Robert E. Dolan
John R. Donahue
John P. Donnell
Richard H. Donohue
Donald R. Dreyer
Daniel E. Dubina
Neale A. Duffett
John S. Earwaker III
Justin D. Edmonds
John S. Elliker, Jr.
Mark E. Ellis
John D. Epley
David S. Epstein
Douglas J. Erbele
Hobart R. Everett, Jr.
James L. Everett IV
Uson Y. Ewart
Bruce K. Farwell
William A. Faust
David A. Fencl
Donald B. Fennessey
Richard W. Fife
David J. Firth
Alan D. Fisher
Steven S. Fitzgerald
Raymond M. Flamm
Gary J. Flor
Clifford W. Folland
Steven V. Fondren
Van Y. Fong
Larry A. Foster
Robert B. Frazier
James M. Fredericksen
Curtis M. French
Brian D. Frenzel
Thomas A. Fulham, Jr.
Edward F. Gallagher, Jr.
Bruce T. Garrett
Patrick M. Garrett
Alan C. Gault, Jr.
James F. Gay
Gregory W. Gebhardt
Paul S. Giarra
Ronald M. Gibbs
David H. Gibbons
Steven M. Glover
Douglas T. Gordon
Leonard A. Goreham
Michael P. Gracey
David G. Grau
Kerry D. Green
Daniel E. Griffin
Hines N. Griffin
Jan W. Gripp
Edmund S. Gross
Austin B. Gunsel
William F. Hackett
Karl A. Hadley
Donald L. Hafer
Dennis K. Hakin
Peter G. Hanson
John T. Hardin
Joseph A. Harland
Raymond M. Harris, Jr.
Donald D. Harvey III
Franz Hatfield
Frederick R. Heaty
Michael C. Heck
Frederick G. Heppner
John M. Herzog
James R. Hess
Ronald C. Hessdoerfer
Gordon Heyworth
James A. Higbie
Peter L. Hilbig
Gordon R. Hill
Larkin D. Hipp
Henry R. Hitpas II
Robert N. Hobbs
Loius A. Hoffman, Jr.
Paul Edward Holley, Jr.
Robert C. Holmes, Jr.
Ronald D. Honey
Dennis D. Horsell
Nathan A. Horowitz
John M. House
Mark A. Housel
Kevin M. Huban
Leonard W. Huck, Jr.
William A. Hudson
William G. Hudson III
Anthoyn L. Impellitteri
Eric B. Jackson
Eric E. Jackson
Jack W. Jahn
Christopher P. Jamison
Thomas M. Jaskunas
Garrison W. Jaquess
Michael T. Meagher
Frank B. Mease
James Meetze
Charles F. Mello
Peter N. Mikhalevsky
Francis R. Miller
Michael W. Monkhouse
Leland R. Montgomery
Mark S. Moranville
James W. Morgan
John B. Morgan
Donald S. Morrison
Martin L. Morrissey
Lawrence J. Morse
David R. Mortensen
Robert G. Morton
Sammy Lee Moser
James N. Mullican
Timothy R. Murphy
George W. Myers, Jr.
Fred H. Naeve, Jr.
William M. Naylor
William D. Needham
William V. Jenkins
William E. Jennings III
Andrew A. Jensen
Martin W. Johnsen
Kenneth R. Johnson
David B. Jolly
Thomas H. Jones
William B. Jones
Peter L. Kallin
George J. Karlsven, Jr.
Walter J. Kasianchuk
Michael E. Kassner
Roger L. Kave
Douglas W. Keith
Christopher J. Kemper
James B. Kendall
Kristopher M. Kennedy
Jared T. Kieling
Mark D. Kilmartin
Murray O. King, Jr.
Robert F. Kissling, Jr.
Patrick J. Klinker
Carl T. Knos
Richard F. Kodzis
Lawrence R. Krahe, Jr.
Victor E. Kratzer
Richard F. Krochalis
Richard E. Kuhn
Terence P. Labrecque
William P. Larsen III
Michael P. Lazar
Daniel V. Leclair
David M. Laffoon
Milton D. Lane
Leopold H. Lemmelin II
John M. Lemmon
Raymond E. Leonard III
William H. Lewis III
Richard J. Liebl
George P. Lillard III
Stuart C. Lilly
Peter R. Lindsay
Jerry D. Lindstrom
David J. Llewellyn
Andrew F. Loomis
John B. Love
Rawlins Lowndes
George W. Lynn
Edward F. McClave
Daniel R. McCort
Harry J. McDevitt
Randal S. McDonald
Daniel McGrath
Daniel B. McGrath
James B. McKinney
William J. McKenney
Charles R. McLean
William D. McLean
James A. McCrae
John M. McCutchen
Brian L. McElmurry
Michael K. McEvoy
John M. McGrail
Gibson E. McMillan, Jr.
Scott J. N. McNabb
Breathitt R. McVay, Jr.
Robert C. Macdermid
William M. Machovina
Bruce K. Maclean
Steven M. Macpherson
Larry G. Madison
Gregory A. Major
John P. Makin
Nicholas A. Malarchik
Patrick J. Mallon
Paul F. Malloy
Michael W. Mann
Bruce D. Mason
Lee C. Mason II
William T. Matthews
John M. Kearney
James F. Keim
William R. Netro
Russell S. Noble
Lynn W. Norden
Timothy J. Norrbom
John W. Norris
Stefan A. Nyarady
Philip J. O'Brien
John T. Oconnell
Arthur J. Ogrady
Clifford M. Olson
Ernest G. Ovitz III
Steven W. Palmer
Richard S. G. Park
Timothy A. Patton
Douglas T. Peart
Andrew J. Peck
Kenneth A. Pedone
Kenneth W. Peters
Mark A. Pickett
Russell A. Pickett
Edward W. Pinion
Rand R. Pixa
Richard P. Pope
Francis J. Popek
Carl R Porterfield
William O. Poston
Jeffrey P. Powell
George L. Powers
Michael K. Price
William R. Price III
Larry R. Prill
Jeffrey D. Pulis
Michael N. Quarles
Donald R. Quartel, Jr.
Paul F. Quinn
Thomas L. Reeder III
Michael C. Rees
Jerry D. Reeves
James R. Reisdorfer
Jeffrey A. Reise
David P. Reistetter
Donald L. Reppert
Robert T. Rich
Howard V. Richardson III
Richard P. Riley
Thomas E. Ritchie
James A. Robb
Steven N. Robinson
Dennis E. Rocklein
Jeffrey L. Roddahl
Willard P. Roderick
Steven L. Romine
Christian Rondestvedt
Thomas W. Rossley
John H. Rothwell
Peter S. Rothwell
Sigurd K. Rottingen
James S. Rountree
James W. Roush
Gerald M. Rowe
Glenn H. Russell
William D. Russell
Jeffrey B. Ryan
William P. Ryan, Jr.
Jack G. Salyer
Thomas B. Salzer
Gregory L. Sample
Robert J. Sanders, Jr.
John B. Santino
Michael Sarraino
Marc Schaefer
Frederick J. Scheibl
George S. Scherer
Gregory J. Schlass
James M. Scholz
John M. Schooley
William Schopflin II
Donald E. Schrade
Randall C. Shultz
Murray J. Scott
Dean G. Sedivy
Robert N. Seebeck
Michael J. Seeley
William A. Seiss
William W. Selman
David M. Sevier
Siegfried L. Shalles
James T. Shaw III
John D. Shaw
Jon V. Shay
Richard W. Shriver
William H. Shurtleff IV
Philip W. Signor III
Irving Silver
Terrence C. Silverberg
Charles C. Simpson III
William M. Simpson, Jr.
Michael J. Sise
Donald E. Sliwinski
Joseph W. Sloan, Jr.
John A. Slusser
Charles E. Smith
Glenn R. Smith
Leigh R. Smith
Loren W. Smith
Robert E. Smith
Scott M. Smith

Terry A. Tarantino
Dennis L. Teitsworth
Richard C. Tennant
Nicholas J. Tennyson
Timothy L. Thickstun
Thomas W. Thiesse
Michael R. Thomas
John A. Thomson
Charles L. Threet, Jr.
Terran J. Tidewell
Frank A. Titus II
Michael R. Tofalo
James M. Tompkins
David M. Torbenson
Joseph E. Torgesen
John R. Traughber
Michael D. Trudeau
Anthony J. Twardziak, Jr.
Paul E. Tyre, Jr.
Jay P. Unwin
Peter M. Vandyk
Jerome J. Vanparys
Thomas G. Vetter
Dennis A. Vidmar
Kenneth A. Vincent
Michael P. Vincent
James C. Voter
Paul J. Vuchetich
Wayne L. Wagner
Howard E. Wagoner III
John G. Waldmann
James R. Wallace
James A. Walters
Charles R. Waters
Michael A. Wathen
Ralph S. Watts
Stephen F. Waylett
Gregg C. Weatherly
Walter L. Weber
James A. Werner
Paul D. Wesley
Lynn G. Wessman
Robert A. Wesolowski
James R. Wheeler
David G. White
George W. White
Millar J. C. White
William S. White
William T. White
Norman R. Wight
William J. Willkie
Charles W. Spradlin, Jr.
Donald C. Stanton
Richard D. Stark, Jr.
John A. Stauter, Jr.
Howard L. Steele III
John E. Steele
Peter W. Steele
Rodney C. Steffens
Kenneth M. Stein
Clyde E. Sterling
Don T. Stevens
John R. Stewart, Jr.
Jeffrey L. Stine
Jeffrey M. Stone
Bradley D. Storm.
Kevin S. Stotmeister
Michael Strong
Lawrence W. Strunk
Joseph Stusnick III
David B. Sutton
Jhan C. Swanson
Anthony G. Tamaccio
Bradley S. Tammes
Daniel F. Tandy
Herlis A. Williams, Jr.
John P. Wilmeth
Dallas G. Wilfong III
Paul S. Winberry
Neil S. Wingert
John S. Woodward
James R. Worth
James L. Wright
Richard C. Wright II
Robert J. Wright
William D. Wright, Jr.
Joseph C. Yancy, Jr.
Michael E. Yates
Robert W. Yerkes
William A. Young
Peter C. Zackrison
Ralph C. Zagrabbe
Philip L. Zeeck
Howell C. Zeigler
William R. Zeird
Dale O. Snodgrass
Richard E. Snook
Michael G. Somadelis
George F. Sparks
George E. Spaulding
Scott L. Speicher

The following named (civilian college graduates) to be permanent lieutenants (junior grade) and temporary lieutenants in the Dental Corps of the Navy, subject to the qualification therefor as provided by law:

Jonathan F. Davies
Julius W. Eickenhorst
Richard I. Glasgow

Stephen A. Grzenda (Naval Reserve officer) to be a permanent lieutenant and a temporary lieutenant commander in the Medical Corps of the Navy, subject to the qualification therefor as provided by law:

Michael W. Lau (civilian college graduate) to be a permanent captain in the Medical Corps in the Reserve of the U.S. Navy, subject to the qualification therefor as provided by law:

Bruce D. Noonan (civilian college graduate) to be a permanent lieutenant (junior grade) and a temporary lieutenant in the Medical Corps of the Navy, subject to the qualification therefor as provided by law.

DIPLOMATIC AND FOREIGN SERVICE

Anthony B. Marshall, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Trinidad and Tobago.

EXTENSIONS OF REMARKS

HOMER BABBIDGE, UNIVERSITY OF CONNECTICUT PRESIDENT, ANNOUNCES RETIREMENT

HON. STEWART B. McKINNEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, December 6, 1971

Mr. McKINNEY. Mr. Speaker, like many residents of Connecticut and elsewhere, I was saddened to learn that Homer D. Babbidge had announced his retirement as president of the University of Connecticut. A scholar, author, and educator, Dr. Babbidge is more importantly a compassionate human who brought to the office of University of Connecticut president a deep understanding and grasp on how to communicate with his fellow man. He not only weathered a decade of turmoil on America's college campuses, but he came through it with the respect and admiration of all.

In recent days, John Peterson, a reporter for the New London, Conn., Day, has authored two articles which deal with the accomplishments and personality of Dr. Babbidge. These are excellent accounts of Dr. Babbidge's career and I would like to share them with my colleagues now.

The articles follow:

BABBIDGE WILL LEAVE MANY FRIENDS WHEN HE STEPS DOWN FROM THE UNIVERSITY OF CONNECTICUT

(By John Peterson)

STORRS, CONN.—Homer D. Babbidge, University of Connecticut president who retires next year, is a dime among 10 pennies.

While some college presidents stumble and fall, Dr. Babbidge walks with confidence and the support of thousands.

That support was exemplified 48 hours after he announced his resignation when 500 students demonstrated and presented Babbidge with petitions signed by 7,000 students and faculty members urging him to reconsider his position.

But Babbidge was keeping his first promise to the university: To limit his tenure to 10 years. Babbidge described it as a relay race, now he must hand over the baton.

Babbidge is described by those on campus as considerate, extremely interested, unbelievable and "cast in the mold of the gods."

The thought of a new president shook the university in October and a month later tremors remained.

As one veteran professor observed, "With Babbidge we could tread water, but I'm afraid we'll sink now."

Many faculty members feel that under Babbidge the university moved forward. But under a new president and a Board of Trustees influenced by the administration of Gov. Thomas J. Meskill, they look for the worse.

There were some who speculated that Meskill was one of the reasons Babbidge resigned. The two had a number of differences—some of them public and most of them heated.

One was the governor's push earlier this year for students to pay tuition costs. Another involved a confrontation between Babbidge and Meskill's finance and control commissioner, Adolph G. Carlson.

Carlson refused to approve contracts for 35 students to spend the year abroad. Babbidge was determined that the university would decide its educational programs, not any state agency.

Funds had been appropriated for the program, the students had paid their fares and were awaiting departure in New York when Babbidge, with trustee support, ordered them to leave.

"There's room for honest differences among honest men," Babbidge says of the incident.

When Babbidge became the eighth president of UConn in 1962, he was 36 years old and the youngest chief administrator of a major university. He had had a number of high-ranking positions. He was vice president of the American Council of Education in Washington when he became president of UConn.

In 1961 the Yale graduate received the Distinguished Service Medal of the Health, Education, and Welfare Department.

Born in Newton, Mass., but raised in New Haven, Babbidge is the author of "Noah Webster: On Being American" and coauthored the book, "The Federal Interest in Higher Education."

Despite a wide assortment of obstacles, Babbidge can count a number of accomplishments during his tenure at the university.

He has recruited a number of highly qualified persons for his staff and faculty. He doubled the faculty salaries and greatly decreased the student-teacher ratio.

Eight new departments were added and other curriculums were expanded. Next spring the university will graduate its first classes of dental and medical students.

It was under the pressure of the takeover of the administrative offices in 1968 that John Breen, then new to the faculty, first saw Babbidge in action.

"It was a bitterly cold night," Breen recalled. Students occupied the building while hundreds of others roamed about outside, threatening violence.

To Breen, Babbidge was the man in the tan coat, moving through the crowds calming students, urging them to talk it over with him. He led about 300 students to a nearby classroom and talked with them until the students dropped thoughts of violence.

Wallace S. Moreland, who came out of retirement to be Babbidge's special assistant, recalled Babbidge's actions during that disturbance and a second involving occupation of the ROTC building.

"During the time of tension he would talk with students, day or night for an hour, two hours or whatever it took," Moreland said.

He remembered Babbidge listening to the demands of students inside the ROTC building, being shouted over a bullhorn. The students wanted the university to convert the building into a day care center and provide its staff of students with free room and board for the summer.

"The answer to that question is, No!" Babbidge yelled back.

Moreland recalled the decision to call in state police to regain control of the administration building was a tough one for Babbidge and came after all other alternatives were exhausted.

"He knew he couldn't communicate with the hard core of 40 or 50," Moreland said. "We could have had a Kent State here, all the elements were present."

Moreland, who has worked for four university presidents, says, "In my score book, Homer Babbidge is one of the greatest.

"The tougher the going, the cooler he comes," Moreland said. "He has a way of getting at a problem quickly."

Babbidge also is described as a listener.